

The Risk Mitigation to the Islamic Crowdfunding in Indonesia

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Keywords: crowdfunding, financial, Islamic, risk mitigation, technology.

Abstract: Islamic crowdfunding which is one of the digital technology and information development on finance and economics provide online financial services for contracting parties without them knowing each other. In the Islamic crowdfunding system, the contracting parties may never meet in the real life or even they will stay anonymous to each other. This situation shows that a cyber risk is one of the legal risks in Islamic crowdfunding transaction. Other than legal protection and supervision through policy and comprehensive regulatory framework from the authorized institution, risk mitigation is urgently needed to protect those who are bound to Islamic crowdfunding transactions, especially legal protection for financier. In the end of May 2018, The Financial Services Authority/Otoritas Jasa Keuangan returned 41 registration documents from the candidate of financial technology companies (fintech) due to the consideration that they are unable to fulfill the obligation to mitigate the risks. The concept of Islamic crowdfunding draws inspiration from microfinance and crowdsourcing under sharia principle. Beside its benefits in terms of easy and practical side, Islamic crowdfunding also has magnitude risk. This article will explain what are the risks that become obstacle to Islamic crowdfunding and the legal solutions in order to conduct risk mitigation in Indonesia. Regarding to the guidance (fatwa) of Dewan Syariah Nasional/National Sharia Board No. 117/DSN-MUI/II/2018, therefore this paper is limited only to analyse Islamic crowdfunding as a platform of financial service based on information technology under the sharia principles.

1 INTRODUCTION

In this digital era, the utilization of technology has not only delivered to the characteristics of new business transaction model, but also raised the alternative system of new financial institutions. Islamic crowdfunding is a hybrid business innovation model that integrates the concept of business ethics of Islamic finance institutions and crowdfunding as one of fundraising innovation model of finance technology. Islamic crowdfunding is expected to become a solution for micro, small and medium enterprises or start-up business instead of formal financial intermediaries. As a new funding method, crowdfunding can support various improvement for profit, cultural, social ventures, and community development. Through this article the author attempts to promote Islamic crowdfunding as a new model of innovation businesses.

The financial technology (hereinafter referred to as fintech) company signs up to The Financial Services Authority/Otoritas Jasa Keuangan (hereinafter referred to as OJK) to comply with the

Regulation of The Financial Services Authority/Peraturan Otoritas Jasa Keuangan (hereinafter referred to as POJK) No. 77 of 2017 on the Lending Service based on Information Technology. PT Ammana Fintek Syariah is one of fintech company that has officially registered and licensed as the first fintech company based on sharia principles in Indonesia. The OJK stated that until 10 June 2018, the number of fintech listed by them consisted of 63 conventional fintech and 1 sharia fintech (in the near future there will be four lending-based financial technology companies-based that runs the sharia principles in the process of filing a registered permit). OJK, however, will return registration documents from the candidate of financial technology companies (fintech) due to inability to fulfill the obligation to do risk mitigation.

Crowdfunding is one of the financial technology services platform. There is no specific regulation on Islamic crowdfunding in Indonesia, therefore there is a lack of regulation regarding to the definition, term and conditions, legal protection and supervision which can cover risk mitigation regulations. In February 2018, National Sharia Board/Dewan

Syariah Nasional (hereinafter referred to as DSN-MUI) has enacted guidance through Fatwa No. 117/DSN-MUI/II/2018 regarding Financial Service based on Information Technology under Sharia Principles (hereinafter referred to as Fatwa DSN-MUI No.117/2018). This Fatwa DSN-MUI No.117/2018 is only guidance, since the characteristic of fatwa is non-binding as the law is established. Financial services based on information technology under sharia principles is the implementation of financial services based on sharia principles which bring together or connect financiers with financing recipients in order to establish financing contracts through electronic systems by using the internet. Meanwhile based on Article 1 point 3 of POJK No. 77 /POJK.01/2016, the lending service based on information technology based is the implementation of financial services to arrange a meeting among lenders with the recipient of the loan in order to construct a lending agreements in rupiah currency directly through electronic systems by using the internet. This platform is generally aimed to support the development of microcredit or small and medium enterprises (hereinafter referred to as SMEs) in capital and investment. The method of the lending service based on information technology is expected to be a solution for SMEs and new start-up business.

