Agreements on Islamic Debt-based Crowdfunding in Indonesia

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Abstract: - Islamic debt-based crowdfunding is one type of crowdfunding based on Islamic law or Sharia principles. As part of Islamic economic activities, the parties (lenders, borrowers, and Islamic debt-based crowdfunding platforms) must comply with the rules of Islamic law (Sharia compliance) in economic activities such as the prohibition of cheating, lying, usury, speculation, objects of unclear agreements and prohibition of conducting transactions that violate other laws. This study aims to determine the legal construction of lender and borrower agreements in Islamic debt-based crowdfunding. The research is classified as empirical juridical research that uses primary data from interviews and surveys as well as secondary data sourced from library research. The data obtained were systematized and processed for in-depth analysis using descriptive analysis. The results show that there are two forms of agreement in Islamic debt-based crowdfunding, namely the agreement between the lender and the Islamic debt-based crowdfunding platform and the agreement between the lender represented by the platform and the borrower. The agreement between the lender and the Islamic debt-based crowdfunding platform uses *wakalah bil ujrah*, while the agreement between the lender represented by the Islamic debt-based crowdfunding platform and the borrower uses a debt-based agreement based on factoring, an agreement based on buying and selling (*murabahah*), a capital partnership agreement (*mudharabah* and *musharakah*) as well as service-based agreements (*ijarah*).

Key-Words: - Agreement, Islamic Debt-based Crowdfunding, Regulation, Lender, Borrower

1 Introduction

Islamic debt-based crowdfunding is a type of internet-based crowdfunding as a means of raising funds. Funk argues that there are four types of crowdfunding, namely donation-based crowdfunding, reward-based crowdfunding, equity-based crowdfunding, and debt-based crowdfunding [1]. Debt-based crowdfunding is also known as crowd-lending or peer-to-peer lending. In this crowdfunding, the fundraiser or borrower must repay the loan with or without additional interest. However, in general fundraisers or borrowers need to pay interest and must pay fees to the relevant platform. Along with the awareness of Muslims to practice Islamic economics, debt-based crowdfunding emerged, which in its operations is based on Islamic principles or Sharia principles, which is called Islamic debt-based crowdfunding. Islamic debt-based crowdfunding is growing rapidly in Indonesia. In 2020, the allocation of Islamic debt-based crowdfunding increased by 50% compared to 2019. In terms of assets, total assets in April 2021 reached IDR 109.4 billion or has a market share of 2.57% of the total assets of the debt-based crowdfunding fin-tech industry. reached IDR 4.23 trillion, with outstanding financing of IDR. 20.61 trillion [2].

The growth and development of Indonesian Islamic financial technology loans cannot be separated from the development of global Islamic financial technology. According to the Global Islamic Fin-tech Report 2021, the total Islamic Fin-tech market in 57 member countries of the Organization of Islamic Cooperation will reach US$49 billion by 2020. In the report, Indonesia ranks fourth as a country experiencing rapid development in the field of Islamic financial technology, with market size of 2.9 billion and is expected to reach 8.3 billion by 2025 [3]. Several things that encourage the growth of the global Islamic finance economy include increasing the living standards of the Muslim population, developing national strategies for countries that are committed to halal products, as well as increasing Islamic values and ethics. Increased awareness of the importance of Islamic ethics and values encourages Muslims to comply with Islamic law when carrying out economic activities, including in conducting debt-based crowdfunding transactions.

The use of Islamic law principles as the operational basis of Islamic debt-based crowdfunding requires all parties involved in it (lenders, borrowers, and Islamic debt-based crowdfunding platforms) to comply with the legal rules stipulated by Islamic law in economic activities. Islamic law emphasizes that any economic activity must not contain fraud, lies, usury, speculation, unclear objects of agreement, prohibition of transactions or content that violates other provisions of Sharia law. The Indonesian Council of Ulama provides an understanding that Sharia principles are principles derived from Islamic law in economic activities including the prohibition of gambling, fraud, usury, persecution, bribery, illicit goods, and other immoral acts [4]. The word "sharia" implies that the economic activity is not in conflict with or in harmony with the sources of Islamic teachings, namely the values contained in the Qur'an and Hadith. Therefore, every economic activity carried out by all parties including Islamic debt-based crowdfunding transactions must uphold justice and expediency, pay attention to the values of unity and brotherhood, and pay attention to moral behavior that comes from absolute religious teachings and requires continuous implementation.

