

Islamic Securities Crowdfunding Based on Indonesia's Islamic and Positive Law Perspective

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Abstract.

This paper analyzes Islamic Securities Crowdfunding (SCF) based on Indonesia's Islamic and positive law perspectives. This paper is a descriptive qualitative by using a normative juridical approach that observes the governing or binding law in society with the convergence on Islamic law and regulations of the Indonesian Financial Services Authority (OJK). The findings reveal that the practice of Islamic SCF is allowed by referring to the Qur'an, Hadith, legal maxim, maqasid al-shariah, and syirkah musamah contract in DSN-MUI Fatwa No.140/DSN-MUI/VIII/2021 issued on August 24, 2021. Furthermore, from the positive law's perspective, Islamic SCF is allowed to operate by referring to POJK No.57/POJK.04/2020, which accommodates to four principal regulations, namely, organizers, crowdfunding services, issuers, and financiers.

Keywords: Islamic Securities Crowdfunding, Islamic Law, Positive Law

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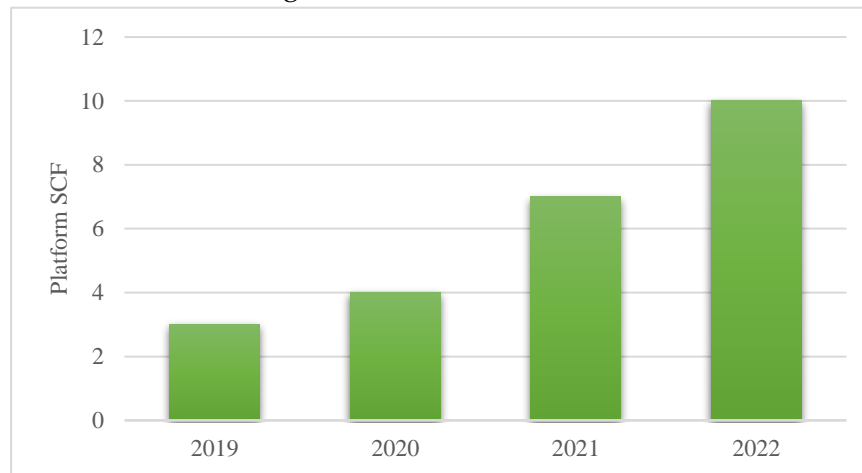
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1. Introduction

Committing to the Indonesian Financial Services Authority Regulation (POJK) Number 57/POJK.04/2020 that to provide alternative funding for Micro, Small, and Medium Enterprises (MSMEs) and budding entrepreneurs to obtain funds through the capital market, it is necessary to expand the scope of securities offerings in crowdfunding services, so that reimbursement need against POJK Number 37/POJK.04/2018 concerning to Crowdfunding Services through Information Technology-Based Stock Offerings (Equity Crowdfunding). Based on this context, the crowdfunding service expands from Equity Crowdfunding (ECF) which is limited to stocks, to Securities Crowdfunding (SCF) which includes other securities (stocks, bonds, or *Sukuk*).

Securities Crowdfunding (SCF) is the offering of securities by issuers as parties that require funding through information technology-based crowdfunding screens organized by crowdfunding providers directly to financiers through an open network of electronic systems. The Indonesian Financial Services Authority (OJK) data shows that the number of SCF operators who already have operational permits continues to grow. In 2019, the number of SCF organizers was 3. Then in 2020, it increased to 4 organizers. Entering 2021 will increase to 7 organizers and 2022 to 10 organizers.



Picture 1.

Registered Securities Crowdfunding (SCF) with Indonesian Financial Services Authority (OJK) in 2019-2022

Source: Indonesian Financial Services Authority (2022)

As of June 2022, 10 SCF operators have registered with the Indonesian Financial Services Authority (OJK). Here is a list of those SCFs:

Table 1. List of SCF Operators in Indonesia Registered with OJK in 2019-2022

No	Company Name	Platform	Website	Year Registered
1	PT. Santara Daya Inspiratama	Santara	santara.co.id	2019
2	PT. Investasi Digital Nusantara	Bizhare	bizhare.id	2019
3	PT. Crowddana Teknologi Indonusa	CrowdDana	crowddana.id	2019
4	PT. Numex Teknologi Indonesia	LandX	landx.id	2020
5	PT. Dana Saham Bersama	DanaSaham	danasaham.co.id	2021
6	PT. Shafiq Digital Indonesia (Islamic)	SHAFIQ	shafiq.id	2021
7	PT. Dana Investasi Bersama	FundEx	fundex.id	2021
8	PT. Likuid Jaya Pratama	Ekuid	eku.id	2022
9	PT. LBS Urun Dana (Islamic)	LBS Urun Dana	lbs.id	2022
10	PT. Dana Rintis Indonesia	Udana	udana.id	2022

Source: Indonesian Financial Services Authority (2022)

Besides conventional SCF, based on POJK No.57, SCF activities can be carried out by Islamic principles (Islamic SCF). Islamic SCF offers securities by issuers through technology-based crowdfunding services directly to financiers through an open electronic system network based on Islamic principles. (Fahmy, 2022b). Based on the SCF operators' data in Table 1, SCFs that carry out their operations based on Islamic principles are SHAFIQ and LBS Crowdfunding.

