



## The Position and Role of the Sharia Supervisory Board in Ensuring Sharia Compliance Equity Crowdfunding in Indonesia

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### ABSTRACT

*Fundraising using the equity crowdfunding method has experienced rapid development and is in high demand from the public. In order to maintain the credibility of the implementation of Islamic securities crowdfunding, it is essential to establish a sharia supervisory board to supervise the offering of sharia-compliant securities employing information technology-driven crowdfunding service platforms. This article aims to discuss and analyze the position and role of the sharia supervisory board within the system, as well as the level of compliance with sharia principles in the implementation of equity crowdfunding in Indonesia. The research method used in this article is a type of normative legal research that relies on secondary data sources obtained through a literature review. The legal protection for the existence of a sharia supervisory board in sharia equity crowdfunding in Indonesia is regulated in POJK Number 57/POJK.04/2020 and Fatwa Number 140/DSN-MUI/VIII/2021. The sharia supervisory board has a very strategic role in ensuring sharia compliance in every equity crowdfunding activity in Indonesia. In order to maintain the credibility of sharia equity crowdfunding in the future, it is essential to ensure that every aspect of operations complies with sharia principles by maximizing the existence of a sharia supervisory board.*

## 1. Introduction

Capital is one of the most common challenges encountered by entrepreneurs in business development. According to the Ministry of Cooperatives and Small and Medium Enterprises (Kemenkop UKM), the number of Micro, Small, and Medium Enterprises (MSMEs) in the 2015-2019 range is explained in Table 1. Meanwhile, the main problem faced by MSMEs is around 22% related to capital. Thus, to be able to develop MSME business activities, efforts need to be made, such as providing easy access to capital. The selection of problems to be

addressed should be judicious; thus, digital-based financial services, better known as financial technology (fintech)<sup>1</sup> are seen as capable of reaching customers and addressing capital-related problems. In law, customers are considered to be in a weaker position than business actors.<sup>2</sup>

Table 1  
Number of MSMEs

No	Year				
	2015	2016	2017	2018	2019
<b>Total</b>	59.262.772	61.651.1771	62.922.617	64.194.057	65.465.497

Source: <https://kemenkopukm.go.id/>

Fintech is rapidly developing in Indonesia because it is supported by advancements in the technological ecosystem.<sup>3</sup> Fintech is a form of non-bank financial institution that has been influenced by the development of digital technology, aimed at transforming and accelerating services in the financial sector.<sup>4</sup> The existence of fintech makes it easier for people to enjoy various financial products and services because their services utilize software. The global crisis was mitigated for startups by the use of financial technology,<sup>5</sup> which facilitated the acquisition of money for small enterprises to sustain and expand their operations.<sup>6</sup> Small-scale businesses with difficulty obtaining additional capital from bank financial institutions can use fintech as a solution. Thus, the government aims to enable MSMEs to effectively compete with other businesses by alleviating concerns about funding.<sup>7</sup>

Crowdfunding is one of the fintech services. It effectively addresses financial challenges in entrepreneurship, facilitating access to money for individuals.<sup>8</sup> Also, it is a form of collaborative fundraising involving the wider community to support projects owned by business players or entrepreneurs. As an intermediary between investors and issuers, fundraising employs an electronic

- 1 I Kadek Ade Safera and Ida Bagus Putra Atmadja., *Perlindungan Hukum Terhadap Pemodal Dalam Kegiatan Equity Crowdfunding*, *Kertha Semaya*, Vol.6 No.9, 2018, page. 1–13
- 2 Bagus Wicaksana., *Analysis of E-Commerce Regulations in Indonesia Towards Trans Pacific Partnership Provisions*, *Jurnal Hukum Unissula*, Vol.38 No.2, 2023, page.133-147.
- 3 Ryan Randy Suryono, Indra Budi, and Betty Purwandari., *Detection of Fintech P2P Lending Issues in Indonesia*, *Heliyon*, 2021
- 4 Sri Astutik and Irawan Soerodjo., *The Role of The Financial Services Authority in Setting the Interest Rate for Financial Technology Loans as Consumer Protection of Financial Services*, *Yuridika*, Vol.38 No.2, 2023, page. 431-442
- 5 Ridwan Irwan Fauzy., *Equity Crowdfunding Dalam Distribusi Zakat*, *La Zhulma Jurnal Ekonomi Syariah*, Vol.12 No.1, 2020, page. 15–28.
- 6 Tedy Ardiansyah., *Model Financial Dan Teknologi (Fintech) Membantu Permasalahan Modal Wirausaha UMKM Di Indonesia*, *Majalah Ilmiah Bijak*, Vol.16 No.2, 2019, page.158–66
- 7 Luluk Nurmalita., *Kebijakan Equity Crowdfunding Dalam Rangka Inovasi Pendanaan Bagi Usaha Mikro Kecil Menengah (Umkm)*, *Airlangga Journal of Innovation Management*, Vol.1 No.1, 2020, page.115
- 8 Cynthia Kurniawan Ong., *Inovasi Keuangan Di Bidang Equity Crowdfunding Dalam Pengembangan Pasar Modal*, *Airlangga Journal of Innovation Management*, Vol.1 No.2, 2020, page.1–9

system operated by a crowdfunding platform. Thus, crowdfunding encompasses three primary participants: the crowdfunding platform, which facilitates public access to funds via the internet; publishers, who are business entities seeking financial support by showcasing business proposals via the platform; and investors, who are fund owners that subsequently finance projects initiated by publishers after reviewing the project proposals.