Bryan A. Garner¹ stated that crowdfunding is a collective fundraising effort that involves using the internet to attract potential fund owners who have the opportunity to support the goals of fundraisers. Adam Ng refers to Ordanini defined crowdfunding as “a collective effort by consumers who network and pool their money together, usually via the internet, in order to invest in and support efforts initiated by other people or organizations”. From these definitions, social capital in the form of trust, social network, and norms are all important elements and outcomes of crowdfunding.² According to the Adam Ng,³ while there are challenges confronting this new sector, there are unique opportunities for the development of an equity-based crowdfunding ecosystem that comprises the funders-investors, crowdfunding portals, third-party services, technology, entrepreneur, development organizations, and the government. Four key enablers of a robust crowdfunding investing

ecosystem are (a) enabling policy and comprehensive regulatory framework; (b) community engagement; (c) entrepreneurial culture; and (d) technology and infrastructure.

As a comparison, England is one of the countries giving specific definition of crowdfunding in one of their laws. The FCA’s Regulatory Approach to Crowdfunding Over The Internet, and The Promotion of Non-Readily Realisable Securities by Other Media Feedback to CP13/13 and Final Rules which is contained in Policy Statement PS14/4, which explains the definition of crowdfunding as following:

“Crowdfunding is a way in which people, organisation and business (including business start-ups) can raise money through online portals (crowdfunding platforms) to finance or re-finance their activities and enterprises. Some crowdfunding activity is unregulated, some is regulated and some is exempt from regulation”.

In relation to characteristic of crowdfunding, Hermer⁴ differentiated based on the background, namely crowdfunding as an intermediate body, as a business body (for profit/commercial) and as a non-profit body (not to profit). Piotr Pazowski⁵ divided into four types of platform of crowdfunding as following:

- a. investment crowdfunding/equity-based crowdfunding
- b. lending-based crowdfunding
- c. reward-based crowdfunding
- d. donation-based crowdfunding.

Meanwhile, in the FCA official website, each definition of crowdfunding platform is being explained as following: (i). loan-based crowdfunding: also known as peer to peer lending, here the customer lending money as a reward of interest payment and capital repayment from time to time; (ii). investment-based crowdfunding: customer invest directly or indirectly in a new business or settled business by buying investment such as stock or debenture; (iii). donation-based crowdfunding: persons who is giving money to a company or organisation they support; (iv). pre-payment or reward-based crowdfunding: persons who is giving money as a reward over appreciation, services or products (like a concert ticket, innovative products computer games).⁶

¹Bryan A. Garner, *Black’s Law Dictionary*, Tenth Edition, Thomson Reuters, Texas, 2014, p. 459.

²A Adam Ng, Abbas Mirakhor, and Mansor H. Ibrahim, *Social Capital and Risk Sharing: An Islamic Finance Paradigm*, Palgrave Macmillan, New York, 2015, p. 117.

³*Ibid*, p. 10.

⁴Joachim Hemer, *A Snapshot on Crowdfunding*, Fraunhofer Institute for Systems and Innovation Research ISI, Karlsruhe, 2011, p. 12.

⁵Piotr Pazowski, “Economic Prospects And Conditions Of Crowdfunding”, *International Conference: Human Capital without Borders: Knowledge and Learning for Quality Life*, Portoroz, Slovenia, 2014, p. 1081.

⁶<https://www.fca.org.uk>.

Undeniably, due to insufficient regulation related to Islamic crowdfunding in Indonesia, some financiers and SMEs are still unsure regarding to the definition, regulation, risk and its mitigation, legal protection, supervision of the Islamic crowdfunding platform. This article will analyse the risk of Islamic crowdfunding, its regulation and supervision in Indonesia, and the effort of legal protection, especially to mitigate the risks in Islamic crowdfunding.