One way to apply Sharia principles in Islamic debt-based crowdfunding is to use an agreement sourced from Islamic law or sharia principles which serves as the basis for legal relationships between the parties in Islamic debt-based crowdfunding transactions. Agreement is a means to express the wishes or desires of the parties involved in the agreement in a clear and easily understood language. In the perspective of Islamic law, the validity of an agreement is a measure of economic activity, because not all agreements or alliances can be justified from the perspective of Islamic law. Lubis & Pasaribu, stated that in the perspective of Islamic law, an agreement is valid if it does not violate the agreed Sharia law, there is willingness and agreement from both parties involved in the agreement and it is stated in a clear and concise statement [5].

Based on this, this study examines the legal forms or constructions used by the parties in making agreements on the implementation of Islamic debt-based crowdfunding as an effort to determine the parties' compliance with the provisions of Islamic law, especially in terms of making agreements that form the basis of legal relationships the parties involved in the implementation of Islamic debt-based crowdfunding. This is important because adherence to Sharia principles in the implementation of Islamic debt-based crowdfunding is not only a religious obligation but also a market demand, as the results of research conducted by Ellipses with the theme Islamic Fin-tech conducted in December 2019 concluded that 76% of Sharia fin-tech companies want sharia certification. The results of Ellipses' research also recommend that fin-tech operators to be successful in carrying out their business activities must adapt to broad financial markets such as green finance, finance that upholds ethics and conducts business under Sharia principles [6]. Compliance with Sharia principles in making agreements will increase public confidence in accessing Islamic debt-based crowdfunding as a source of community economic development.

2 Materials and Methods

This research is qualitative research that makes the law an object of study and is known as empirical juridical research. This study examines the agreement used as the basis for the legal relationship of the parties involved in the implementation of Islamic debt-based crowdfunding (Islamic debt-based crowdfunding platform, lenders, and borrowers). The data used are primary data obtained through interviews and secondary data obtained through library research in the form of primary legal materials, namely laws and regulations, secondary legal materials in the form of scientific works contained in books, journals, and so on as well as tertiary legal materials that explain primary legal materials and secondary legal materials. The data obtained were systematized and processed for in-depth analysis using descriptive analysis.

3 Results and Discussion

In the perspective of Islamic economic law, there are two terms related to the agreement, namely al-aqdu and *al-ahdu*. Referring to the understanding described in the Qur'an, *al-aqdu* means agreement or engagement, while *al-ahdu* means time or promise. *Al-aqdu* in contemporary times has the equivalent term, namely *iltizam* which is synonymous with *verbinteni*s while *al-ahdu* is the same as *overeenkomst*. On a practical level, Islamic jurists argue that the contract is a link between the existence of consent (statement) and *qabul* (acceptance) of a matter that has legal consequences in the form of rights and obligations.

The agreement (contract) is the main basis for the emergence of legal relationships that cause rights and obligations between the parties. In Islamic debt-based crowdfunding transactions, the entitled party is called the lender (fund owner) whose interests are represented by the Islamic debt-based crowdfunding platform, and the obligated party is called the borrower. The lender has the right to repay the money he lent to the borrower with additional profits, the borrower is obliged to pay his debts to the lender accompanied by profit sharing. At the implementation level, agreements on Islamic debt-based crowdfunding are different from agreements in other economic activities because in Islamic debt-based crowdfunding there is an obligation to implement Sharia principles in agreements made between Islamic debt-based crowdfunding platforms, lenders and borrowers that function as the basis for a legal relationship. Contracts made by two or more parties are considered invalid if they are not following the provisions and requirements of Islamic law [7]. Each agreement must fulfill several principles in making agreements that are sourced from Islamic law [8], among others; the principle of freedom of contract (*al-khurriyah* , as an equation (*al-musawah*), as justice, the principle of the willingness of both parties, the principle of honesty and truth (*ash shidqi*), and as written.