The crowdfunding business model also includes equity crowdfunding, the issuer's offering of shares to investors using an electronic system. The implementation of equity crowdfunding provides an opportunity for the public to invest in startup companies in the hope of obtaining equity. The facilities provided by the crowdfunding service platform are expected to attract public interest in investing in businesses carried out by business actors without having to carry out a public offering process on the stock exchange. The presence of equity crowdfunding provides new innovations in conducting share offerings, which are philosophically part of capital market activities in a simpler form than conducting an Initial Public Offering (IPO) process.<sup>9</sup> Equity crowdfunding is a mini IPO for MSMEs and startups seeking funds from the public.<sup>10</sup> The practice of equity crowdfunding makes it easier for business players to obtain funds in line with the spirit of the government in realizing financial inclusion.<sup>11</sup> For business players, equity crowdfunding can also be used as a medium for business promotion to the public.<sup>12</sup> It is even considered an up-and-coming alternative in providing financing to business players. Equity-based crowdfunding is believed to have contributed to increasing economic growth due to the democratization of supply and supply in the investment process.<sup>13</sup> Investment activities are regarded as one of the primary drivers of national economic expansion.<sup>14</sup>

Equity crowdfunding can increase the number of Islamic stock issuers. The majority of Indonesians are Muslim, and around 64% are still unbanked, providing great opportunities for sharia-based fintech users.<sup>15</sup> Fintech with

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- 9 Cindy Indudewi Hutomo., Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (Equity Crowdfunding), *Jurnal Prespektif: Kajian Masalah Hukum Dan Pembangunan*, Vol.24 No.2, 2019, page. 65–74.
  - 10 Darian M. Ibrahim., Equity Crowdfunding: A Market for Lemons?, *Minnesota Law Review*, Vol.100 No.2, 2015, page. 561–607
  - 11 Ratna Hartanto., Hubungan Hukum Para Pihak Dalam Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi, *Jurnal Hukum Ius Quia Iustum*, Vol.27 No.1, 2020, page. 151–68
  - 12 Nurmalita, Luluk., Kebijakan Equity Crowdfunding Dalam Rangka Inovasi Pendanaan Bagi Usaha Mikro Kecil Menengah (Umk), *Airlangga Journal of Innovation Management*, Vol.1 No.1, 2020;
  - 13 Burze Yasar., The New Investment Landscape: Equity Crowdfunding, *Central Bank Review*, 2021
  - 14 Safina Callistamalva Arindrajaya., Legal Protection Against Cryptocurrency Investors: Overview of Indonesian Consumer Protection Law, *Journal of Human Rights, Culture and Legal System*, Vol.2 No.2, 2022, page. 113-121
  - 15 Lilik Rahmawati, Iqbal Tanjung, and Baiq El Badriati., Analisis Permintaan Dan Perilaku Konsumen Fintech Syariah Model Crowdfunding, *Profit: Jurnal Kajian Ekonomi Dan Perbankan Syariah*, Vol.2 No.1, 2018, page. 35–49

crowdfunding innovation is seen as capable of creating a stable sharia-based financial order.<sup>16</sup> The legitimacy of the existence of sharia equity crowdfunding in Indonesia is the stipulation of Financial Services Authority Regulation (POJK *Peraturan Otoritas Jasa Keuangan*) Number 57/POJK.04/2020 concerning Securities Offerings through Information Technology-Based Crowdfunding Services (POJK Number 57/POJK.04/2020). It is said that sharia equity crowdfunding is if an entity complies with sharia principles in all aspects of its operations, the project carried out by the business actor is not solely pursuing profit, and the capital paid in by investors to finance the project must be *halal* and free from *haram* substances.<sup>17</sup> Until now, there has been no specific *fatwa* that regulates equity crowdfunding, but actually, DSN-MUI Fatwa Number 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles can be used as a legal protection for fintech that runs sharia products, including the implementation of equity crowdfunding. Legal protection is protection accommodated by law as an effort to restore or balance against violations of rights that occur.<sup>18</sup> This fatwa aims to create a fair sharia economic ecosystem, although the main points of crowdfunding services are not yet regulated in detail, which is developing so fast. Therefore, it is relevant to use the theory of legal compliance as a basis for analyzing the compliance of equity crowdfunding with sharia values.

Legal compliance theory is a conceptual framework that discusses the factors influencing individuals or organizations to comply with the law. This theory explains why certain people or entities comply with legal regulations and how these provisions can be maintained. There are many motivations for individuals to comply with the law, such as recognizing the rule as a legal requirement, promoting social harmony, following to societal norms, and avoiding social sanctions.

In the equity crowdfunding system, three main business players are interrelated during the stock offering process: the issuer as a fund seeker, the organizer of equity crowdfunding as a liaison, and the community as investors. However, POJK Number 57/POJK.04/2020 mandates the implementation of crowdfunding services, which states that activities and types of business based on sharia principles must have a Sharia Supervisory Board. This is reinforced by the Fatwa of the National Sharia Council of the Indonesian Ulama Council Number: 140/DSN-MUI/VIII/2021 concerning Sharia Securities Offerings Through Information Technology-Based Crowdfunding Services Based on Sharia Principles (Islamic Securities Crowd Funding) (hereinafter Fatwa Number:

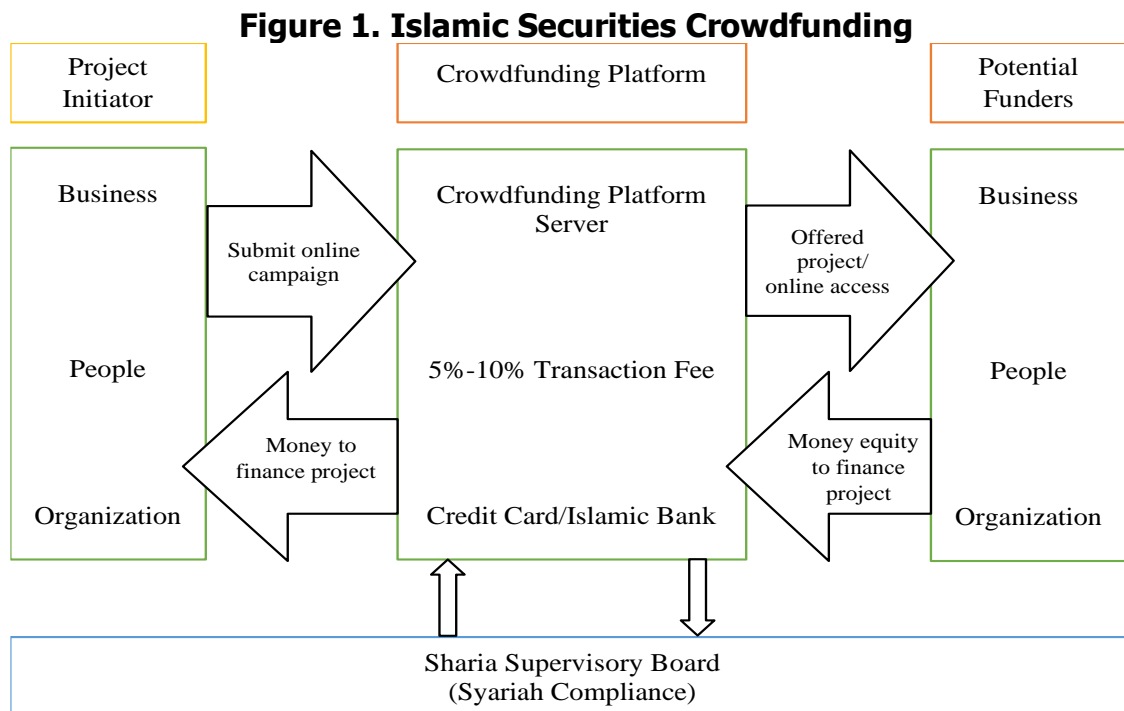
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16 Buerhan Saiti, Muhammad Hamal Musito, and Ensari Yucel., Islamic Crowdfunding: Fundamentals, Developments and Challenges, *Islamic Quarterly*, Vol.62 No.3, 2018, page. 469–85.

17 Rahmawati Apriliani, Anju Ayunda, and Sarrah Fitriani Fathurrochman., Kesadaran Dan Persepsi Usaha Mikro Dan Kecil Terhadap Crowdfunding Syariah, *Amwaluna*, Vol.3 No.2, 2019

18 Gusriadi and Taufiq El Rahman., Perlindungan Hukum Terhadap Kreditur Akibat Surat Kuasa Membebaskan Hak Tanggungan Yang Terdegradasi Sebagai Akta Di Bawah Tangan, *Jurnal Hukum Unissula*, Vol.37 No.2, 2021, page.134-154

140/DSN- MUI/VIII/2021). Thus, there are four stakeholders in sharia-based crowdfunding services: publishers, organizers, investors, and the Sharia Supervisory Board (SSB). The position of the SSB in the Islamic entity structure is an independent organ that functions as a guarantor and supervisor of compliance with sharia principles. This board is responsible for ensuring that the implementation of crowdfunding services adheres to sharia principles. Islamic securities crowdfunding activities can be described in Figure 1.



Source: [https://www.researchgate.net/figure/Islamic-Crowdfunding-Plaform-Process\\_fig1\\_292138715](https://www.researchgate.net/figure/Islamic-Crowdfunding-Plaform-Process_fig1_292138715)

According to Syahrial (2022), SSB has a fundamental role in monitoring the compliance of every entity that implements sharia principles in its business activities. Substantially, SSB provides full responsibility for maintaining integrity and public trust in ensuring that an entity’s operations comply with sharia principles.<sup>19</sup> The optimization of SSB is necessary due to its ability to supervise and assess crowdfunding services' performance from a sharia perspective. Sharia equity crowdfunding activities must ensure that sharia principles are followed and implemented properly. Consequently, business activities that contain *maisir*, *gharar*, *haram*, and usury must be abandoned.

Even though the discussion about equity crowdfunding is new and regulations in several countries have required SSB as a sharia corporate governance structure, the existence of SSB contributes to monitoring sharia compliance in every sharia business entity. This is an effort to increase the reputation and

19 Murah Syahrial., Peran Dewan Pengawas Syariah (DPS) Terhadap Kepatuhan Pemenuhan Syariah Pada Perbankan Syariah, *Jurnal An-Nahl*, Vol.9 No.1, 2022, page. 45–52

trust of business actors and investors in the Equity Crowdfunding platform to demonstrate commitment to Sharia principles.

The existence of SSB has a primary role in monitoring and evaluating Equity Crowdfunding activities to ensure that every transaction and activity complies with Sharia principles. In addition, SSB can contribute to preparing sharia guidelines and policies that must be followed by every Equity Crowdfunding organizer and business actor seeking capital and help assess projects financed through Equity Crowdfunding so that they do not violate Sharia principles.

In order to ensure that sharia crowdfunding services are run according to sharia or not, this article contributes to complementing previous research by conducting an in-depth analysis of the position and role of the sharia supervisory board in carrying out its responsibilities of supervising and ensuring compliance with sharia equity crowdfunding in Indonesian?