In Islam, when two or more parties agree to a particular business where each party conducts a joint capital with an agreement that the benefits and risks will be born together, this kind of cooperation is called a partnership contract (*syirkah*) (Antonio, 2001). This type of contract distinguishes between the Islamic and conventional economic systems. In

conventional economics, for instance, additional lending interest to both enterprises and consumer activities is normal. In Islamic economics, the contract implements the Islamic ethical framework in economic activity aimed at moral improvement. Hence, for *maslahah* to be performed, the community must be able to determine what commodities are required, in what quantities, and when they are required. In addition, the topic of agreements is crucial to a firm's operation (contracts). Islamic law makes extensive use of contracts and agreements as a means of acquiring property. Fiqh scholars interpret the word agreement or contract as the interaction between *ijab* and *qabul* that establishes the presence of legal influence over the object of commitment ((P3EI), 2019).

Despite the existence of Islamic SCF, especially in Indonesia, it has not been fully maximized by micro, small, and medium enterprises (MSMEs) as an alternative capital. Some of the challenges that are typically encountered in obtaining this alternative capital include (1) limited information on appropriate sources of business funding, both informal finance and formal finance funding through financial institutions and funding sources from the central and local governments; (2) limited ability to manage the company because individuals or families own most MSMEs, especially micro-scale businesses; (3) limited production, distribution, and marketing capabilities because they only rely on the resources owned by these MSMEs; (4) limited ability to administer the business, for example recording transactions, reporting, managing business licenses; (5) limited assets owned by MSMEs while most funding to MSMEs requires guarantee.

Henceforth, from the investor side, the majority of them still have concerns regarding investing in the real sector, such as MSMEs, as for (1) investment in MSMEs carries a high risk because the business characteristics of MSMEs are still in the stage of pioneering or establishing a business so that business operations are not stable and the sustainability of their business cannot be presumed; (2) limited access to valid information to analyze the business performance of MSMEs; (3) a lack of confidence in the ability of MSMEs to run their business (4) the difficulty of tracking the money that has been allocated to MSMEs, which makes it hard for investors to estimate returns and repayments.

Consequently, regarding this case, the government support in the form of issuing POJK No.57/POJK.04/2020 concerning securities offerings through information technology-based crowdfunding services, one of which accommodates operational licenses as SCF organizers, has opened up opportunities for issuers (MSMEs), investors and organizers Islamic SCF to be able to participate in developing Islamic SCF in Indonesia. Furthermore, with the issuance of the Indonesian legal support, namely POJK No.57/POJK.04/2020 concerning securities offering through information technology-based crowdfunding services, it also supports the legality of Islamic SCF. Referring to the DSN-MUI Fatwa No.140/DSN-MUI/VIII/2021 concerning Islamic Securities Crowdfunding, it is the driving force for the issuance of SCFs based on Islamic principles, where there are provisions governing the implementation of transactions in Islamic SCF.

After the publication of POJK No.57/POJK.04/2020 and the DSN-MUI Fatwa No.140/DSN-MUI/VIII/202, it has opened up opportunities to fill the gaps in legal analysis related to Islamic SCF from a positive legal perspective and especially from an Islamic law perspective. Islamic law has the main source of law that is the foundation of the practice of *muamalah* in economics, such as the Qur'an, Hadith, legal maxim, and *maqasid al-shariah* as the

ultimate goal. Therefore, this paper aims to determine whether the Islamic SCF provisions align with Islamic law and positive law in Indonesia.

1.1. Islamic Securities Crowdfunding (SCF)

Terminologically, Islamic Securities Crowdfunding (SCF) is defined as offering securities by issuers through information technology-based crowdfunding services directly to financiers by using an open network of electronic systems based on Islamic principles (Fahmy, 2022b).

The Indonesian Financial Services Authority (OJK) is a regulator that has authority related to licensing of Islamic SCF operators (granting permits, denying permits, revocation of operational licenses) and reporting and supervising the implementation of SCF by the Islamic SCF organizing platform.

Crowdfunding service providers, or organizers, are Indonesian legal entities that provide, manage, and operate crowdfunding services. The organizer reviews prospective Islamic SCF issuers and checks the eligibility of Islamic SCF investors.

Issuers, specifically Indonesian business entities, are legal entities and other business entities that issue securities through crowdfunding services. Publishers are prohibited to (1) A business entity that is controlled either directly or indirectly by a business group or conglomerate; (2) a Public company or subsidiary; and (3) A business entity with a net worth of more than IDR 10 billion, excluding land and buildings for business premises.

A financier is a party who purchases issuer securities through crowdfunding services. Financiers who can buy securities through crowdfunding services are obliged to: (1) Have a stock account with a Custodian Bank, specifically storing securities and funds through crowdfunding services; (2) Have the ability to purchase shares of the Issuer; and (3) Meet the Financier's criteria and share purchase restrictions.

Custodian Bank is a commercial bank that has obtained approval from the Indonesian Financial Services Authority to conduct business activities as a custodian. The Indonesian Central Securities Depository (KSEI) is a Depository and Settlement Institution (LPP) in the Capital Market that provides central custodian and securities transaction settlement services.