The principles of the agreement must be implemented in the agreement that forms the basis for the legal relationship of the parties in Islamic debt-based crowdfunding, namely the Islamic debt-based crowdfunding platform, lenders and borrowers. The Financial Services Authority of the Republic of Indonesia noted that as of June 2021 there were ten Islamic debt-based crowdfunding platforms in Indonesia. Of the ten platforms, five of them have licenses granted by the Financial Services Authority to Islamic debt-based crowdfunding platforms that have met several standards set by the Financial Services Authority and have an Information Security Management System certificate of SNI/ISO 27000. Meanwhile, five other platforms registered status. Registered status is granted by the Financial Services Authority to an Islamic debt-based crowdfunding platform that is applying for a permanent permit. At this time, all registered Islamic debt-based crowdfunding platform organizers have submitted applications and are in the process of obtaining the said permanent permits. The list of Islamic debt-based crowdfunding platforms in Indonesia is shown in the following table;

Table 1: List of Islamic Debt-based Crowdfunding in Indonesia as of June 2021

Platform Name	**Status**	**Date**
Investree	Permitted Number KEP-45/D.05/2019	13-05-2019
Ammana	Permitted Number KEP-21/D.05/2020	25-05-2020
Alami Sharia	Permitted Number KEP-21/D.05/2020	27-05-2020
Dana syariah	Permitted Number KEP-32/D.05/2021	21-04-2021
Duha Syariah	Permitted Number KEP-32/D.05/2021	21-04-2021
qazwa	Registered Number S-440/NB.213/2019	07-08-2019
ETHIS	Registered Number S-608/NB.213/2019	30-10-2019
KAPITAL BOOST	Registered Number S-609/NB.213/2019	30-10-2019
Papi Tupi Syari’ah	Registered Number S-612/NB.213/2019	30-10-2019
Fintech Syari’ah	Registered Number S-600/NB.213/2019	30-10-2019

These platforms are obliged to apply the principles of agreement regulated by Islamic law in the agreement which forms the basis for the legal relationship of the parties involved. Based on the survey and interviews, it was found that there are two forms of legal relationship as outlined in the agreement, namely the legal relationship between the Islamic debt-based crowdfunding platform and the lender and the relationship between the lender and the borrower. The agreement that forms the basis for the legal relationship between the parties is by the formulation of Article 18 of the Financial Services Authority Regulation number 77 of 2016 concerning Information Technology-Based Lending and Borrowing Services. Financial Services Authority Regulation 77/2016 only mentions the existence of a binding agreement between the debt-based crowdfunding platform and the lender and the agreement between the lender and the loan recipient. Financial Services Authority regulations do not regulate agreements between debt-based crowdfunding platforms and loan recipients. The two are not mutually exclusive, the position of the debt-based crowdfunding platform is only as an intermediary and is purely administrative in nature.

Based on the survey and interviews, it was found that there are two forms of legal relationship as outlined in the agreement, namely the agreement between the Islamic debt-based crowdfunding platform and the lender and the agreement between the lender and the borrower. These two forms of agreement are following the formulation of Article 18 of the Financial Services Authority Regulation number 77 of 2016 concerning Information Technology-Based Lending and Borrowing Services. The regulation only mentions the existence of binding agreements between debt-based crowdfunding platforms and lenders and agreements between lenders and borrowers. Regulations on information technology-based lending and borrowing services do not regulate agreements between debt-based crowdfunding platforms and loan recipients. The two are not mutually exclusive, the position of the Islamic debt-based crowdfunding platform is only as an intermediary and is purely administrative in nature.

3.1. Agreement between Islamic Debt-based Crowdfunding Platform and Lenders

The agreement between the Islamic debt-based crowdfunding platform and lenders uses one type of agreement, namely the *wakalah bil ujrah* agreement/contract. This contract is one type of contract that is categorized as a contemporary contract because the *wakalah bil ujrah* contract is not found in the literature on Islamic economic law. This agreement was instituted by the Indonesian Council of Ulama through fatwa number 1l3/2017 concerning the *Wakalah bi Ujrah* contract. Terminologically, *wakalah* is the act of a person to appoint a person or legal entity to act on his behalf as a representative. In the context of Islamic debt-based crowdfunding, representative action occurs when the lender gives a mandate to the Islamic debt-based crowdfunding platform to represent it in investing its funds and when the borrower applies to finance through the Islamic debt-based crowdfunding platform to find investors who are willing to provide loans/financing.