## **2. Research Methods**

There are two approaches to understanding the theory of compliance, namely the instrumental approach and normative approach.<sup>20</sup> The study was conducted using a normative juridical method,<sup>21</sup> which included analyzing secondary data sources gathered from literature studies on legal materials on sharia equity crowdfunding supervisors and compliance. This article focuses on analyzing the position of the sharia supervisory board and the extent of compliance with the implementation of equity crowdfunding in Indonesia. The secondary data studied consisted of primary legal materials in the form of POJK Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services and Fatwa of the National Sharia Council of the Indonesian Ulama Council Number: 140/DSN-MUI/VIII/ 2021 concerning Sharia Securities Offering through Information Technology-Based Crowdfunding Services based on Sharia Principles (Islamic Securities Crowd Funding). The secondary legal materials include books, articles, and proceedings related to the research objective for the period range of 2015-2022. The gathered data is further examined using a conceptual framework based on sharia principles, with the aim of addressing the research objectives outlined in this paper.

## **3. Result And Discussion**

### **3.1. Position Of The Sharia Supervisory Board In Equity Crowdfunding In Indonesia**

The existence of sharia supervisors in financial institutions and sharia business activities is fundamental. This is what distinguishes sharia business entities from conventional businesses. The emergence of the sharia economy, particularly contemporary Islamic financial institutions, is increasingly imperative for

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20 Rachma Indriyani, Asmar Binti Abdul Rahim, Ruzita Binti Azmi., Fishing Quota and International Obligation: Why Has Indonesia been Indicated as a Non-Compliant State, *Hasanuddin Law Review*, Vol.7 No.2, 2021, page. 89-104

21 Ricki Azis Dzaki, Legal Certainty of Measurement And Mapping Of Land Basic Maps, *Jurnal Hukum Unissula*, Vol.38 No.2, 2022, page. 148-158

ensuring compliance with sharia principles in their daily operations. The SSB was established as an entity that supervises sharia business institutions, ensuring their compliance with the objectives and aims of sharia.

Sharia supervision is one of the core teachings of Islam, namely the commandment of *amar makruf nahi munkar* (inviting goodness, preventing evil). At least Surat At-Taubah (9): 105 has provided a normative basis for the concept and validity of sharia supervisors.

**وَقُلْ أَعْمَلُوا فَسَيَرَى اللَّهُ عَمَلَكُمْ وَرَسُولُهُ وَالْمُؤْمِنُونَ وَسَتُرَدُّونَ إِلَىٰ عِلْمِ الْغَيْبِ  
وَالشَّهَادَةِ فَيُنبِّئُكُمْ بِمَا كُنْتُمْ تَعْمَلُونَ**

"Say [Prophet], 'Take action! God will see your actions- as will His Messenger and the believers- and then you will be returned to Him who knows what is seen and unseen, and He will tell you what you have been doing (Q.S. At-Taubah: 105)" (The Qur'an, 2004).

According to Anwar (2020), the verse above shows that everyone must be self-aware if their work is always supervised by Allah, the Messenger of Allah, and the believers (society). The sharia law of supervision consists of three essential parts in its supervisory system<sup>22</sup>, namely (1) Supervisor of Allah the Almighty as a supervisor of conscience as evidenced by one's belief in Him; (2) Supervisor of the Muhammad PBUH as a formal-institutional supervisor by providing a set of sharia law; (3) Supervisors of believers as social supervisors carried out by the community. This explanation further strengthens the opinion that the effective operation of sharia supervision requires the involvement of all elements<sup>23</sup>, not only the responsibility of the SSB but also that it must involve internal and external supervisors.<sup>24</sup>

Every business institution based on sharia principles must have a sharia supervisory board.<sup>25</sup> The supervision carried out by the SSB is a mandate and responsibility for every decision of the National Sharia Board to provide advice, input, and supervise sharia compliance of entities that carry out sharia-based business activities. The position of SSB as an organ of expert groups in the field of *fiqh mu'amalah maliyah* (sharia law-related materials) on the recommendation of the National Sharia Board– Indonesian Ulama Council (DSN-MUI, *Dewan Syariah Nasional – Majelis Ulama Indonesia*) The selection of the sharia supervisory board is determined by their scientific expertise, experience, and dedication to promoting sharia economic development.

22 Syamsul Anwar., *Studi Hukum Islam Kontemporer: Bagian Dua*, Pertama, Yogyakarta, UAD Press, 2020

23 Irwan Misbach., *Kedudukan Dan Fungsi Dewan Pengawas Syariah Dalam Mengawasi Transaksi Lembaga Keuangan Syariah Di Indonesia*, *Jurnal Minds: Manajemen Ide Dan Inspirasi*, Vol.2 No.1, 2015, page. 1–27.

24 Ahmad Baehaqi., *Usulan Model Sistem Pengawasan Syariah Pada Perbankan Syariah Di Indonesia*, *Jurnal Dinamika Akuntansi Dan Bisnis*, Vol.1 No.2, 2014, page. 119–33

25 B Heradhyaska and P I Pamesti., *Regulasi Dewan Pengawas Syariah Pasar Modal Syariah Di Indonesia*, *Jurnal Hukum Ekonomi Islam*, 2021,

The only institution with the authority to issue sharia fatwas in the Indonesian economic sector is the DSN-MUI.<sup>26</sup> In other words, the DSN-MUI is the formulator of sharia fatwas in the economic sector, while the SSB is the executor of supervision over the fatwas decided by the DSN-MUI. SSB supervision is carried out in two forms, namely supervisors before the business is run (*ex-ante*) by formulating sharia policies so that they are followed later. In contrast, supervisors, after the business is carried out (*ex-post*), are carried out on sharia financial institution products that are run.<sup>27</sup>