1.2. Contemporary *Musyarakah* Principles in Islamic Securities Crowdfunding

Musyarakah is a cooperation contract between two or more parties for a particular business in which each party contributes funds (or charity/expertise) with an agreement that the benefits and risks will be borne together (Antonio, 2001). Fiqh scholars explain *musyarakah* from a variety of opinions. According to *Malikiyah*, *musyarakah* is a permission to use (*tasharruf*) property owned by two people jointly by both; that is, both allow each other to use their property, but each has the right to use theirs. According to *Shafi'iyah* and *Hanabilah*, *musyarakah* is the right (authority) to act legally for two or more people on something they agree on. Meanwhile, *Hanafiyah* argues that *musyarakah* is an agreement carried out by people who cooperate in capital and profit (Haroen, 2000). In the compilation of Islamic Economic Law, *musyarakah* is a cooperation between two or more people in terms of capital, skills, or trust in a particular business with profit sharing based on a ratio (DSN-MUI, 2009).

There are four types of *musyarakah*, as explained by classical fiqh scholars, specifically: (1) *Syirkah i'nan*, which is a cooperation between two or more people in the capital to carry out a joint business by dividing profits or losses according to the amount of their respective capital (Mardani, 2012); (2) *Syirkah mufawadhah* is a contract in which the capital of all parties and the form of cooperation they carry out both in quantity and quality must be the same, profits or

losses divided equally (Antonio, 2001); (3) *Syirkah wujuh* is cooperation carried out by two or more persons who have no capital at all. They make a purchase of goods on credit and sell them at a cash price, while the profits obtained are divided together according to the agreed ratio (Al-Kahfi, 1972); (4) *Syirkah a'maal* is cooperation carried out by two or more persons to complete a work, the results of the work are shared according to the agreement at the time of the contract (Abidin, n.d.)

According to Wahbah al-Zuhaili, the contemporary concept of *musyarakah* is an implementation of *musyarakah*, further developed using inductive methods. This approach is also taken to apply other *muamalah* contracts to the products of contemporary financial institutions (Al-Zuhayli, 1997). The division of contemporary *musyarakah* can be classified as follows: (1) *Syirkah Tadhamun*, is a cooperation between two or more parties to carry out business activities in order to obtain profits; the *shariks* are responsible and mutually guarantee (*tadhamun*) for all obligations of the business entity, which are not only limited to the amount of capital included but are responsible for the entire assets of the business entity based on the *syirkah* contract; (2) *Syirkah Taushiyah Basithah*, which is a company founded by the *shariks* who are partly responsible for each other, and some of them only provide capital; (3) *Syirkah Muhashah*, which is an agreement made by two or more persons to invest their shares in a project by depositing part of the capital or work by dividing the profits or losses according to the portion of capital/work participation (under the agreement); (4) *Syirkah Mutanaqisah*, which is a cooperation between some *shariks* (in this case, customers and banks) by including assets to be used as business capital, and the *syirkah* business capital is then purchased by the customer in stages; and (5) *Syirkah Musahamah* is the participation of business capital calculated by the number of shares traded in the capital market so that the owners can change easily and quickly. *Syirkah musahamah* is beneficial for business development because shares are distributed in large quantities; *Syarik's* capital has not changed due to the exit of old shareholders (by way of sale) or the entry of new shareholders (by way of buying).

According to the characteristics of Islamic SCF, which is a method of collecting funds with a partnership scheme carried out by issuers with the issuance of securities (shares or Sukuk) through a crowdfunding mechanism under Islamic principles (Fahmy, 2022a), it can be concluded that Islamic SCF uses a contemporary *musyarakah* approach in the form of a *syirkah musahamah* contract.

1.3. Islamic and Positive Law in Indonesia

Indonesians commonly use the term "Islamic Law" as a translation of *al-fiqh al-Islami*. From the perspective of western law, this term is known as Islamic Law. In neither the Qur'an nor the Al-Hadith is the term *al-Hukmu al-Islami*. What is used is the word *as-shari'ah*, which in its elaboration, was later born the term *fiqh*. (Puspitasari, 2021)

Mahmud Shaltut, in his book *Al-Islam 'Aqidah wa Shari'ah*, defines *shari'ah* as the rule that Allah has passed down to a man to be guided to Allah, with his fellow man, with his environment and with his life (Shaltut, 1966). As for the book Introduction to Islamic Law, Muhammad Hasbi Ash Shiddieqy mentions that Imam Asy Syathibi in *Al-Muwaffaqat* explained the meaning of *Shari'a* as provisions that create boundaries for the *mukallaf* regarding their deeds, words, and intentions. (Ash Shiddieqy, 1997)

Meanwhile, the term *fiqh*, according to Imam Abu Hamid Al-Ghazali, means "understanding and knowledge." However, according to 'urf ulama is a science that explains certain laws of *syara'* for the deeds of the *mukallaf*, such as compulsory, *haram*, *mubah*, *Sunnah*, *makruh*, *shahih*, *fasid*, *bathil*, and *qadha*. In addition, Prof. Dr. Amir Syarifuddin explained that *fiqh* means the science of shari'a laws that are *amaliyah* in nature that are unearthed and found from *tafsili* postulates. (Syarifuddin, 2011). As Wahbah al-Zuhaili concluded that the law, according to the *ushul fiqh* expert, is the *nash-nash syar'i* itself, while according to the *fiqh* expert, the law is the effect (result) of the understanding of the *nash-nash syar'i*, as a legal material to be practiced by the *mukallafs*, which sometimes need *ijtihad* and sometimes do not. (al-Zuhaili, 1986)