2 THE RISKS IN ISLAMIC CROWDFUNDING

Parties in Islamic crowdfunding system portrays the huge risk inherent to all parties especially cyber related risks, in addition to that it also shows lack of legal protection to the parties bound to the Islamic crowdfunding transactions. Legal protection is required to protect all parties especially the funds giver. Following are several risks in Islamic crowdfunding :

a. Cyber Risk

Cyber risk is a risk inherent in to any transaction based on information technology or depends on the internet. Islamic crowdfunding illustrates the magnitude of the risks will be borne by the parties, especially the risks related to cyber risk which it is known very weak in legal protection and law enforcement. Risk mitigation is one of the legal protection which is very important to protect the parties, especially the funders. To prevent and overcome all the risks faced in Islamic crowdfunding. Some legal components that can be used as elements in the framework of legal protection as preventive and repressive risk mitigation efforts include regulatory sandbox, risk management in Islamic crowdfunding, oversight function by authorized institutions, as well as the legal protection of the parties if there is a discrepancy with the contract, it is necessary to regulate liability, sanctions or compensation (*dhaman al aqd*) and related sanctions.

b. Shariah/ Legal Compliance Risk

Lack of regulations and literation of Islamic crowdfunding lead to the arise of sharia/ legal compliance. The existence of a command for muslim to comply with sharia as a binding legal rule is recognized as the main duty of a muslim

throughout the world. This is not constrained in its application only if there is support by the social and political system of law for the interests of muslims in carrying out sharia compliance. If not, then sharia will be faced with a larger and stronger manipulation of legal, social, and political interests. This is in line with Feener's statement which states that:⁷

Sharī'a is particularly powerful for providing such binding rules of conduct because it is, on one level, a sufficiently abstract notion to appeal to anyone who would consider him or herself Muslim. At the same time, however, under this broad assent to Sharī'a as an ideal, there are immense spaces for the elaboration of very specific positions on a wide range of social and political—as well as more specifically religious—issues. Such a situation allows the possibility for great manipulation by certain powerful interests.

c. Financing Risks

The following are some credit or financing risks that are likely to be faced by Islamic crowdfunding funders when conducting cooperation in financing:

1. Business Failure and Investment Losses.

Most of the *budding* business people have no experience in running their business, lack of knowledge and entrepreneurial skills in the early stages end in business failure, but there are also micro, small, and medium enterprises (hereinafter referred to as MSME) business actors or start-up businesses in the early stages who succeed in giving multiple benefits to the fund providers. This means that the funder is more likely to have a loss than to get a profit.

2. Unspent Profits

If MSME businessmen or start-up businesses at an early stage succeed in making a profit, they will usually use the profit for their business expansion and therefore there will be a long lag before the business actor distributes the profits to the funder.

3. Additional Capital

When a start-up business or MSME is successful and growing, usually they will need additional capital and therefore the business actor will carry out an advanced capital search campaign. As a result of the additional capital obtained by the business, the proportion of profit/profit sharing from the initial funder is divided by the next fund provider.

⁷R. Michael Feener, "Social Engineering Through Shari'a: Islamic Law And State-Directed Da'wa In Contemporary Aceh", *Indonesia law Review*, Vol. 3,2013 , p. 308.

3 RISK SHARING IN ISLAMIC CROWDFUNDING TRANSACTIONS

The development of the Islamic crowdfunding platforms and products may therefore more promote risk sharing activities.⁸ In Fatwa DSN-MUI No. 117/2018, there are several types of *aqad* and their mechanisms of risk sharing which is related to the Islamic financial technology transaction, namely:

- a. Sale and Purchase Agreement, is a contract between the seller and the buyer that results in the transfer of ownership of the exchanged object (goods and prices);
- b. *Ijarah* contract, is a contract of transfer of usufructuary rights on a certain item or service within a certain time by payment of *ujrah* or wages;
- c. *Musharakah* contract: a cooperation contract between two or more parties for a particular business in which each party contributes venture capital funds (*ra's al-mal*) provided that profits are divided according to agreed ratio or proportionally, while losses are borne by the parties proportional;
- d. *Mudharabah* agreement: a contract of cooperation between a capital owner (*shahibu al-maal*) who provides all capital with the manager (*'amil / mudharib*) and business profits are divided among them according to the ratio agreed in the contract, while the loss is borne by the capital owner;
- e. *Qardh* agreement: a loan agreement from the lender with the provision that the loan recipient must return the money he receives in accordance with the agreed time and method;
- f. *Wakalah* contract: a contract of delegation of power from the power of attorney (*muwakil*) to the recipient of the power of attorney (*wakil*) to accomplish certain legal actions which may be represented;
- g. *Wakalah bi al-ujrah*: a *wakalah* contract which is accompanied by a reward in the form of *ujrah* (fee).

Furthermore, this fatwa stated several model of information technology-based financing based on sharia principles that can be performed by service provider, which are:

Firstly, factoring financing; namely financing in the form of service for collection of receivables based on proof of invoice, either accompanied or without

accompanied by bail (*qardh*) given to entrepreneur who have a bill to a third party (payor).

Secondly, financing procurement of third party ordered goods (purchase orders); namely financing provided to entrepreneur who have obtained orders or work orders for procurement of goods from third parties.

Thirdly, financing the procurement of goods for entrepreneur that sell online (online seller); namely financing provided to entrepreneur who conduct online buying and selling transactions at information technology-based trading service providers (market place/ e-commerce platform) who are already working in partnership with the service provider

Fourthly, financing the procurement of goods for entrepreneur who sell online with payment through the provider of payment gateways; namely financing provided to entrepreneur who are actively selling online (seller) through their own distribution channels and payments made through payment authorization providers online (payment gateway) which cooperates with the service provider.

Fifthly, funding for employees; namely financing provided to employees who need consumptive financing with a salary cut cooperation scheme through the employer institution.

Sixthly, community-based financing, namely financing provided to community members who need financing, with the payment scheme being coordinated through the community coordinator/management.

Meanwhile, based on Article. No.1 verse (25) the sharia law, the definition of funding the provision of funding or bill which is considered to be similar to that is in the form of:

1. Profit share transaction in the form of *mudharabah* and *musyarakah*;
2. Renting transaction in a form of *ijarah* or *ijarah muntahiya bittamlik*;
3. Trade transaction in a form of accounts receivable *murabahah*, *salam*, *istishan*;
4. Lending transactions in a form of accounts receivable *qardh*;
5. Service renting transaction in a form of *ijarah*;
6. Multi-service transaction.

This fatwa also contain provisions that are prohibited in sharia financing service based on information technology, including *riba* (an additional given in the exchange of *riba* goods/ *riba fadl* or additional that is agreed upon in the principal debt in return for the suspension of payment in absolute

⁸A Adam Ng, Abbas Mirakhor, and Mansor H. Ibrahim, Social Capital and Risk Sharing: An Islamic Finance Paradigm, Palgrave Macmillan, New York, 2015, p. 120.

terms/*riba nasi'ah*); *gharar* (an uncertainty in a contract, either regarding the quality or quantity of the object of the contract or about its submission); *maysir* (every contract that is carried out with unclear objectives, and inaccurate calculation, speculation, or profit); *tadlis* (the act of hiding the object's contract disability done by the seller to trick the buyer as if the object of the contract is not defective); and *dharar* (an action that can cause harm or loss to another party).

From the explanation above it can be concluded that Islamic crowdfunding or sharia crowdfunding or sharia crowdfunding based on information technology contain deflation as a crowdfunding platform designed to fulfill sharia principle, which is an effort to collect/raising funds collectively (individual and/or organisation) in funding a project of start-up business/ SMEs, giving financing both personal or business, or other necessities over internet platform which is in line with sharia principle. Islamic crowdfunding implement sharia contracts between giver, site organiser and receiver. In addition to that, the object and aim of financing which is funded are also things that have to comply with sharia principles that must be excluding gambling, interest, *gharar* and *batil* substance.