The position of SSB in the equity crowdfunding system is regulated in POJK Number 57/POJK.04/2020 and fatwa Number: 140/DSN-MUI/VIII/2021. The organizers and issuers of crowdfunding services with sharia-based business activities are required to attach a photocopy of the Articles of Association (AD), which explains the activities and procedures for managing sharia-based businesses, must have an SSB based on the decision of the General Meeting of Shareholders (RUPS, *Rapat Umum Pemegang Saham*). If business entities do not have an SSB, they must make a statement that they will appoint a sharia supervisor. This emphasizes that every implementation of sharia crowdfunding services must be supervised by SSB so that it is following sharia principles. This arrangement provides legal certainty for the community, especially those involved in crowdfunding service activities with sharia principles, may not in economic practices that contain elements of *maisir* (gambling), *gharar* (uncertainty), *haram*, *usury* (additional), *tadlis* (unclean), *dharar* (harm), *riswah* (bribes), *zhulm* (persecution) and immorality.

The existence of SSB must be independent even though it has incentives and is affiliated with a supervised sharia institution. Considering that SSB benefits from supervised institutions, a conflict of interest can be created if they are not careful in carrying out their duties independently and professionally. In this position, SSB is faced with a difficult situation. On the one hand, the supervised institution wants to obtain sharia-compliant status in carrying out its business activities, but on the other hand, the SSB has the potential to be dismissed at any time by the supervised institution.<sup>28</sup> In such a situation, it is feared that SSB will only provide a good assessment of the institutions being supervised. This is a bad precedent for the performance of SSB, which is considered less than optimal in ensuring the operationalization of institutions based on sharia principles. Therefore, to support the role of SSB in carrying out the supervisory position of crowdfunding service activities based on sharia principles. According to Khotibul Umam in Nurhisam,<sup>29</sup> each SSB must meet a minimum of five

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26 Bagya Agung Prabowo and Jasri Bin Jamal., Peranan Dewan Pengawas Syariah Terhadap Praktik Kepatuhan Syariah Dalam Perbankan Syariah Di Indonesia, *Jurnal Hukum Ius Quia Iustum*, Vol.24 No.1, 2017, page.113–29

27 Muthiah Az-Zahra Rasyid, Ro`fah Setyowati, and Islamiyati., Crowdfunding Syariah Untuk Pengembangan Produk Perbankan Syariah Dari Perspektif Syariah Compliance, *Diponegoro Law Jurnal*, Vol.6 No.4, 2017, page. 1–16.

28 Heradhyaska, B, and P I Pamesti., Regulasi Dewan Pengawas Syariah Pasar Modal Syariah Di Indonesia, *Jurnal Hukum Ekonomi Islam*, 2021;

29 Luqman Nurhisam., Kepatuhan Syariah (Sharia Compliance) Dalam Industri Keuangan Syariah, *Jurnal Hukum Ius Quia Iustum*, Vol.23 No.1, 2016, page.77–96



characteristics, which include being responsible, having high integrity, being independent, being careful, and being professional.

Therefore, sharia supervision on crowdfunding services must be optimized to still meet sharia principles. The active role of SSB will determine the realization of sharia compliance in equity crowdfunding operations. If there is a deviation from sharia compliance, action must be taken according to applicable law. The failure to comply with the sharia principles in crowdfunding services would harm the credibility and integrity of the institution. Therefore, business organizations can effectively attain public trust in establishing sharia equity crowdfunding in Indonesia, which may only be encouraged by assuring full compliance with sharia standards.

### **3.2. Sharia Compliance Equity Crowdfunding in Indonesia**

The regulation of sharia-based equity crowdfunding in Indonesia refers to POJK Number 57/POJK.04/2020 and is reinforced by Fatwa Number 140/DSN-MUI/VIII/2021. The implementation of crowdfunding services must be carried out in a trustworthy, careful manner and, of course, comply with sharia principles. It must refrain from engaging in actions that contradict or violate both sharia and positive law.

As explained in Fatwa Number 140/DSN-MUI/VIII/2021, when running crowdfunding services, the organizer must conduct a comprehensive analysis of the application of investors using crowdfunding service facilities and the feasibility of business actors issuing shares. The analysis includes compliance with business law and compliance with sharia principles. As an implementation of the precautionary principle and sharia compliance, the organizer has the right to approve or reject the submission of crowdfunding service activities after a thorough feasibility analysis has been carried out.

Offering sharia securities in the form of shares through crowdfunding services must comply with the provisions of the DSN-MUI Fatwa Number. 135/DSN-MUI/V/2020 concerning Shares.<sup>30</sup> The publisher's business activities must be halal and follow sharia standards. The contract used in the offering of sharia securities is a *syirkah musahamah* (joint stock company) contract<sup>31</sup>, namely a *syirkah* contract in which the ownership of the share of sharia capital is based on paid-in capital as evidenced by shares and has limited liability. For the record, investors who buy shares become shareholders/partners (*syarik*), entitled to receive dividends. The issuer offers sharia securities through crowdfunding to increase business capital in the hope of improving business performance so that it will grow and develop.

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30 Dewan Syariah Nasional Majelis Ulama Indonesia., Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia No: 135/DSN-MUI/V/2020 tentang Saham, Dewan Syariah Nasional MUI, 2020;

31 Dewan Syariah Nasional Majelis Ulama Indonesia., Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia No: 140/DSN-MUI/VIII/2021 tentang Penawaran Efek Syariah Melalui Layanan Urun Dana Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah (Islamic Securities Crowd Funding), *Dewan Syariah Nasional MUI*, 2021

Meanwhile, offering sharia securities in the form of *sukuk* follows the DSN-MUI Fatwa No. 137/DSN-MUI/DV2020 regarding *Sukuk*.<sup>32</sup> More specifically, regarding equity crowdfunding, Fatwa Number 140/DSN-MUI/VIII/2021 explains that the *sukuk* issued must have the same value and clear assets as the basis for the *sukuk* issuance. In addition, *sukuk* issued by the issuer is required to pay investment profits to investors (*sukuk* holders) in the form of profit sharing on a regular basis.