Similarly, the law is a set of rules on human behavior that a group of societies recognizes, drawn up by a person authorized by that society, applicable and binding on all its members. According to Prof. Dr. Ismail Muhammad Shah, Islamic law is "a set of rules based on the revelation of Allah and the *Sunnah* of the Apostle regarding the behavior of *mukallaf* people that are recognized and believed to apply and bind to all Muslims." (Muhammad, 1992)

If the simple meaning of Islamic law is connected with the meaning of *fiqh*, as explained earlier, then it can be concluded that what is meant by Islamic law is the one called *fiqh* in Islamic literature in Arabic. Thus every word *fiqh*, in this case, means Islamic law. (Puspitasari, 2021)

In Islam, *fiqh* has two functions: a positive law and a moral standard. The function of positive law by referring to its function and role as other favorable laws in obtaining ratification from authorized institutions, such as the legislature. The role of *fiqh* as a moral standard is to refer to the fact that the authorities have ratified not all *fiqh* laws. It is like the law of *mubah*, *makruh*, and even mandatory and *haram* laws are not entirely absorbed in the product of legislation or contained in court decisions or jurisprudence (Syafirin, 2009).

According to Joseph Schacht, Islamic law differs significantly from other legal systems (Schacht, 1964). It is because Islamic law (*fiqh*) results from the interaction of normative values with the reality of life guided by reason. Furthermore, H.M Rasyidi divided the breadth of Islamic law (*fiqh*) into two major parts: worship affairs and community affairs (Rasyidi, 1980). The first part covers all issues related to the affairs of the hereafter. The second part covers all issues related to world issues and laws, such as *'uqubah* (criminal law), *munakahat* (marriage law), and *mu'amalah* (business transactions) (Ash Shiddieqy, 2001).

The understanding of *fiqh* as Islamic law also evolved into *fiqh mu'amalah*. *Fiqh mu'amalah*, which refers to a broad meaning according to Fathi 'Uthman, can be divided into seven (Uthman, 1970), namely: (1) *Al-Ahkam al-Ahwal al-Shahsiyyah* (civil law); (2) *Al-Ahkam al-Maddiyyah* (the law of the treasury); (3) *Al-Ahkam al-Jina'iyyah* (criminal law); (4) *Al-Ahkam al-Murafa'at* (civil and judicial procedural law); (5) *Al-Ahkam al-Dusturiyyah* (institutional and bureaucratic law); and (6) *Al-Ahkam al-Dawliyyah* (international law); and *Al-Ahkam al-Iqtishadiyyah wa al-Maliyyah* (economic and financial law).

Several things can distinguish between *mu'amalah fiqh* and positive law (Al-Zuhayli, 1997). Among them: (1) The *fiqh mu'amalah* aims to form an excellent moral to establish good relationships with fellow human beings. Meanwhile, positive law is oriented towards one's obligation to society to maintain order and security even though it sometimes contradicts the principles of the Islamic religion; (2) The *Fiqh mu'amalah* is based on the revelation of Allah

Almighty so that everyone who is in jihad (*mujtahid*) is always bound to the sources of Islamic law, namely the *Qur'an* and *al-Sunnah*, and must be following the purposes, methods, and principles of sharia; (3) The *Fiqh mu'amalah* is universal and encompasses all aspects of life; (3) The *Fiqh mu'amalah* is religious, as is the problem of halal and haram so that a worldly nature characterizes it; and also has the characteristic of *ukhrawi* who sees every problem in terms of nature and reality simultaneously and sees the relationship between man and Allah Almighty; (4) The *Fiqh mu'amalah* is based on harmony to maintain the interests of the individual and society without anyone being harmed; (5) Sometimes positive law establishes halal law limited to something forbidden in the *fiqh mu'amalah*, such as drug trafficking, opening licenses for nightlife venues full of sins, and business venues that contain elements of usury; and (6) The *Fiqh mu'amalah* is dynamic and feasible to apply under any circumstances. However, in certain circumstances, it can change according to the circumstances of time and place, such as legal provisions based on analogies (*Qiyas*), benefits (*Maslahah*), or traditional customs (*'Urf*).

Thus, the determination of Islamic law in the context of *fiqh mu'amalah* can be carried out based on Islamic law principles, namely, *ijtihad*, which involves human thought (*ra'yu*) and requires the provision of methodology as a tool of analysis (Nafis, 2011). Therefore, Muhammad Salam Madkur divided the *ijtihad* methodology into three, including the *Bayani*, *Qiyasi*, and *Istislahi* methods (Madkur, 1984).