Based on the fatwa number 113/2017, the Islamic debt-based crowdfunding platform as a representative of lenders is allowed to receive *ujrah*/wages for their services as representatives of lenders in managing their funds and can receive ujrah/wages from borrowers for their services. lending services or finding investors who are willing to provide loans or financing to borrowers. The representative mechanism by which representatives (persons/legal entities) can receive this *ujrah*/wages in the perspective of the Indonesia Council of Ulama fatwa number 113/2017 is called the *wakalah bil ujrah* contract. The amount of *ujrah* given by lenders to the Islamic debt-based crowdfunding platform is adjusted to the loan grade from the credit scoring results based on the documents submitted by the borrower. *Ujrah wakalah* starts from 12% for low-risk financing and a maximum of 19-20% for high-risk financing. However, there are also Islamic debt-based crowdfunding platforms that do not burden lenders with *ujrah* such as Alami and Duha Syari'ah.

3.2. Agreement between Lender and Borrower

In Islamic debt-based crowdfunding, the interests of lenders in conducting transactions are represented by the Islamic debt-based crowdfunding platform. Therefore, the agreement between the lender and the borrower turned into an agreement between the Islamic debt-based crowdfunding platform and the borrower. There are several forms of agreement used in the legal relationship between the lender and the borrower, including;

1. *Wakalah bil ujrah* agreement; The use of *wakalah bil ujrah* depends on the desire for Islamic debt-based crowdfunding. If the platform wants to get *ujrah* from the borrower, the agreement used is the *wakalah bil ujrah* agreement. *Wakalah* in this context, the mechanism is that the borrower asks the Islamic debt-based crowdfunding platform for help to find investors (lenders) who are willing to lend a certain amount of money. Thus, the borrower can be charged a *wakalah* fee, the amount of which is determined based on the grade of financing that will be given by the lender to the borrower. The amount of the loan provided by the lender to the borrower becomes a benchmark for the amount of *ujrah wakalah* that must be paid by the borrower to the platform. On the Investree platform, the *wakalah* fee that must be borne by the borrower ranges from 2.4% - 4%.
2. *Qardh* contract; granting loans from lenders to borrowers with the obligation to return the loans received at a time determined by both parties (borrowers and lenders). This *qardh* contract is used by the Investree, Alami, and Kapital Boost platforms in providing financing. The Investree

applies the *qardh* contract to the bailout provided to the borrower without asking for compensation because in providing financing the Investree also uses the *wakalah bil ujrah* contract as the basis for its legal relationship with the borrower. Investree determines the amount of *ujrah* between 2.4% - 4% depending on the loan grade given. Investree obtains *ujrah* from borrowers for their services in finding investors (lenders) who are interested in providing loans. This mechanism is under the fatwa of the Indonesian Council of Ulama Number 117/2018. In the fatwa, it is stated that in the provision of information technology-based services, the provider can use a contract that is following the characteristics of the contract, including using a *wakalah bil ujrah* contract.

3. *Ijarah* contract; the granting of benefits or usufructuary rights over an item or service that is utilized by providing a lease or *ujrah*. The *ijarah* agreement is used by the Ammana, Duha Syariah and Fintek Syari'ah platforms in providing financing. In Duha Syariah, the *ijarah* agreement is used to facilitate the needs of the borrower in consuming certain services. Duha Syariah uses the *ijarah* contract as the basis for providing financing in the form of services to borrowers in need. Duha Syariah does not provide loans in the form of money directly to the borrower but requires the borrower to first purchase the goods or services needed on the e-commerce marketplace that has collaborated with Duha Syariah such as www.duniahalal.com. Based on this pattern, the use of *ijarah* contracts on Duha Syari'ah platform transactions is not appropriate. There should be different types of needs of borrowers who apply for financing. If the borrower needs goods, the most appropriate contract so that Duha Syari'ah can be justified in taking profits is to use a *murabahah* contract, not an *ijarah* contract. *Ijarah* contract is more appropriate if what is needed by the borrower is the use of certain services such as tourism financing based on the fatwa of the Indonesian Council of Ulama Number 44/2004 concerning Multiservice Financing.
4. *Mudharabah* contract; a cooperation agreement between parties who have funds (*shahibul maal*) and parties who need funds (*mudharib*) who have expertise or skills in managing productive and halal businesses. Profits obtained from the use of funds are shared based on the agreed ratio. This contract is used by the Ammana and Qazwa platforms in providing financing to borrowers. The Ammana platform uses a *mudharabah* contract as the basis for providing loans to borrowers. The *mudharabah* contract was chosen because the majority of borrowers who apply for financing have an ongoing business and need capital to develop their business. *Mudharabah* is a contract that specifically applies to the trade sector. *Mudharabah* is not commonly used outside of trade or business activities [9].
5. *Musharakah* contract; *Musyarakah* comes from *syirkah* which means mixing. Technically, Islamic jurists provide the understanding of *musharakah* as a contract that occurs between one person or entity with another in terms of capital and profit. This contract is used by ETHIS in providing financing to borrowers in need. The choice of using this contract can be justified because the majority of ETHIS borrowers are those who need capital to do business. Although the use of this contract has a greater risk than using a *mudharabah* contract or *murabahah* contract, in transactions using this contract the marketplace can be a party that participates in managing the running of the company that is receiving financing when the *syirkah* used is *syirkah muwafadhah.*
6. *Murabahah* contract; is a sale and purchase agreement for a certain item in which the seller clearly states the characteristics of the goods being traded including the acquisition price of the goods to the prospective buyer and the seller determines how much profit he wants when he wants to sell the goods. Technically, it is a sale and purchase agreement of goods with a known cost price plus a profit margin agreed upon by the seller and the buyer. In Islamic debt-based crowdfunding transactions, platforms that use this contract include Ammana, Dana Syari'ah, Duha Syari'ah and Qazwa, Kapital Boost, and Papi Tupi Syari'ah.

In the perspective of Islamic economic law, in principle, every contract can be justified as long as no evidence prohibits it. This principle is under the provisions of Islamic Jurisprudence rules which state [10];"The basic law in transactional economic activities is permissible unless there is a proposition that prohibits it". This rule is a basic rule that underlies the ability to use a contract that is by the activities carried out. Islamic law gives freedom to its adherents to develop contracts used in civil relations, especially in the economic field by human development and needs, therefore in sharia economic activities, the contract may be carried out as long as no argument prohibits it. Islam outlines that as long as there is a willingness from the parties to the contract and there is no evidence that prohibits the economic activity, the economic activity can be justified unless the contract or transaction contains elements of coercion, error in the object, fraud and deception [11].

4 Conclusion

The legal construction of the agreement between the lender and the borrower in an Islamic debt-based crowdfunding transaction is a *qardh* or borrowing contract. However, the agreement is carried out online by utilizing the web or what is called a platform. There are three parties involved in the Islamic debt-based crowdfunding agreement; Platforms of Islamic debt-based crowdfunding, lenders, and borrowers. The legal relationship between the Islamic debt-based crowdfunding platform and lenders is based on the *wakalah bil ujrah* agreement. The lender represents the debt-based crowdfunding platform to manage the funds he has so that these funds are managed and managed to be loaned to other people (borrowers). Based on the contract, the representative gets a salary called *ujrah*. The agreement between lenders represented by the Islamic debt-based crowdfunding platform and borrowers depends on the type of financing because in the perspective of Sharia economic law it is not allowed to provide loans in the form of money. For the Islamic crowdfunding platform to collect fees from borrowers, the Indonesian Council of Ulama issued fatwa number 67/2008 regarding Sharia Factoring. In addition to using *qardh* contracts based on factoring, financing provided by Islamic debt-based crowdfunding to brokers can also use *ijarah*, *mudharabah*, *musyarakah*, and *murabahah* agreements. In principle, Islam gives freedom to its adherents to develop contracts used in civil relations, especially in the economic field by human development and needs, therefore in Sharia economic activities, all forms of agreement may be carried out as long as no evidence prohibits it.

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