Financial institutions are part of the functions, duties, and authorities of the Financial Services Authority (OJK, *Otoritas Jasa Keuangan*) to regulate and supervise them based on the Law of the Republic of Indonesia Number 21 of 2011 on the Financial Services Authority. Three equity crowdfunding platforms have been officially registered, and permission was obtained from OJK as the supervisor and licensor of companies that provide crowdfunding services, namely PT. Santara Daya Inspiratama, PT. Digital Investment Nusantara (Bizshare), and PT. CrowdDana Technology Indonusa. Each platform has a different program. If Santara and Bizshare focus on developing MSMEs by offering shares to investors, CrowdDana will invest in the property sector.<sup>33</sup>

Currently, in Indonesia, the OJK has only approved Bizshare Syariah as the official organizer of sharia-based equity crowdfunding. Bizshare sharia is the first platform to provide crowdfunding services based on sharia principles through information technology-based share offerings, using a *mudharabah* and *musharakah* contracts in the form of share ownership of a limited liability company (PT, *Perseroan Terbatas*). Its activities are carried out without usury, without fines, without confiscation, without debt, and without guarantees. The presence of this platform contributes to the development and advancement of the sharia economy, especially the halal investment sector in Indonesia. For investors who will invest in shares in sharia-based business activities using the Bizshare sharia platform, they can choose a business that has received a sharia compliance statement from the sharia supervisory board, which can be seen in the funding prospectus as stated on the Bizshare.id website and application. Dividend distribution through the Bizshare sharia platform is based on the percentage of share ownership. This is to avoid the element of usury in the distribution of business profits. The platform uses a Bank Syariah Indonesia (BSI) account for investment and dividend withdrawal.

The implementation of the *mudharabah* contract in equity-based Islamic crowdfunding will have a high risk if it is not accompanied by adequate regulations to protect the parties involved in equity crowdfunding transactions. Another thing that can be done to minimize the risk of providing crowdfunding services with equity provisions is to increase financial technology's

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32 DSN-MUI., Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia No: 137/DSN-MUI/IX/2020 Tentang *Sukuk*, *Dewan Syariah Nasional MUI*, 2020.

33 Suwinto Johan and Ariawan., Consumer Protection in Financial Institutions, *Legality: Jurnal Ilmiah Hukum*, Vol.29 No.2, 2021, page.173-183

sophistication in the context of monitoring and providing legal protection. The process of financial education must also continue to make the public aware.<sup>34</sup>

Several things must be ensured by share issuers who run businesses based on upstream to downstream sharia principles, namely<sup>35</sup>:

- 3.2.1. The publisher's products/services must be halal and not contain prohibited elements.
- 3.2.2. Issuers are prohibited from debt containing more than 5% usury.
- 3.2.3. The publisher's turnover must be halal.
- 3.2.4. The sale and purchase transaction must comply with the principles of *fiqh muamalah*.
- 3.2.5. The issuer must have its own sharia supervisory board.
- 3.2.6. The contract (contract) that is executed will be reviewed for the level of compliance and conformity with sharia.

As a mandate from the regulations made by the OJK, every implementation of crowdfunding services must be carried out with the principle of prudence by providing protection and security for investors and business actors as instructed by Islamic teachings in *muamalah*. The implementation of prudence is realized during the selection and evaluation process of business actors seeking capital by submitting the issuance of shares. The project owner's company proposal has significant growth and development potential, which may provide substantial rewards for investors. It is necessary to be completely open and honest when sharing information about current company activities and to regularly provide financial reports via crowdfunding service providers.

Crowdfunding service providers in Indonesia, such as Santara, Bizhare, and CrowdDana, each apply the precautionary principle in carrying out their activities. For example, Santara conducts a business selection and review process that business actors manage by involving expert business analysts who have a track record of analyzing business profiles. The existence of the Santara pre-listing service makes it easier for prospective investors to review potential share issuers (business actors) so that the selection process is more objective and comprehensive. Meanwhile, for Bizshare, the evaluation process was carried out by checking the location of the business. Such a strict evaluation and review process avoids *tadlis* (concealing) or fraud on the contract object.

Business entities must provide transparent business development information which is manifested in the form of regular reports. Transparency is an effort to free every transaction from the element of *gharar*. Investors who are going to invest and need important information, such as what the stock price is, what business it is in, and how much funds have been collected, can be seen on the official website of the equity crowdfunding platform. In addition, there are crowdfunding services such as Bizhare to ensure the finances of their business

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34 Muhammad Shahrul Ifwat Ishak and Md Habibur Rahman., Equity-Based Islamic Crowdfunding in Malaysia: A Potential Application for Mudharabah, *Qualitative Research in Financial Markets*, 2021

35 Nur Rahmah Sari et al., Equity Crowdfunding for SMEs : Sharia Compliance Challenge amid the Covid-19 Pandemic, *Iqtisaduna*, Vol.6 No.2, 2020, page. 198–213.

actors, sending teams to audit finance and monitor business developments in the field.

Each website of the crowdfunding service provider is also provided with other important information to reduce the risks that may occur to avoid speculation or misinterpretation of business prohibited in Islam. Therefore, the organizers will usually always remind prospective investors to be careful in choosing the business to be funded and as an investment choice. For example, Santara, through its website, always emphasizes that prospective investors are careful in studying the prospectus of the share issuer so that there is no element of feeling disadvantaged over the business information. Likewise, CrowdDana provides explanations to prospective investors so that in choosing investments, they must be based on considerations of financial literacy and good risk analysis of the business that will be used as an investment place. To avoid the element of usury, investors will get dividends from the results of their investments according to the initial agreement. Bizhare distributes dividends based on the percentage of share ownership, while CrowdDana distributes dividends every three months. As for avoiding *dharar* or losses, it is proven that there is a policy that the equity crowdfunding operator must obtain permission and supervision from the OJK and periodically report important information needed by the user. Investors are required to register through the platform and every activity will be monitored by the service provider. Business actors are required to report business developments as accountability to investors through the provided application.

The contract used between investors and business owners on the Santara, Bizhare, and CrowdDana platforms is a *musyarakah* contract, in which two or more parties contribute to deposit funds for which profits and losses are divided proportionally according to the agreement. This is a manifestation of the application of sharia principles in equity crowdfunding, namely not oppressing and not being wronged and fair in applying income.<sup>36</sup> In the practice in CrowdDana, where the platform makes an initial agreement that the capital for the project is entirely from investors, CrowdDana does not contribute to providing capital for both investors and business actors. Unlike on the Santara and Bizhare platforms, investors who invest in MSMEs through the two providers can enjoy business dividends without being involved in operational activities, although investors are still given the right to provide input to business actors.

The implementation of the *wakalah bi al-ujrah* (salary representation) contract is carried out by investors by giving authority to the platform accompanied by *ujrah* (wages). For example, Santara acts as the investor's representative as the issuer's shareholder during the AGM and the signing of the deed. At CrowdDana, investors are stated to agree to delegate power to CrowdDana when an agreement occurs in the form of signing an agreement through the platform. The provision of wages for granting this authorization can be seen in

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36 Muhammad Rusydi Kadir., Sistem Equity Crowdfunding (ECF) Dalam Hukum Di Indonesia, *Az-Zarqa': Jurnal Hukum Bisnis Islam*, Vol.13 No.1, 2021, page.59–80.

the practice at Bizshare through the website, where investors are responsible for paying management and platform each 5% of the income received.

Meanwhile, the *ijarah* agreement between the capital owner and the equity crowdfunding platform is practiced by business actors by using the services or facilities provided by the platform to assist the funding application process by providing payment of wages for these services. As in Bizhare, where share issuers or business actors represent the Bizhare platform to take care of legality, securities administration, and custodian relations by paying a service fee and management fee of 5% each of the total nominal invested. This implementation is in line with the DSN-MUI Fatwa No. 117/DSN-MUI/II/2018 and Fatwa Number 140/DSN-MUI/VIII/2021, which states that the operator may charge fees based on the *ijarah* principle in the provision of information technology-based financing systems and services.<sup>37</sup>

The practice of equity crowdfunding is said to be compliant with sharia if the business project being financed does not violate Islamic principles. Before offering shares to the public through a crowdfunding service platform, issuers must comply with the provisions set by the OJK. Business activities funded by investors and run by business actors as stipulated by the publisher as stipulated by Santara, Bizhare, and CrowdDana are known not to be in conflict with the applicable law. None of the projects undertaken by publishers are used for the purposes of terrorism or money laundering since such actions not only contravene legal statutes but also run against the principles of sharia.

Sharia compliance must also be proven from the source of investor funds used to finance projects run by business actors, which must not conflict with Islamic law. The three equity crowdfunding companies in Indonesia have not set specific rules regarding the sources of funds used by investors to fund projects as stipulated by the DSN-MUI Fatwa. The Santara platform imposes some basic conditions on investors, mandating them to uphold the platform's good image and reputation. This includes refraining from engaging in commercial operations that involve race, ethnicity, or religion. Likewise, Bizhare and CrowdDana also supervise investors by requiring them to register by entering the required amount of personal information.<sup>38</sup>

Profits obtained in the implementation of equity crowdfunding must be shared based on the principle of proportional justice based on sharia principles. Determining the number of dividends to be distributed to investors is decided through the RUPS. Dividends are distributed according to the percentage of share ownership every six to twelve months, according to the agreement. Santara also cooperates with the Indonesian Central Security Depository Services (KSEI, *Kustodian Sentral Efek Indonesia*) institution in the process of recording each investor's share ownership. CrowdDana dividend distribution is

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37 Dewan Syariah Nasional Majelis Ulama Indonesia., Fatwa Nomor 117/DSN-MUI/II/2018/ Tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah, 2018.

38 Nur Rahmah Sari et al., Equity Crowdfunding for SMEs: Sharia Compliance Challenge amid the Covid-19 Pandemic, *Iqtisaduna*, Vol.6 No.2, 2020, page. 198–213

carried out every three months using a sound financial system. Thus, the overall profit-sharing mechanism in crowdfunding services implemented by the three platform providers in Indonesia can be said to have complied with sharia principles.

In an effort to provide true, accurate, and accountable information, each platform has provided a contact person who can be contacted if a user needs more precise and more detailed information. To maintain security, Bizhare has a good data security protection system, as evidenced by its international standard certification, namely ISO 27001. If suspicious actions are detected from the registered account, CrowdDana has the right to stop access from that account. CrowdDana guarantees that data and information will not be traded, transferred, opened, or transferred to other third parties.

Based on the explanation above, it is known that, in general, every equity crowdfunding activity carried out by the three equity crowdfunding platforms in Indonesia follows sharia principles. Things that are prohibited by sharia, such as practices that contain *maisir*, *gharar*, *haram*, and usury have been attempted to be avoided by platforms, publishers, and investors. Meanwhile, the contract used, the object to be funded, and the source used by the investor can be analogized to be in line with sharia principles.

### **3.3. The Role of the Sharia Supervisory Board in Ensuring Sharia Compliance Equity Crowdfunding in Indonesia**

The role of SSB as the authority holder in carrying out the supervisory function of sharia compliance in every sharia business should be appreciated for the advancement of the sharia economy. Such a position is very strategic for the creation of sharia compliance, which is an important element for the existence of the sharia industry. In fact, the core of sharia business lies in complying with sharia provisions in every operationalization of its activities.<sup>39</sup> Therefore, compliance with the sharia principles must be maintained. This requirement is supported by a policy that stipulates that every sharia industrial activity must have an SSB.

Supervision carried out by SSB as a supervisory body includes product supervision in crowdfunding service organizations to align with sharia principles. The procedures that must be followed by SSB in carrying out the role of sharia review are planning review procedures, executing review procedures and reviews of working papers, and documenting conclusions and reports.<sup>40</sup> The three steps for implementing sharia supervision are conducted to get a comprehensive understanding of the execution of crowdfunding service operations and to provide recorded results as report material for the authorities.

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39 Anisah Novitarani and Ro'fah Setyowati., Analisis Crowdfunding Syariah Berdasarkan Prinsip Syariah Compliance Serta Implementasinya Dalam Produk Perbankan Syariah *Al-Manahij: Jurnal Kajian Hukum Islam*, Vol.12 No.2, 2018, page. 247–62

40 Luqman Nurhisam., Kepatuhan Syariah (Sharia Compliance) Dalam Industri Keuangan Syariah, *Jurnal Hukum Ius Quia Iustum*, Vol.23 No.1, 2016, page.77–96

An SSB appointed by the DSN-MUI must supervise crowdfunding services for a sharia business. This means that the presence of SSB in sharia equity crowdfunding is a must for both organizers and issuers. In the context of equity crowdfunding, the task of SSB is to conduct a substantive review of sharia material on crowdfunding service activities that are run based on sharia principles. It is permissible for SSB to ask for an explanation of the business being supervised, examine the contract used, express an opinion from a sharia perspective on the problem or activity being carried out, and comprehensively explain the fulfillment of sharia principles for the business being carried out as material for preparing reports to stakeholders.<sup>41</sup> Another important thing is that SSB has the responsibility to educate the equity crowdfunding parties regarding halal and haram, which should be considered by economic actors.<sup>42</sup>

The role of the SSB is crucial to ensure the implementation of sharia principles and minimize the occurrence of deviations from Islamic values by the organizers and issuers of sharia securities. It is hoped that SSB will be able to assist the process of supervision and control in order to develop Islamic securities crowdfunding so that each product produced is truly in line with sharia provisions. Even SSB may impose sanctions on crowdfunding service providers and sharia securities issuers if they are proven to have committed deviations as determined by the DSN-MUI. Disobedience of sharia business to regulations in positive law and *fatwas* issued by the competent authority is a form of violation for which the perpetrators can be subject to sanctions according to applicable law, starting with administrative sanctions with warning letters or warnings to sanctions for revocation of business licenses. The procedure is that the findings of SSB are submitted to DSN, then DSN will forward it to Bank Indonesia or OJK for the subsequent investigation to be carried out according to the report before being sanctioned in proportion to the level of violation. Even based on the court's decision, the perpetrator of the violation can be sentenced to criminal punishment if proven guilty. As emphasized in fatwa Number 140/DSN-MUI/VIII/2021, acts including *taqshir* by the issuer are subject to sanctions and/or compensation if they do not proceed with the securities offering before the end of the securities offering period.

The existence of SSB in Indonesia has an important role in ensuring that every Islamic securities crowdfunding activity complies with sharia principles. This level of sharia compliance is the difference between conventional crowdfunding services and sharia crowdfunding services. If crowdfunding services claim to be based on sharia, but do not implement sharia principles, it means the same as conventional crowdfunding services that do not pay attention to and comply with sharia signs.

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41 Taufik Kurrohman., Peran Dewan Pengawas Syariah Terhadap Syariah Compliance Pada Perbankan Syariah, *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan*, Vol.8 No.2, 2017, page. 49–61.

42 Ramadhani Irma Tripalupi., Equity Crwdfunding Syariah Dan Potensinya Sebagai Instrumen Keuangan Syari'ah Di Indonesia, *Adliya*, Vol.13 No.2, 2019, page. 229–46.

#### **4. Conclusion**

The role of the Sharia Supervisory Board (SSB) in the sharia equity crowdfunding system is to serve as a self-governing entity responsible for supervising equity crowdfunding practices to ensure their compliance with sharia principles. Ensuring all equity crowdfunding operations are conducted only via sharia-compliant contracts. In addition, Publishers ensure that the projects and shares they provide are in full compliance with sharia standards. The funds provided by investors to finance the publisher's operation are not generated from components such as *maisir*, *gharar*, *haram*, and usury.

Therefore, the position of the SSB in supervising the operations of publishers and organizers (platforms) must be executed effectively and with utmost accountability. This is a mandate from POJK Number 57 /POJK.04/2020, as well as supporting the existence of equity crowdfunding, which operates sharia business entities in Indonesia. In addition, Fatwa Number 140/DSN-MUI/VIII/2021 further strengthens the existence and strategic role of SSB in ensuring sharia compliance in all crowdfunding service activities; thus, it operates according to sharia principles.

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