The *ijtihad Bayani* method is a way of *istinbath* (excavation and determination) of laws that rest on the rules of *lughawiyyah* (language) or the meaning of *lafadz*. This method describes the way of understanding a *nash*, both the *nash* of the *Qur'an* and the *Sunnah*. Various aspects include: (1) The meaning of *lafadz* corresponding to its form, i.e., '*Am* (general), *hash* (special), *muthlaq* (unlimited), *muqayyad* (limited), '*amr* (commandment), *nahy* (prohibition), and *musytarak* (double meaning); (2) The meaning of *lafadz* corresponding to its use, namely *haqiqah* (meaning of origin) and *majaz* (meaning of metaphor); (3) Analysis of *lafadz* according to its power in showing meaning (*muhkam*, *mufassar*, *nash* and *zahir*, or *mutasyabih*, *mujmal*, *musykil*, and *khafi*), and (4) Analysis of a *lafadz* of meaning.

The *ijtihad Qiyas* (analogy) method equates a legal case for which there is no statute' in the text with a legal case for which there has been a legal text due to the similarity of the '*illat* of the law of the two. There are four basic elements in *Qiyas*, specifically; (1) new cases (*furu'*) requiring legal settlement; (2) the case of origin (*ashl*) present in the primary sources of the *Qur'an*, *Sunnah*, and *ijma'*; (3) the reason, the ratio of legist ('*illat*), i.e., the general nature of the new case and the original case; and (4) the legal norms that are applied to new cases because of the similarity of the legal legist ('*illat*) ratio between the two cases, so that the law is moved from the old case to the new case (Al-Maqdisi, n.d.).

Furthermore, the *ijtihad Istislahi* method is a way or rule in determining the legal status of a problem by relying on general postulates, due to the absence of specific postulates on the matter, based on the principle of benefit following *maqhasid al-Syariah* (the primary purpose of Islamic sharia) which includes three categories of interests, such as; *dharuriyat* (primary), *hajjiyat* (secondary), and *tahsiniyat* (tertiary). Included in the category of *istislahi* methods are *al-maslahah al-mursalah* (benefits for which there is no explicit reference to *nash*), *al-istishab* (basically everything is legally permissible or based on previous legal provisions), *sadd-*

aldzarai' (closing the path leading to the occurrence of lawlessness) and *'urf* (good customs) (Al-Syatibi, n.d.).

The products of *ijtihad* can be divided into *fiqh*, *qanun*, *qadha'i*, and fatwa. Giving fatwas is more specific compared to *ijtihad*. It is because *ijtihad* is a legal *istinbath* activity whether there is a question or not, whereas *ifta'* is performed when there is an actual incident and a *fiqh* expert tries to know the law (Abu Zahrah, 2000). Fatwa, in the classical definition, is optional or endeavor, that is, a choice that is not legally binding, although it is morally binding for the *mustafti* (the party who requested the fatwa), while for other than *mustafti* it is known or informative which is more than just a discourse. They are open to taking the same fatwa or asking the mufti/another expert for a fatwa.

In giving fatwas, not everyone can do it; a mufti must have several requirements that must be met, such as mastering the opinions and rules in *ushul fiqh* and *fiqh*, having the completeness to perform *ijtihad*, knowing the sciences needed to formulate a law, for example, *Nahwu* science, linguistics, the science of *Mushthalah al-Hadith*, the interpretation of verses and legal hadiths. Since the fatwa concerns religious issues, not everyone can occupy as mufti. The conditions that a mufti must include: (1) The fatwa must be based on the *mu'tabar* parent books so that the recipient of the fatwa can accept the fatwa given; (2) If he is based on the word of a religious person, then he can show the basis for the source of taking his fatwa; thus, he avoids wrongdoing and lying; (3) A *mufti* must understand or know the various opinions of scholars so that there is no misunderstanding between him and the recipient of his fatwa; and (4) A *mufti* must be religious and honest.

The preceding follows that the fatwa is the result of the *ijtihad* of a *mufti* in connection with the legal events submitted to him. So, fatwas are more specific than *fiqh* or *ijtihad* in general. Because it may be that the fatwa issued by a *mufti*, already formulated in jurisprudence, has only not been understood by the requester of the fatwa. (Tamam, 2021)

The relevance between Islamic law in *fiqh* and fatwa is in the form of a complementary relationship. The *fiqh* contains a systematic description of the substance of Islamic law, which a person does not entirely need. *Fiqh* is seen as a book of the law (*rechtsboeken*), as a normative reference in performing daily deeds. If a problem requires a detailed explanation and description, one consults the mufti to find a way out of the problem. The fatwa serves to apply the provisions of the *fiqh* to specific issues concretely.

Based on the Law of the Republic of Indonesia Number 10 of 2004 concerning the Establishment of Laws and Regulations laying down the highest power of legislation is the 1945 Constitution which is also the source of legislation. It means that the constitution is a source of taking and referencing legislation in formulating favorable legal rules in legal matters of the law (Mahendra, 2007). In Indonesia, in addition to Islamic law in the definition of sharia as a source of national law, as well as customary law, the dutch government's heritage law is in line with the principles of justice and has been accepted and used by the community, various or international *muktamar*, all of them can be used as a source to formulate favorable legal rules (Mahendra, 2007)

According to its form, positive Indonesian law consists of written law (statutory law) and unwritten law (customary law). There are two sources of positive law in Indonesia, namely material sources of law and formal sources of law. The source of material law is the legal

consciousness of society or the legal consciousness that lives in a society that is considered to be. (Soeroso, 2009)