4 RISK MITIGATION IN ORDER TO THE LEGAL PROTECTION TO THE ISLAMIC CROWDFUNDING

In order to the legal protection to the Islamic crowdfunding may be preventive or repressive to the parties who infringe the law, both need supervision by the authorized body. In relation to preventive legal protection, the legal protection that can be done are regulatory sandbox and risk management. Regulatory sandbox is a preventive legal protection form for the implementation of a healthy fintech transaction, the balance between innovation and risk management,⁹ regulation that puts forward its protection to the society and strengthening the coordination with the related parties. Regulatory sandbox will contain

⁹Fintech Bank Indonesia is a place for assesment, risk mitigation, and an evaluation of business and product/service model from fintech and also the research initiator related to information technology based financing servicing activity based on banking. The aim of the establishment of fintech office are; first, facilitate the innovation development in the ecosystem of technology based finance in Indonesia, Second, prepare Indonesia to optimising the technology development in an attempt of

digital transition procedures and will be applied in order for the fintech performer to fulfill the criteria determined by the Central Bank of Indonesia/Bank Indonesia (hereinafter referred to as BI), which is to gain opportunity to maturing the concept and developing it in a healthy way, and in time it will be able to provide secure financial services for the society.

Regulatory sandbox issued by fintech office which is aiming to give legal protection and risk mitigation to fintech performer, including crowdfunding. When an Islamic crowdfunding has been registered declared to have official permission, then this business has truly fulfilled the criteria and has matured the concept, and it has an opportunity to develop in a healthy way and in time is able to provide secure financial services for the society. Through that provision, BI is regulating and giving permission and supervising the performance of fintech. Regulatory sandbox is also implemented in England and Singapore in order to protect the investor and the spear head of financial sector development interest.

On the official website of Financial Conduct Authority (hereinafter referred to as FCA) in England, the objective of regulatory sandbox is elaborated, which enable company to verify product, services, business model and innovative presentation mechanism in areal market with a real customer. Meanwhile, up until now there has not been any standard regulation in relation to regulatory sandbox. The regulation applied in England and Singapore, however, may at least describes how this policy works. In relation to the sandbox, in Singapore it is issued by Monetary Authority of Singapore (hereinafter referred to as MAS) and become solution to facilitate the innovator to experience and regulate the government. The regulatory sandbox by MAS is a first step in regulating fintech without strangling innovation and enable to experiment. MAS will loosen specific regulation requirements that may be applied to the applicant. Sandbox provides protection which is suitable to accommodate its consequence to the customers due to the impact of failures which is limited to a specific trial group. By managing sandbox, they will be more able to understand and

economic development, third, increasing the competitiveness of Indonesia technology based finance industry. Fourth, absorbing the information and giving feedback to support the BI policy formulation as a response towards the development which is based on technology. To achieve that main goal fintech office will operate in four different function, which are a catalyst or facilitator, businesses intelligence assessment and also co-ordination and communication function.

arrange specific fintech regulation for the future economy.

Generally, registrant which has finally passed the sandbox regulation test obliged to report regularly to the authority. They, however, do not have to fulfill all the regulation requirements immediately. In an exam period, company may be taking benefit of the flexibility and concession offered by “sandbox” to gain experience and gain its strength if their innovation is proven to succeed and the company is able to comply with relevant constitution after sandbox examination, product maybe used to the wider scale of a government agreement. Some things that need to be taken into consideration are eligibility of applicants and consumer safeguard. Furthermore, fintech supervising board given individual guide about the interpretation of the regulation based on case after case that may be encountered by the business performer. Both the MAS and FCA are holding specific standard that obliging the applicant to formulate a strategy which is just and clear for the customer when the examination finished according to the regulation.

Other than risk mitigation as legal protection by authorized institutions, the implementation of risk mitigation is also an obligation to the candidate and the registered company of Islamic crowdfunding. Risk mitigation mechanism in sharia transaction is enable to be implemented in Islamic crowdfunding. Risk mitigation in Islamic crowdfunding is related to the risk management, legal protection and supervision.

Regarding to the risk management, risk management functions as a filter or early warning system for financial service activities, including the need for risk management in Islamic crowdfunding. Adiwarmar Karim¹⁰ said that the purposes of the risk management are (i). providing information about risks to regulators, (ii). ensuring that banks do not experience unacceptable losses, (iii). minimizing losses from various risks that are uncontrolled, (iv). measuring exposure and concentration risk, (v). allocating capital and limiting risk.

Adiwarmar Karim, as quoted by Trisadini Prasastinah Usanti¹¹, explained that there are fundamental differences between Islamic banks and conventional banks, the difference is in what is measured (what to measure), not how to measure. That the Islamic bank operational risk management

process includes risk identification, risk assessment, risk anticipation and risk monitoring. Risk management in Islamic banks has a different character from conventional banks, mainly because of the inherent types of risk that only exist in Islamic banks. Even the risk management provisions for Islamic banks may be applied in Islamic crowdfunding risk management. Risk identification carried out by Islamic banks does not only cover the various risks that exist in financial institutions in general, but also includes typical risks in Islamic financial institutions. So that risk management in Islamic bank can be implemented to Islamic crowdfunding which are risk identification, risk assessment, risk anticipation and risk monitoring.

In the operations of Islamic financial institutions so far, namely the provisions regarding risk management in Islamic banks, on the asset side, investments can be made through profit-based financing (*mudarabah* and *musyarakah*) and fixed income financing models, such as *murabahah* (selling buy by mark-up), buying and selling with installments (*murabahah* / medium / long term), *istishna'* greetings (submission of deferred sale and purchase objects or advance payment) and *ijarah* (leasing). Funds are only provided to finance business activities in accordance with Islamic principles. While on the liability side, third party funds can be collected in the form of current accounts and investment accounts. The first type of fund in Islamic banks is *qard hasan* (interest-free loan) or *amanah* (trust contract). The fund must be returned in full to the depositor for the performance (demand deposit). While investment depositors will receive compensation based on the profit and loss sharing (PLS) scheme and the fund shares in the bank's operational risk. The application of the principle of profit sharing to depositors is a unique characteristic of Islamic banks. These characteristics together with variations in financing models and compliance with sharia principles, has changed the risk characteristics faced by Islamic banks.¹²

¹⁰Adiwarmar A Karim, *Bank Islam: Analisis Fiqih dan Keuangan*, Raja Grafindo Persada, Jakarta, 2007, p. 256.

¹¹Trisadini Prasastinah Usanti, “Pengelolaan Risiko Pembiayaan Di Bank Syariah, *Adil : Jurnal Hukum*” ,Vol. 3 No.2,2015, p. 422.

¹²Khan Tariqullah dan Habib Ahmed, *Manajemen Risiko Lembaga Keuangan Syariah*, Bumi Aksara, Jakarta, 2008, p. 2-3.

5 SUPERVISION BY AUTHORIZED INSTITUTION

Regarding to the legal protection of the Islamic crowdfunding system, it means that it discusses the supervision by government to the Islamic crowdfunding system itself. Supervision must be carried out by the authorized institution so that there is no overlapping in carrying out the supervisory function. Regarding supervision in the field of fintech, including oversight of crowdfunding, there is still a lack of regulation so that the coordination system between BI and the OJK has not been realized because until now there are no legal instruments governing the formal framework (both at the level of general policy makers and at the technical level) in order to support the supervisory task related to the course of crowdfunding activities. The FCA strictly stated on its official website that the regulated internet business model activities only deal with loan-based crowdfunding platforms (loan-based crowdfunding): also known as 'peer-to-peer lending', and investment-based crowdfunding (investment-based crowdfunding) and FCA does not regulate donation-based crowdfunding (donation-based crowdfunding) and pre-payment or rewards-based crowdfunding.¹³

The crowdfunding platform is differentiated on the purpose of the activity. If Islamic crowdfunding is intended to be built on an *ijarah* contract that aims to carry out activities primarily related to financing services, the financing services authority is the institution authorized to monitor it. This has been regulated in Article 6 of Act Number 21 of 2011 concerning the Financial Services Authority/OJK (State Gazette of the Republic of Indonesia of 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253), that the OJK carries out the task of regulating and supervising the activities of financial services in the sector of banking, financial services activities in the capital market, and financial services activities in the insurance, pension funds, financial institutions and other financial services institutions. OJK has a role to organize an integrated system of regulation and supervision of all activities within the financial services sector. OJK has authority in the field of regulation and supervision. In the field of supervision, OJK supervises and protects consumers in the banking sector, capital market, and Non-Bank Financial Industry/Industri Keuangan Non-Bank

(hereinafter referred to as IKNB), provides and/or revokes business licenses, approves or determines dissolution, gives written orders to financial service institutions and appoints site managers Islamic crowdfunding web and authorized to set administrative sanctions. In the task of bank supervision there is coordination between BI and OJK. BI exercises its authority in the field of macroprudential, and OJK in the field of microprudential.¹⁴

Supervisory agencies will be different if Islamic crowdfunding binds itself to a *tabarru* contract which the main activity is donation based crowdfunding and the position of the funder is a donor, not a capital provider. If the funds raised in fundraising are donation conducted through Islamic crowdfunding platforms, it is very possible that the funds are included in the category of *zakat*, *infaq* and *sadaqah*. Related to the management of *zakat* regulated by the Law of the Republic of Indonesia Number 23 of 2011 concerning Management of Zakat (State Gazette of the Republic of Indonesia Number 115 in 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5255) (hereinafter referred to as the Zakat Management Law), the supervisory function is on the National Zakat Board/ Badan Zakat Nasional (hereinafter referred to as BAZNAS). In this case, the government carries out regulatory control duties, and BAZNAS as the executing agency. The reason for the government to design BAZNAS as a non-structural government institution whose membership consists of elements of society and government, is that the nature of its nature is not lost. To assist BAZNAS in the implementation of collecting, distributing and utilizing *zakat*, the community is possible to create Amil zakat agencies/Lembaga Amil Zakat (hereinafter referred to as LAZ). Every LAZs must obtain permission from the government. Zakat finance is not included in the national budget of Indonesia balance sheet, but it is reported in the document. The state has an interest in facilitating muslims in fulfilling the obligation of *zakat*, but not taking advantage of the people's funds. It is firmly stipulated in Article 1 jo. Article 5 of the Zakat Management Law, that BAZNAS is an institution that carries out *zakat* management nationally, domiciled in the capital city of the country and is a non-structural government institution that is independent and responsible to the President through the Minister.

¹³<https://www.fca.org.uk>.

¹⁴Rebekka Dosma Sinaga, "Sistem Koordinasi Antara Bank Indonesia Dan Otoritas Jasa Keuangan Dalam Pengawasan

Bank Setelah Lahirnya Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan "Transparency, *Jurnal Hukum Ekonomi*, Volume I Nomor 2 Feb-Mei 2013.

Nur Aqidah Suhaili¹⁵ stated that in Islamic crowdfunding can apply *waqf* as an object of fundraising, if so, then the supervisory function related to *waqf* is regulated in Article 34 jo Article 36 of Law Number 41 of 2004 concerning Wakaf (State Gazette of the Republic of Indonesia of 2004 Number 159, Supplement to the State Gazette of the Republic of Indonesia Number 4459) (hereinafter referred to as the Waqf Law). The provisions in the Waqf Law stipulate that the authorized institution in the land waqf field is the National Land Agency. Authorized institutions in the field of waqf of movable objects other than money are agencies related to their main duties. Agencies that are authorized in the field of waqf of movable objects other than unregistered goods are Indonesian Waqf Board (Badan Wakaf Indonesia).

6 THE LIABILITY OF THE PARTIES

In common business transactions when the distribution of results and achievements related to the fulfillment of the contract is not appropriate, then the liability efforts, compensations and sanctions are the answer to the legal protection of Islamic crowdfunding. In the national legal system as a consequence of Article 1367 *Burgerlijk Wetboek* which states that everyone must be responsible for persons or objects under his control. As outlined earlier, that crowdfunding systems that depend on the internet are subject to the Act of Information and Electronic Transaction/Undang-Undang tentang Informasi dan Transaksi Elektronik (hereinafter referred to as ITE Law) Law, but in this ITE law there is no explicit provision of the principle of liability is adopted, The ITE law states that parties that conduct electronic transactions must be performed under the good faith principle, and among them three forms of liability, namely (i) liability for errors (liability based on fault), (ii) liability for negligence (negligence) or (iii) principle of liability without error (strict liability).

Nining Latianingsih stated that basically the principle of liability that applies to businesses in a crowdfunding system is the principle of presumption

¹⁵Nur Aqidah Suhaili, "Crowdfunding: A Collaborative Waqf Based Internet Platform", *International Journal of Business, Economics and Law*, Vol. 11, Issue 5 (Dec.), 2016, p. 41.

¹⁶Nining Latianingsih, "Prinsip Tanggung Jawab Pelaku Usaha Dalam Transaksi Elektronik Menurut Undang-

of innocence. Basically, the liability of the businessmen apply the principle of liability for negligence, but according to its development began to shift to the application of strict liability, especially in transactions that have a large risk impact. Whereas the provisions in the UU ITE applies the principle of presumed liability to the businessmen, especially in Article 17 paragraph (1) remind that among parties must apply good faith, so the application of strict liability must be seen in the certain cases so that there is no loss to the other party.¹⁶

7 BUILD AN ECOSYSTEM OF ISLAMIC CROWDFUNDING

According to the Adam Ng,¹⁷ while there are challenges confronting this new sector, there are unique opportunities for the development of an equity-based crowdfunding ecosystem that comprises the funders-investors, crowdfunding portals, third-party services, technology, entrepreneur, development organizations, and the government. Four key enablers of a robust crowdfunding investing ecosystem are (a). enabling policy and comprehensive regulatory framework; (b). community engagement; (c). entrepreneurial culture; and (d). technology and infrastructures. To sum up the risk mitigation of Islamic crowdfunding will be effective or in the other words the legal protection, the supervision and the law enforcement ruin as their function if there is a harmony among the Islamic crowdfunding community (service provider, funder, and the SMEs) and authorized institutions to build an ecosystem of Islamic crowdfunding which consists of policy and comprehensive regulatory framework; community engagement; entrepreneurial culture; and support by technology and infrastructure.

8 CONCLUSION

Some risks in Islamic crowdfunding are cyber risk as a main risk inherent in to any transaction based on information technology or depends on the internet, legal protection due to lack of regulations, lack supervision and lack of law enforcement as factor

Undang Informasi Dan Transaksi Elektronik", *Jurnal Ekonomi Dan Bisnis*, Vol 11, No. 2, Desember 2012, p. 71-76.

¹⁷*Ibid*, p. 10.

from authorized institutions, in internal SMEs there is legal/ sharia compliance risk due to lack of of literation about the Islamic crowdfunding principle, liability, system and mechanism, and this situation lead to the herding on financing risk because of default or expertise factors.

In order to the legal protection, in one side, it is an obligation to the authorized body to perform risk mitigation. On the other side, risk mitigation is compulsory condition for service provider to apply and thi srisk mitigation should be supported by SMEs and the funder. The risk mitigation in Islamic crowdfunding similar with Islamic bank or other Islamic finance institution which is related to risk management, legal protection, supervision, and liability. Risk management itself has been covered by risk identification, risk assessment, risk anticipation and risk monitoring.

The main effort to mitigate the risk of Islamic crowdfunding, the authorized institutions and the Islamic crowdfunding community (service provider, funder, and the SMEs) must create a harmony atmosphere and start to build the ecosystem of Islamic crowdfunding which consists of policy and comprehensive regulatory framework; community engagement; entrepreneurial culture; and support by technology and infrastructure.

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