The source of formal law is the place to find the law, procedure, or manner of formation of the Act. Some sources of legal form are as follows: (1) Laws; (2) Customs; (3) Jurisprudence; (4) Treaties; and (5) Legal Doctrine

The relevance between positive law in the form of laws and regulations of the Indonesian Financial Services Authority is derivative relationships. It can be seen from the establishment of Law No. 21 of 2008 concerning Islamic banking related to business operations based on sharia principles, which was then followed by the issuance of Law No. 21 of 2011 concerning the Indonesian Financial Services Authority related to the authority owned by the OJK in activities in the financial services sector. OJK's authority in activities in the financial services sector is further translated by the issuance of POJK No.57/POJK.04/2020 concerning securities offering through information technology-based crowdfunding services that regulate the legality of Islamic Securities Crowdfunding (SCF) in Indonesia.

2. Research Method

The method used in this study is descriptive qualitative, markedly research that describes a complex situation (Zuhriyah, 2012). The approach used is normative juridical as it discusses laws that regulate or are binding in society (Amirudin and Asikin, 2018) by taking primary data sources derived from DSN-MUI fatwa No.140 / DSN-MUI / VIII / 2021 related to Islamic securities crowdfunding and POJK No.57 / POJK.04 / 2020 concerning securities offering through information technology-based crowdfunding services. In addition, secondary data sources come from various literature related to the research object, namely Islamic securities crowdfunding.

This research uses data analysis techniques through three main mechanisms: data reduction. Second, it presents already focused data in a description narrative, thus providing a comprehensive understanding. Third, take the essence of the narrative presented so that it becomes a conclusion that provides understanding (Nurjaman et al., 2022), especially regarding Islamic securities crowdfunding from the perspective of Islamic law and positive law in Indonesia.

3. Results and Discussions

Viewed from the perspective of Islamic law, in this case, is DSN-MUI Fatwa No.140 / DSN-MUI / VIII / 2021, Islamic SCF is part of Islamic Securities Crowdfunding, which is a mechanism for collecting public funds openly to be used as business capital or finance a business that uses digital platforms or based on information technology.

At a glance, Islamic SCF does look like Financial Technology (Fintech) because both are based on information technology. Even though there are differences between these financial instruments, specifically, unlike Islamic SCF, Fintech is included in the category and financing instruments. Meanwhile, Islamic SCF is included in the capital market category and has instruments such as Sukuk and shares. Therefore, Islamic SCF can be used as access to capital for MSME actors without being treated as debt and does not have time as well in financing.

The legal basis of SCF is also based on the *Qur'an*, namely Surat Al-Maidah (5) verse 1:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَوفُوا بِالْعُقُودِ

"O, believers! Cash-out those contracts...."

In the book of Tafsir As-Sa'di, it is explained that what is meant by the word *أَوْفُوا* means not just to fulfill. Its origin is from the word *الوفاء* which means to perfect (Sa'di, 2014). *الْعُقُودُ* means contracts or covenants. It was as if God were saying, "O believers perfect your promises." People of faith believe there is a day of resurrection and accountability. So that when he promises or makes a promise, he seeks to perfect the contract as a consequence of faith.

In the book of *Zubdatut Tafsir min Fathil Qadir*, the contract in question is the contract taken by Allah and made against His servants in the form of laws. Furthermore, included in the contract is a *mu'amalah* contract, or the fulfillment of promises in terms of mutual assistance for good matters and not the other way around (Shaikh Dr. Muhammad Sulaiman al-Asyqar, 2012).

In this context, the contract used in Islamic SCF is the *Syirkah Musahamah* contract (*Syirkah al-Musahamah Dzati al-Mas'uliyah al-Mahdudah*). This *Syirkah* contract owns a portion of Shari'a capital based on paid-up capital as evidenced by shares and has limited liability. This contract is also the foundation for establishing Islamic SCF organizing companies.

The legal basis of the SCF is also sourced to the Hadith of the Prophet Abu David and al-Tirmidzi of Abu Hurairah:

وَعَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ (أَدِ الْأَمَانَةَ إِلَى مَنْ أَنْتَ مَنَّكَ، وَلَا تَخُنْ مَنْ خَانَكَ) رَوَاهُ أَبُو دَاوُدَ، وَالتِّرْمِذِيُّ

From Abu Hurairah Radhiyallahu 'anhu that the Messenger of Allah SAW said: "Give a mandate to the one who gives you the mandate and does not betray the one who betrays you" (HR. Abu Daud and Tirmidhi)

Concerning the command of the Prophet Muhammad SAW in this hadith, asy Shaikh al Mubarakfuri explained that the command (in this hadith) indicates the obligatory thing (Mubarakfuri, n.d.), i.e., a person is obliged to fulfill the mandate. Thus Imam adz-Dzahabi has categorized the deeds of treason as the deeds of great sin. (Dzahabi, 2003)

This hadith is the basis for risk mitigation in Islamic SCF investment because it is a type of investment with a high-risk category. If investors, issuers, and organizers of Islamic SCF can fulfill the mandate properly, then the investment risk can be minimized.

The legal basis related to Islamic SCF is also explained in the following fiqh rules:

أَيْنَمَا وَجِدَ الْمَصْلَحَةُ فَتَمَّ حُكْمُ اللَّهِ

"Where there is the benefit, there is the law of God."

From the *istinbath* method of law in this *fiqh* rule, the method used is the *istishlahi* method or benefit analysis, especially *al-Maslahah al-Mursalah*, which is a benefit whose existence is not supported by *Syara'* and is not canceled/rejected by *Syara'* through detailed arguments. This *maslahat* is said to be *mursalah* because it is independent of the arguments that authorize or cancel it. It is a *mashlahat Mutlaq*, which has no particular link to the *shari'a* text (Juhrobin, 2021). In addition, in the context of *Maqhasid Syariah* in Islamic financial transactions where it aims to maintain property, SCF Syariah is a type of social need with a *tahsiniiyat* or tertiary level (Ahmed, 2011).

Concerning a positive legal perspective, in this case, POJK No.57 / POJK.04 / 2020, Islamic SCF is the implementation of securities offering services carried out by issuers to sell securities directly to financiers through an open electronic system network. The Financial Services Authority Regulation on Securities Offering through Information Technology-Based

Crowdfunding Services is a substitute for POJK Number 37/POJK.04/2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings (Equity Crowdfunding).

This replacement is needed to accommodate the needs of Small and Medium Enterprises in utilizing crowdfunding services as one of the sources of funding in the Capital Market, especially by expanding the Securities instruments that can be offered through crowdfunding services so that they are not only in the form of shares (Securities are equity) but can also be in the form of debt securities or Sukuk.

In this POJK, there are 4 (four) principal regulations, namely regarding Providers, Crowdfunding Services, Issuers, and Financiers, with the principal regulations, including:

- a. The Organizer's criteria include the following: (1) Operators who will carry out crowdfunding services must have a business license from the Financial Services Authority; (2) The Organizer is an Indonesian legal entity in the form of a limited liability company or cooperative; (3) Ownership of the Operator's shares by foreign nationals or foreign legal entities, either directly or indirectly, at most 49%; and; (4) The Organizer must have paid-up capital or own capital of at least IDR 2.5 billion when applying for a permit.
- b. Terms related to Crowdfunding Services, among others: (1) Securities that can be offered through the Crowdfunding Service include equity Securities, Debt Securities, or Sukuk; (2) The maximum limit for raising funds through crowdfunding services by each Issuer within 12 months is at most IDR 10 billion; (3) The offering period of the Securities shall not exceed 45 days; and (4) Arrangements regarding the purchase of Securities, the delivery of funds and Securities, and the trading of Securities
- c. Issuer means an Indonesian business entity in the form of a legal entity or other business entity that issues Securities through Crowdfunding Services. However, the Publisher is prohibited as follows: (1) A business entity that is controlled either directly or indirectly by a business group or conglomerate; (2) A public company or listed subsidiary; and (3) Business entities with a net worth of more than IDR 10 billion, excluding land and buildings for business premises.
- d. Financiers who can purchase Securities through crowdfunding services must: (1) Have a Securities account with a Custodian Bank that is specifically for storing Securities or funds through Crowdfunding Services; (2) Have the ability to purchase Issuer Securities; and (3) Meet the Financier's criteria and the limit on the purchase of Securities.

4. Conclusions

Given these points, this study shows that from the perspective of Islamic law in Indonesia, the practice of Islamic SCF is allowed by referring to the *Qur'an*, *hadith*, legal maxim, *maqhasid al-shariah*, and *syirkah musahamah* contract contained in the DSN-MUI Fatwa No.140 / DSN-MUI / VIII / 2021 issued on August 24, 2021. Referring to the positive law, namely POJK No.57 / POJK.04 / 2020, Islamic SCF is allowed to operate by looking at four principal regulations, including Organizers, Crowdfunding Services, Issuers, and Financiers.

References

Abidin, I. (n.d.). *Radd al-Muhtar 'ala al-Dur al-Mukhtar* (3rd ed.). Dar al-Fikr.

- Abu Zahrah, M. (2000). *Ushul Fikih*. Pustaka Firdaus.
- Ahmed, H. (2011). Maqasid Al-Shariah and Islamic Financial Products: A Framework for Assessment. *ISRA International Journal of Islamic Finance*, 3(1), 149–160.
- Al-Kahfi, A. (1972). *al-Syarikat fi al-Fiqh al-Islami*. Dar al-Fikr.
- Al-Maqdisi, I. Q. (n.d.). *Rawdah al-Nadzir wa Junnah al-Manazir fi Usul al-Fiqh*. Matba'ah al-Salafiyyah.
- Al-Syatibi. (n.d.). *al-Muwafaqat fi Usul al-Ahkam*. Matba'ah al-Maktabah al-Tijariyyah.
- al-Zuhaily, W. (1986). *Ushul al-Fiqh al-Islami*. Dar al-Fikr.
- Al-Zuhayli, W. (1997). *al-Fiqh al-Islami wa Adillatuh*. Dar al-Fikr.
- Amirudin dan Asikin, Z. (2018). *Pengantar Metode Penelitian Hukum* (10th ed.). Raja Grafindo Persada.
- Antonio, S. (2001). *Bank Syariah: Dari Teori Ke Praktik* (1st ed.). Gema Insani Press.
- Ash Shiddieqy, M. H. (1997). *Pengantar Hukum Islam*. PT Pustaka Rizki Putra.
- Ash Shiddieqy, M. H. (2001). *Pengantar Hukum Islam*. PT Pustaka Rizki Putra.
- DSN-MUI. (2009). *Kompilasi Hukum Ekonomi Syariah*. Prenada Media Group.
- Dzahabi, A. (2003). *Al Kaba-ir, tahqiq Abu 'Ubaidah Masyhur bin Hasan*. Maktabah Al Furqan.
- Fahmy, E. (2022a). *Modul Securities Crowdfunding (SCF) Syariah Untuk Investor* (1st ed.). Komite Nasional Ekonomi dan Keuangan Syariah (KNEKS).
- Fahmy, E. (2022b). *Modul Securities Crowdfunding (SCF) Syariah Untuk Penerbit* (1st ed.). Komite Nasional Ekonomi dan Keuangan Syariah (KNEKS).
- Haroen, N. (2000). *Fiqh Muamalah*. Jaya Media Pratama.
- Juhrocin, U. (2021). ANALISIS MASLAHAH MURSALAH. *JIMMI*, 4(2), 9.
- Madkur, M. S. (1984). *al-Ijtihad fi al-Tasyri' al-Islami*. Dar al Nahdhah.
- Mahendra, Y. I. (2007). *Hukum Islam dan Pengaruhnya Terhadap Hukum Nasional Indonesia*. <http://yusril.ihzamahendra.com/comment-page-3.html>
- Mardani. (2012). *Fiqh Ekonomi Syariah*. Prenada Media Group.
- Mubarakfuri, S. al. (n.d.). *Tuhfatul Ahwadzi Syarh Sunan at Tirmidzi*. Daar al Kutub al Ilmiah.
- Muhammad, I. (1992). *Filsafat Hukum Islam*. Bumi Aksara.
- Nafis, M. C. (2011). *Teori Hukum Ekonomi Syariah*. UI Press.
- Nurjaman, M. I., Ayu, D., Witro, D., Sofie, H. M., & Istianah, I. (2022). Analisis Perbandingan Fatwa-Fatwa DSN-MUI Tentang Akad Pengalihan Utang Di Lembaga Keuangan Syariah. *Al Maal: Journal of Islamic Economics and Banking*, 4(1), 50. <https://doi.org/10.31000/almaal.v4i1.5990>
- Puspitasari, N. (2021). Cash Waqf Linked Sukuk (CWLS) Dalam Perspektif Hukum Islam Dan Hukum Positif di Indonesia. *Repository.Uinjkt.Ac.Id*, 4(1), 6. https://repository.uinjkt.ac.id/dspace/handle/123456789/58121%0Ahttps://repository.uinjkt.ac.id/dspace/bitstream/123456789/58121/1/NENENG_PUSPITASARI_FSH.pdf
- Pusat Pengembangan dan Pengkajian Ekonomi Islam (P3E1) Universitas Islam Indonesia. (2019). *Ekonomi Islam* (8th ed.). Raja Grafindo Persada.
- Rasyidi, H. . (1980). *Keutamaan Hukum Islam*. Bulan Bintang.
- Sa'di, S. A. bin N. as. (2014). *Tafsir Al-Qur'an As-Sa'di* (5th ed.). Darul Haq.
- Schacht, J. (1964). *An Introduction to Islamic Law*. Clarendon Press.
- Soeroso. (2009). *Pengantar Ilmu Hukum*. Sinar Grafika.

- Syafrin, N. (2009). Konstruksi Epistemologi Islam: Telaah bidang Fiqh dan Ushul Fiqh. *Tsaqafah*, 5(2), 227. <https://doi.org/10.21111/tsaqafah.v5i2.127>
- Syaikh Dr. Muhammad Sulaiman al-Asyqar. (2012). *Zubdatut Tafsir min Fathil Qadir*. Daril Nafais.
- Syaltut, M. (1966). *Al-Islam 'Aqidah wa Syari'ah*. Dar Al-Qalam.
- Syarifuddin, A. (2011). *Ushul Fikih*. Kencana.
- Tamam, A. B. (2021). Kedudukan Fatwa Majelis Ulama Indonesia (MUI) dan Fatwa Dewan Syariah Nasional (DSN) dalam Sistem Hukum Indonesia. *Al-Musthofa: Journal Of Sharia Economics*, 4(2), 172–181.
- Uthman, F. (1970). *Fikr al-Qanun al-Islami bayna Ushul wa al-Syariah*. Maktabah Wahbah.
- Zuhriyah, L. F. (2012). *Metode Penelitian Kualitatif*. Revka Putra Media.

Fatwas and Laws

- DSN MUI Fatwa No.140/DSN-MUI/VIII/2021 concerning Islamic Securities Crowdfunding
- POJK Number 57/POJK.04/2020 concerning Securities Offering through Information Technology-Based Crowdfunding Services
- Law of the Republic of Indonesia Number 21 of 2011 concerning the Authority for Services and Finance
- Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking