

## Reconceptualising Legal Entity Structures for Indonesian Commercial Crowdfunding

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### ABSTRACT

This study examines the optimal legal entity framework for the sustainable development of commercial crowdfunding in Indonesia, with a focus on Equity Crowdfunding and Securities Crowdfunding. Employing a normative and conceptual legal methodology, it analyzes key regulations issued by the Financial Services Authority and assesses their coherence with the constitutional principle of economic democracy. The study contends that legal entity selection plays a critical role in ensuring legal certainty, accountability, and investor protection within crowdfunding ecosystems. It evaluates the suitability of various legal forms, including limited liability companies, cooperatives, foundations, and partnership structures, in facilitating profit-oriented fundraising while preserving market integrity. The analysis underscores the necessity of a clear regulatory distinction between social and commercial crowdfunding models. The findings demonstrate that optimizing legal entity structures is a strategic imperative to enhance fintech governance, expand MSME and startup access to capital, and advance inclusive growth in Indonesia's digital economy.

### Keywords:

Securities  
Crowdfunding; Equity  
Crowdfunding; Legal  
Entity Model;  
Business Law; Cyber  
Law.

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## INTRODUCTION

The state plays an essential role in promoting public welfare by shaping an economic system that is fair, inclusive, and sustainable. In Indonesia, this responsibility is firmly grounded in the Constitution, which places popular sovereignty at the center of national life, including economic activity. Popular sovereignty means that power originates from the people, is exercised by the people, and ultimately serves the people. This principle forms the foundation of economic democracy, which guides the development of Indonesia's economic system. Economic democracy goes beyond the pursuit of market efficiency. It emphasizes equal access to economic resources, social justice, and meaningful public participation in economic processes. These values are clearly reflected in Article 33 of the 1945 Constitution of the Republic of Indonesia, which mandates that the state control key sectors of production for the greatest benefit of the people (Suseno, Sudarsono, Fadjar, & Sihabudin, 2019). Economic democracy therefore integrates political, economic, and cultural dimensions into a unified system that supports collective welfare rather than individual profit alone.

In the digital era, one concrete manifestation of economic democracy is crowdfunding, particularly equity crowdfunding (ECF) and securities crowdfunding (SCF) (Astuti, Suhariningsih, Sukarmi, & Hamidah, 2024a). Through these models, access to capital is no longer limited to large investors or financial institutions. Instead, ordinary citizens can participate directly by investing in businesses and becoming part-owners. Recognising this potential, the Indonesian government has introduced a series of regulations governing ECF and SCF, demonstrating a strong commitment to expanding inclusive financing opportunities. These regulations have been especially

beneficial for Micro, Small, and Medium Enterprises (MSMEs) and startups, which often face difficulties accessing traditional sources of funding. Despite this progress, the implementation of ECF and SCF still faces significant legal and technical challenges. One major issue is the lack of clarity regarding the most appropriate legal entity for issuers under the SCF scheme (Astuti, Suhariningsih, Sukarmi, & Hamidah, 2024b). This uncertainty creates legal risks, reduces investor confidence, and weakens transparency and accountability. In addition, the boundaries between commercial crowdfunding and social or donation-based crowdfunding are often unclear. This overlap leads to regulatory confusion and makes it difficult for issuers, platforms, and investors to determine which legal rules apply.

These challenges highlight the urgent need to review and clarify the regulatory framework governing the legal structure of SCF issuers. As the system has evolved from the more limited ECF model to the broader and more flexible SCF framework, regulatory complexity has increased. This raises two important questions.

*First, to what extent do existing regulations reflect the constitutional values of economic democracy?*

*Second, what type of legal entity is most suitable to support SCF as an inclusive, efficient, and fair financing mechanism?*

This study seeks to address these questions by examining existing legal entity models for SCF issuers in Indonesia and proposing an ideal legal structure, particularly for commercial crowdfunding. The goal is to identify a framework that balances market efficiency with legal certainty, investor protection, and broad access to finance for MSMEs and startups. Using a normative legal research approach supported by conceptual and statutory analysis, this study aims to contribute to the development of a digital investment ecosystem that is firmly rooted in the principles of economic democracy.

## METHOD

This study uses a normative legal research methodology, which focuses on the analysis of written legal norms that serve as authoritative standards for resolving legal issues (Astuti, Suhariningsih, Sukarmi, & Hamidah, 2021; Atmojo & Fuad, 2023). Often referred to as doctrinal research, this approach emphasises the interpretation and evaluation of statutes, legal principles, and established legal doctrines found in legislation and legal literature. In this study, the normative method is applied to examine the regulatory framework governing securities crowdfunding (SCF), with particular attention to identifying the most suitable legal entity for issuers operating within this digital financing model.

To support the analysis, the research employs three main approaches: the statute approach, the conceptual approach, and the comparative approach.

- a. The statute approach involves a systematic review of relevant legal instruments that form the basis of crowdfunding regulation in Indonesia. These include the 1945 Constitution of the Republic of Indonesia, especially Article 33, Law No. 8 of 1995 on Capital Markets, and regulations issued by the Financial Services Authority (OJK). The key OJK regulations analyzed are POJK No. 37/POJK.04/2018 on Equity Crowdfunding (OJK, 2018), POJK No. 57/POJK.04/2020 on Securities Crowdfunding (OJK, 2020), and POJK No. 16/POJK.04/2021 (OJK, 2021) as its amendment. This approach aims to assess how these legal norms reflect the

- principles of economic democracy, ensure legal certainty, and provide adequate protection for investors and business actors.
- b. The conceptual approach is used to examine the fundamental ideas underlying crowdfunding regulation. This includes concepts such as economic democracy, the welfare state, and the legal forms of business entities recognized in Indonesian law, namely Limited Liability Companies (*Perseoran Terbatas*), Cooperatives, and Limited Partnerships (*Commanditaire Vennootschap*). Economic democracy is a central concept because it emphasizes inclusivity and equal access to financing. This analysis is supported by legal doctrines, academic literature, and theories of economic law that help explain how legal entities should be structured to promote fairness, efficiency, and sustainability within the SCF ecosystem.
  - c. The comparative approach involves comparing Indonesia's legal framework with those of selected jurisdictions, particularly the United States and the United Kingdom. These countries are chosen due to their more developed crowdfunding markets and well-established regulatory systems for digital finance. The purpose of this comparison is to identify best practices that may inform the design of an appropriate legal entity model for securities crowdfunding in Indonesia.

In terms of legal materials, this study draws upon primary, secondary, and tertiary legal sources in a structured and systematic manner. Primary legal materials comprise binding legal instruments that form the core normative framework governing crowdfunding activities in Indonesia, including the Constitution, the Capital Markets Law, and relevant regulations issued by the Financial Services Authority (*Otoritas Jasa Keuangan*). These instruments provide the authoritative legal basis for assessing the regulation of Equity Crowdfunding and Securities Crowdfunding.

Secondary legal materials consist of scholarly works that offer doctrinal analysis and critical perspectives on the applicable legal norms. These materials include legal textbooks, peer-reviewed academic journal articles, and expert commentaries that examine capital market regulation, fintech governance, and legal entity structures. Such sources are used to interpret, contextualize, and evaluate the primary legal materials within broader theoretical and comparative frameworks.

Tertiary legal materials, including legal dictionaries and encyclopedias, are employed to support conceptual clarification and ensure terminological consistency. All legal materials are analyzed using a descriptive qualitative method, which enables a systematic description, interpretation, and evaluation of legal norms in relation to the research questions. Through this methodological framework, the study seeks to formulate an ideal legal entity model for commercial crowdfunding in Indonesia that aligns with economic democracy, enhances investor protection, and facilitates inclusive and sustainable economic development.

## RESULTS AND DISCUSSION

## **1. The Principle of Economic Democracy and Crowdfunding in Indonesian National Law**

### *a. The Meaning of Economic Democracy in Indonesian Legal Context*

In the Indonesian legal system, the principle of economic democracy is firmly grounded in Article 33 of the 1945 Constitution, particularly paragraph (1), which states that the national economy is organized as a joint effort based on the principle of kinship. This provision forms the constitutional basis for an economic system that rejects the concentration of economic power in the hands of a few individuals or large corporations, especially in relation to strategic resources. Instead, it promotes a collective and inclusive economic model that reflects the core values of economic democracy (Atmaja & Erliyana, 2024). The principle of kinship does not refer to family relations, but to broader social values such as cooperation, mutual assistance (gotong royong), and social solidarity. These values emphasize that economic activities should involve active participation from all segments of society and ensure that the benefits of development are shared fairly. Economic democracy in Indonesia therefore requires an economic system that is participatory, inclusive, and oriented toward the common good.

These principles are deeply rooted in Indonesia's legal and cultural traditions. Concepts such as gotong royong have long been recognized as central elements of the kinship principle and as expressions of collective responsibility (Simarmata, Yuniarti, Riyono, & Patria, 2019). As a result, Indonesia's economic democracy is not based solely on free-market mechanisms. It also incorporates social responsibility, distributive justice, and equal access to economic resources. Further support for this interpretation is found in Article 33 paragraphs (2) and (3), which grant the state authority to control sectors that are vital to the public interest. These include key industries and natural resources such as land, water, and energy, which must be managed by the state for the greatest benefit of the people. This constitutional mandate affirms the active role of the state not only as a regulator, but also as a facilitator and, when necessary, a direct participant in strategic economic sectors.

In practice, the constitutional vision of economic democracy stands in contrast to elitist or exclusionary development models. It calls for meaningful public participation in economic decision making and development processes. However, the implementation of these ideals has not always been consistent. The influence of liberal economic approaches has, at times, resulted in policies that limit access for vulnerable and low-income groups. As an economic constitution, the 1945 Constitution provides more than a legal framework; it sets a normative direction for Indonesia's economic development. Economic democracy, as mandated by the Constitution, seeks to achieve social welfare, economic justice, and shared prosperity for all citizens. Consequently, this principle functions not only as a constitutional value, but also as a practical guideline for shaping economic policies, drafting legislation, and managing national resources in line with the goals of inclusive, just, and sustainable development (Mahesa, Anggoro, & Nugroho Perwiro Atmojo, 2021).

### *b. The Relevance of Public Participation in Economic Financing*

The ultimate goal of Indonesian economic law is to achieve prosperity and social justice, in accordance with the philosophical values of Pancasila. Within this

framework, public participation in development financing plays a central role in realizing economic democracy. Public involvement in financing is not only a normative ideal but also a practical principle that must guide the formulation of economic law and policy. Future developments in Indonesian economic law should therefore prioritize mechanisms that expand public participation in financing national development. Building a just and equitable society requires more than the legal recognition of economic rights. It also requires inclusive systems that allow citizens to actively contribute to economic development through accessible financing mechanisms. Alternative funding models, such as crowdfunding, cooperatives, and public investment schemes, provide practical channels for public participation and support inclusive economic growth. These mechanisms enable citizens to contribute capital, share risks, and benefit directly from development outcomes.

The principle of proportional justice further requires that all citizens have equal opportunities not only to enjoy the results of development but also to participate in the development process itself. Open, transparent, and accessible financing schemes strengthen public ownership of economic progress and help reduce structural inequality by enabling the participation of vulnerable and marginalized groups. In this way, public participation in financing becomes a tool for social inclusion and economic empowerment. Public-oriented financing also reinforces the principle of non-discrimination in economic life. Individuals, Micro, Small, and Medium Enterprises (MSMEs), and larger business actors must have equal access to funding sources. When access to finance is dominated by a limited group, public participation declines and fair competition is weakened. Therefore, legal and regulatory support for financial inclusion and community-based financing initiatives is essential to ensure a balanced and competitive economic environment.

These considerations highlight the strategic role of Indonesian economic law in promoting and regulating public based financing models, in line with the Pancasila Economic System. Economic democracy within this system emphasizes collective participation, mutual cooperation, and shared responsibility in economic activities, including financing. Public participation is thus a defining feature of the Pancasila-based economic model. The core principles of the Pancasila Economy further reinforce this commitment. Economic activity is guided not only by profit, but also by social and moral values, encouraging public participation as an expression of solidarity. Economic nationalism supports the strengthening of domestic capital by reducing dependence on foreign funding and empowering citizens to contribute to national development. A balance between centralization and decentralization allows local communities to manage and finance their own economic initiatives.

From a constitutional perspective, Article 33 of the 1945 Constitution mandates state control over sectors vital to the public interest. However, this control does not exclude public involvement. Instead, it requires the active participation of the people through fair and inclusive financing schemes, such as cooperatives, securities crowdfunding, and regional bonds. Principles of equality, kinship, and social benefit embedded in Indonesian economic law support the development of a financing system that is inclusive and just. Economic democracy, as an expression of popular sovereignty, demands broad public access not only to production but also to financing mechanisms. Public participation in financing is therefore not a secondary concern; it



is a concrete realization of economic democracy and a central pillar of the Pancasila Economic System (Jaelani, 2016).

*c. Crowdfunding, a Contemporary Approach to Economic Financing*

Advances in information systems and technology have transformed funding mechanisms worldwide, with crowdfunding emerging as one of the most significant innovations. Crowdfunding is a method of raising funds from the public through digital platforms that rely on internet connectivity. It allows individuals or organizations to present projects—such as startups, social initiatives, creative works, research, or community programs—to a broad audience and collect financial contributions, usually in small amounts, from many people. At its core, crowdfunding is a form of collective financing that enables public participation in achieving economic and social objectives. The growth of crowdfunding is closely linked to limitations within traditional financial systems. Conventional financial institutions often impose strict requirements that make it difficult for Micro, Small, and Medium Enterprises (MSMEs) and underserved groups to access capital. As a result, crowdfunding has emerged as a more inclusive and accessible alternative. By using digital platforms and social networks, crowdfunding connects fund seekers directly with the public, reducing reliance on traditional financial intermediaries and promoting a more participatory financing model in the digital economy. Internationally, crowdfunding has developed into several main models, based on the relationship between funders and project owners (Astuti et al., 2024a).

- a) First, donation-based crowdfunding involves contributions made without any expectation of financial return, typically for charitable, social, or humanitarian purposes.
- b) Second, reward-based crowdfunding provides non-financial benefits to contributors, such as products, services, or exclusive access to creative content.
- c) Third, lending-based crowdfunding, also known as peer-to-peer lending, allows individuals to lend money to borrowers under agreed repayment terms, either with or without interest.
- d) Fourth, equity-based crowdfunding enables contributors to invest in a business in exchange for ownership interests or securities. This model is the most complex in terms of legal and regulatory requirements, as it involves capital market principles and investor protection issues.

In Indonesia, equity-based crowdfunding is regulated under the Securities Crowdfunding (SCF) framework. SCF was formally introduced through Financial Services Authority (OJK) Regulation No. 57/POJK.04/2020, which governs the public offering of securities through digital platforms. This regulation provides legal certainty for all parties involved, including platform operators, issuers, and investors. It also demonstrates the state's commitment to supporting digital financial innovation while ensuring transparency, security, and inclusiveness within the national financial system.

*d. Securities Crowdfunding and Its Relevance to Economic Democracy in Indonesia*

Within Indonesia's constitutional framework of economic democracy, Securities Crowdfunding (SCF) holds a significant normative position. Economic democracy, as reflected in indicators of participation, fairness, and equitable distribution of resources, requires mechanisms that enable broad public involvement in economic activities. SCF fulfills this requirement by positioning the public not merely as policy beneficiaries but as active investors and holders of economic rights. Through access to investment

opportunities in startups and MSMEs, SCF expands participation in the productive economy, including for communities traditionally excluded from formal financial systems. From a distributive justice perspective, SCF contributes to a more equitable allocation of economic opportunities. It enables entrepreneurs and small businesses from disadvantaged and non-urban regions to raise capital on a national scale, thereby reducing structural barriers created by conventional financial institutions. This function aligns with the constitutional mandate to promote balanced economic development and social justice.

SCF also serves as an instrument of economic empowerment and legal protection. Regulations issued by the Financial Services Authority (OJK) establish SCF as a regulated financing mechanism that supports public welfare objectives. Mandatory disclosure requirements, investor protection measures, issuer due diligence, and ongoing reporting obligations reflect the principles of transparency and accountability that underpin economic democracy. In addition, legal safeguards for retail investors, including risk disclosure and dispute resolution mechanisms, ensure the protection of economic rights and legal certainty. In normative terms, Securities Crowdfunding represents a concrete implementation of economic democracy in the digital economy. Its continued development requires consistent regulatory oversight to ensure alignment with constitutional values, particularly the principles of fairness, inclusiveness, and collective welfare embodied in Indonesia's Pancasila-based economic system (Jaelani, 2016).

## **2. The Evolution of Crowdfunding Regulation in Indonesia**

### *a. Crowdfunding as a Regulated Alternative to Conventional Financing*

For decades, access to capital in Indonesia has been dominated by conventional banking institutions that apply strict requirements such as collateral, credit history, and formal feasibility assessments. While this system has supported economic stability, it has also limited access to financing for Micro, Small, and Medium Enterprises (MSMEs) and other groups lacking institutional capacity. This condition runs counter to the spirit of Article 33 of the 1945 Constitution, which mandates that economic activities be organized to promote collective welfare, equity, and broad public participation. The emergence of crowdfunding, particularly Securities Crowdfunding (SCF), represents a structural shift in financing by enabling public participation through digital platforms. SCF reduces reliance on traditional financial intermediaries and opens access to capital based on transparency and public trust. However, because crowdfunding involves public funds and investment risk, strong legal regulation is essential to ensure legal certainty and protect economic rights.

In Indonesia, the Financial Services Authority (*Otoritas Jasa Keuangan* - OJK) plays a central role in regulating and supervising crowdfunding activities. Through regulations on equity and securities crowdfunding, OJK establishes SCF as a formal part of the financial system. These regulations impose mandatory disclosure obligations, issuer eligibility requirements, investor protection measures, and continuous reporting standards. Such regulatory mechanisms reflect the principles of transparency, accountability, and prudence required in managing public funds. From a constitutional perspective, OJK's regulatory framework positions SCF as an instrument for realizing economic democracy under Article 33 of the 1945 Constitution. By expanding access to capital for MSMEs and startups while ensuring regulatory oversight, SCF supports equitable economic participation and balanced development.

Effective regulation therefore becomes a key factor in ensuring that crowdfunding not only drives financial innovation but also advances social justice and public welfare in accordance with Indonesia's constitutional economic order.

*b. The Transformation from POJK 37/2018 to POJK 57/2020 and POJK 16/2021*

In Indonesia, technology-based fundraising was initially regulated through Financial Services Authority Regulation (POJK - *Peraturan Otoritas Jasa Keuangan*) No. 37/POJK.04/2018 concerning Equity Crowdfunding Services through Technology-Based Share Offerings. This regulation introduced equity crowdfunding as a mechanism for raising funds from the public through digital platforms in exchange for company shares. Accordingly, the scope of POJK 37/2018 was limited to equity instruments, namely shares representing ownership in the issuing company. As funding needs and capital market instruments developed, this limited scope was no longer sufficient. In response, the Financial Services Authority (OJK) revoked POJK 37/2018 and replaced it with POJK No. 57/POJK.04/2020 concerning Securities Offerings through Information Technology-Based Crowdfunding Services. This regulation significantly expanded the legal scope of crowdfunding by allowing not only shares, but also other securities such as bonds and sukuk to be offered through digital platforms. With this change, the regulatory terminology formally shifted from equity crowdfunding to securities crowdfunding (SCF).

Table 1. Comparison of Crowdfunding Regulations in Indonesia

Aspects	POJK No. 37/POJK.04/2018 <i>Equity Crowdfunding</i>	POJK No. 57/POJK.04/2020 <i>Securities Crowdfunding</i>	POJK No. 16/POJK.04/2021 <i>Implementation of SCF</i>
Regulatory Focus	Introduction of equity crowdfunding as a digital fundraising mechanism	Expansion of crowdfunding into securities-based offerings within the capital market	Operational strengthening and supervision of SCF platforms
Terminology Used	Equity Crowdfunding	Securities Crowdfunding (SCF)	Securities Crowdfunding (SCF)
Legal Basis	Capital Market Law and fintech regulation framework	Capital Market Law integrated with digital securities offerings	Implementing regulation of POJK 57/2020
Types of Instruments	Shares (equity only)	Shares, bonds, sukuk, and other securities	Follows POJK 57/2020
Scope of Regulation	Limited to share offerings through digital platforms	Broader regulation covering multiple securities instruments	Detailed regulation of licensing, governance, and supervision
Issuer Eligibility	Limited to certain companies offering equity	Wider range of issuers, including MSMEs and startups	Clarifies issuer requirements and platform responsibilities
Role of Platform Provider	Facilitator of equity offerings	Licensed SCF operator within the capital market system	Strengthened role with prudential and governance obligations
Investor Protection	Basic disclosure and risk information	Enhanced investor protection and disclosure standards	Detailed investor safeguards and complaint handling
Supervision Mechanism	General oversight by OJK	Integrated supervision under OJK capital market authority	Continuous supervision and reporting to OJK



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Aspects	POJK No. 37/POJK.04/2018 <i>Equity Crowdfunding</i>	POJK No. 57/POJK.04/2020 <i>Securities Crowdfunding</i>	POJK No. 16/POJK.04/2021 <i>Implementation of SCF</i>
Regulatory Objective	Initial regulation of digital equity fundraising	Expansion and integration of crowdfunding into the capital market	Ensuring legal certainty, transparency, and operational integrity

This regulatory transformation is expected to represent a substantive development rather than a mere change in terminology (see Table 1). Conceptually, equity crowdfunding refers specifically to fundraising through the issuance of shares, whereas securities crowdfunding covers a broader range of capital market instruments. By adopting the term securities, OJK intends to align the crowdfunding framework with capital market law, which recognizes various forms of securities. In this sense, Securities Crowdfunding (SCF) is designed to encompass equity crowdfunding while extending legal coverage to other investment based instruments, thereby potentially providing greater flexibility within the digital financing ecosystem. The expansion of the SCF framework is also expected to indicate OJK’s policy objective to integrate crowdfunding into the broader capital market system, particularly as an alternative source of financing for Micro, Small, and Medium Enterprises (MSMEs) and startups. By widening the range of permissible instruments, SCF is intended to enhance access to capital while maintaining regulatory oversight in line with investor protection principles. Nevertheless, whether this regulatory expansion effectively translates into broader and more inclusive financing opportunities remains a matter that requires further empirical and normative assessment.

To strengthen implementation and supervision, OJK subsequently issued POJK No. 16/POJK.04/2021 concerning the Implementation of Information Technology-Based Crowdfunding Services. This regulation is intended to provide more detailed provisions on licensing, platform governance, supervisory mechanisms, and investor protection. It seeks to reinforce the position of SCF platform providers as regulated financial technology actors subject to prudential standards, transparency obligations, and principles of good governance. Taken together, the regulatory transition from POJK 37/2018 to POJK 57/2020, as complemented by POJK 16/2021, can be understood as OJK’s effort to progressively structure the legal framework for financial technology based fundraising. This transformation is expected to expand the legal scope of crowdfunding, strengthen investor protection, and promote legal certainty and transparency within Indonesia’s capital market system. However, the extent to which these regulatory objectives are effectively realized in practice remains open to critical legal analysis and further regulatory evaluation.

*c. Safeguarding the Economic Rights of Communities in Equity based Crowdfunding*

Communities that participate in crowdfunding require adequate legal and institutional protection to ensure fair and sustainable practices. Various economic rights must be addressed by government regulators, platform operators, fundraisers, and supporters in order to protect community interests and maintain the integrity of crowdfunding activities. One of the most fundamental rights is the right to information transparency. Communities are entitled to receive clear, accurate, and comprehensive information regarding the projects they support, including project objectives, the

intended use of funds, and the background of the fundraiser. This right also includes access to regular updates on project progress, financial utilization, and measurable outcomes. Closely linked to transparency is the right to accountability, which obliges fundraisers to manage collected funds responsibly and to provide detailed and verifiable reports to supporters and relevant authorities.

Accountability mechanisms are particularly important given the vulnerability of crowdfunding platforms to fund misuse, including money laundering and terrorism financing. An Indonesian case demonstrates these risks, where funds collected under the guise of humanitarian assistance during a disaster were later diverted to support a terrorist network (CNN, 2021). In this context, communities must also have the right to raise questions and obtain official responses regarding project implementation and the distribution of funds. Another essential right is the right to investment education. Community members should be equipped with adequate knowledge regarding the risks and potential returns of crowdfunding participation, including basic skills for evaluating projects and understanding investment exposure. Access to such educational resources enables communities to make informed decisions and engage more confidently in crowdfunding initiatives.

Communities are also entitled to legal certainty. This includes access to legal protection and remedies in cases of fraud, misappropriation of funds, or failure to fulfill project commitments. Legal certainty encompasses the right to submit claims, seek compensation, and obtain protection under applicable laws and regulations. In addition, contributors may have the right to a refund, particularly where non-charitable crowdfunding campaigns fail to reach their funding targets or are not implemented in accordance with the stated objectives, subject to the platform's terms and conditions. Within the context of equity-based crowdfunding, the right to financial returns becomes particularly significant. Equity crowdfunding generally functions as an early stage financing mechanism for business ventures seeking growth without the provision of collateral and depends heavily on public participation (Enri-Peiró, 2023).

Where the funded project is a business entity, contributors are entitled to a proportionate share of profits in the form of dividends, based on their equity ownership. Even in the absence of immediate dividend distributions, early-stage investors may benefit from capital gains as the company's valuation increases over time. Equity-based crowdfunding may also involve contributors' rights to participate in corporate governance. In certain circumstances, investors may exercise voting rights in key corporate decisions in proportion to their shareholding. Such participation reflects the legitimate interests of early investors in the strategic direction of the enterprise and allows them to contribute perspectives that may influence business development and operational decisions.

#### *d. The Importance of Incorporated Business Entities*

In the business context, voting rights play a vital role in both profit oriented and non profit crowdfunding schemes. We maintain that voting rights constitute a crucial instrument in supporting the advancement of business entities. This principle reflects democratic values that underpin ethical and effective organizational governance. Through the exercise of voting rights, business entities are able to achieve sustainable growth while remaining compliant with applicable legal norms and ethical principles.

In other words, voting mechanisms enable business expansion without undermining foundational values. In the absence of such mechanisms, corporate governance risks becoming arbitrary, creating opportunities for violations of legal and social norms and, in the long term, potentially destabilizing national and even global business ecosystems. With regard to potential legal gaps, attention must be given to the provisions of Financial Services Authority Regulation (*Peraturan Otoritas Jasa Keuangan*) No. 57/POJK.04/2020 on Securities Crowdfunding (SCF), particularly Article 47 paragraph (1) point (b), which provides:

*“For Issuers in the form of other business entities, including information concerning the structure and name of the business entity, as well as the deed of establishment and the latest articles of association that have been approved by or notified to the competent authority...”*

This provision gives rise to potential future risks, particularly in relation to the classification of business entities. It should be recognized that, in legal practice, business entities are generally divided into two main categories: incorporated business entities (*badan usaha berbadan hukum*) and non-incorporated business entities (*badan usaha tidak berbadan hukum*). An incorporated business entity possesses a legal personality separate from its founders. Accordingly, it is capable of owning assets, assuming liabilities, and undertaking legal actions in its own name. This separation is essential as it limits the personal liability of the founders and ensures that all rights and obligations are vested in the entity rather than in individuals.

Founders and executives of an incorporated business entity are afforded legal protection corresponding to their respective roles and responsibilities, thereby eliminating any justification for the commingling of personal interests with organizational interests. Moreover, incorporated business entities are subject to strict supervision and specific legal obligations, ranging from incorporation procedures and periodic reporting to liquidation processes. These administrative requirements involve formal engagement with government institutions, such as the Directorate General of Taxes and the Ministry of Law and Human Rights. One of the defining characteristics of an incorporated business entity is that capital contributions are registered in the name of the entity rather than in the name of individuals, thereby ensuring objectivity in legal treatment.

A clear example is the Limited Liability Company (*Perseroan Terbatas* or PT), in which shareholders benefit from the principle of limited liability, restricted to the value of their shareholdings. This means that, in the event of losses incurred by the company, shareholders' liability does not extend beyond the capital they have invested. In addition, shares in a PT represent voting rights exercised through the General Meeting of Shareholders (*Rapat Umum Pemegang Saham* or RUPS), enabling shareholders to participate in strategic corporate decision making, including the appointment of directors and commissioners, the distribution of dividends, and the approval of certain corporate actions. This structure renders the PT a highly suitable legal form for the implementation of equity-based crowdfunding schemes. As an incorporated business entity, the PT provides legal certainty and protection for investors. The clarity of its organizational structure, the defined responsibilities of its management, and oversight through internal organs such as the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners establish the PT as a reliable vehicle for public fundraising.

Furthermore, a Limited Liability Company (*Perseroan Terbatas* or PT) has the legal flexibility to issue various types of securities, including shares, bonds, sukuk, and other financial instruments. This characteristic aligns with the securities crowdfunding (SCF) model, which permits the public offering of securities through electronic platforms operated by licensed SCF providers. Nevertheless, the incorporation of a PT—particularly one oriented toward capital market activities—entails significant costs, time, and comprehensive legal documentation. When a PT offers securities to the public, it is also subject to stringent capital market regulations, especially those concerning disclosure, investor protection, and periodic reporting. Consequently, a high level of regulatory understanding and compliance with the OJK framework is indispensable. Within this regulatory setting, the relationship between PTs and securities crowdfunding is structurally and normatively intertwined. Financial Services Authority Regulation No. 57/POJK.04/2020 expressly limits eligible SCF issuers to Limited Liability Companies, including non-listed companies, startups, and Micro, Small, and Medium Enterprises (MSMEs). This provision establishes a clear legal basis for PTs to raise public funds through SCF platforms that are registered with and supervised by the OJK. The requirement that issuers take the form of PTs is not merely a structural preference but a normative safeguard to ensure legality, transparency, and accountability. As incorporated business entities, PTs provide a clear allocation of rights and obligations, thereby strengthening investor protection by ensuring that public funds are managed by entities subject to defined governance standards and regulatory oversight.

At the MSME level, incorporation as a PT enables access to SCF as an alternative financing mechanism, particularly for seed funding and business expansion. SCF offers a strategic solution for MSMEs facing limited access to conventional financing, such as bank loans that typically require collateral. Through OJK-regulated platforms, MSME-scale PTs may attract individual investors willing to support productive activities in the real sector. This model is consistent with government and regulatory policies that position MSMEs as central actors in financial inclusion and the digitalization of financing through financial technology (Kurniawan, Wenas, & Atmojo, 2022; Wingstond, Wirawan, Atmojo, & Fahreza, 2023). Despite its potential, MSME participation in the SCF ecosystem remains constrained by structural challenges, most notably low levels of financial and legal literacy. Many MSME actors lack adequate understanding of equity ownership, disclosure obligations, and the principles of transparency and accountability inherent in public fundraising. In the SCF context, insufficient awareness of legal risks and investor protection obligations may lead to project failure and undermine public trust. Therefore, while the integration of PT-incorporated MSMEs into the SCF framework holds significant promise, it requires systematic capacity-building. MSMEs that have fulfilled the formal requirements of a PT may utilize SCF as an inclusive and efficient financing channel, provided they receive sustained guidance from regulators, government agencies, and supporting institutions—such as business incubators and fintech associations—to ensure administrative readiness, financial discipline, and compliance with investor protection standards.

*e. Other Forms of Incorporated Business Entities: Cooperatives and Foundations*

In addition to Limited Liability Companies (*Perseroan Terbatas* or PT), cooperatives constitute a legally recognized form of incorporated entity in Indonesia



and play a significant role in realizing the ideals of economic democracy as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia. Cooperatives operate on the principles of kinship and economic democracy, whereby ownership and management are vested in the members themselves. Cooperative capital is derived from member contributions and is represented by Cooperative Capital Certificates (*Sertifikat Modal Koperasi* or SMK), rather than shares as in a PT. Within the cooperative system, each member holds equal voting rights regardless of the amount of capital contributed. In other words, each member has one vote, in contrast to the PT model, where voting rights are proportionate to share ownership. This structure ensures that strategic decisions are made through deliberation and consensus, thereby upholding participatory values and collective justice (Astuti et al., 2024a). The principal advantage of cooperatives lies in their alignment with the principles of economic democracy. Their member based governance structure renders cooperatives inclusive and closely connected to grassroots communities. Cooperatives are also oriented toward the welfare of their members rather than solely toward profit maximization, which positions them as important drivers of people-centered economic development. However, from the perspective of open fundraising mechanisms such as securities crowdfunding (SCF), cooperatives face several structural limitations. In particular, cooperatives are not designed to accommodate equity or bond based crowdfunding schemes offered broadly to the public. Capital market and SCF regulations in Indonesia, as reflected in Financial Services Authority Regulation No. 57/POJK.04/2020, restrict the role of securities crowdfunding issuers to legal entities in the form of Limited Liability Companies.

Table 2. Comparison of Incorporated Business Entities

Inc. Business Entity	Advantages	Limitations	Relationship with Securities Crowdfunding (SCF)
Foundation ( <i>Yayasan</i> )	Able to attract donations or public contributions.	Cannot be used for commercial purposes.	Not compatible with SCF, as foundations are not profit-oriented.
	Focused on social or educational objectives, which can generate public support.	Not suitable for profit-sharing-based crowdfunding models.	Only relevant where crowdfunding is applied for specific social purposes.
Cooperative ( <i>Koperasi</i> )	Membership-based structure with equal voting rights. Consistent with principles of economic democracy.	Not suitable for managing equity-based or bond-based crowdfunding schemes.	Unable to issue shares to the public beyond cooperative membership.
MSME-Scale Limited Liability Company ( <i>PT skala kecil</i> )	Able to utilize crowdfunding for seed funding or business expansion. Frequently targeted by financial inclusion regulations.	Many SMEs are not yet incorporated as PTs, limiting access to SCF. Financial literacy remains a major barrier to crowdfunding participation.	Potentially suitable for SCF if incorporated as a PT. Requires institutional assistance to understand and access SCF mechanisms.



Table 2. Comparison of Incorporated Business Entities

Inc. Business Entity	Advantages	Limitations	Relationship with Securities Crowdfunding (SCF)
Limited Liability Company ( <i>Perseroan Terbatas</i> - PT)	An ideal structure for equity-based crowdfunding schemes.	Incorporation requires greater cost and time.	Highly compatible with SCF, as PTs may lawfully issue shares and other securities.
	Incorporated legal status provides protection for investors.	Capital market regulations are complex and demand a high level of compliance.	PTs are the primary entities recognized under SCF regulations, including POJK No. 57/2020.
	Able to offer various types of securities, such as shares and bonds.		

As a consequence, cooperatives are not permitted to issue shares or other securities to the public outside their membership, as such practices would conflict with the fundamental cooperative principles of closed membership and member-based participation. Moreover, the issuance of securities by cooperatives to non members may contravene Law No. 25 of 1992 on Cooperatives, which limits cooperative activities to their members. Accordingly, although cooperatives are legally recognized entities that embody economic democracy, they are currently unable to utilize securities crowdfunding schemes as regulated under the POJK framework, particularly those involving the public offering of securities. Nevertheless, cooperatives may continue to explore alternative financing models grounded in membership, such as internal savings and loan schemes or member-based capital pooling, provided these mechanisms are managed transparently and accountably in accordance with cooperative values. In the long term, policy reform or the development of hybrid regulatory models may be necessary to enable modern cooperatives to access external financing sources without undermining their foundational principles. Such institutional innovation could serve as a bridge between the cooperative model of economic democracy and the more open financing mechanisms characteristic of capital market based systems.

The final example of an incorporated business entity recognized in Indonesia is the foundation (*Yayasan*), which possesses characteristics distinct from those of Limited Liability Companies (*Perseroan Terbatas* or PT) and cooperatives (see Table 2). A foundation is a non profit legal entity established for social, religious, humanitarian, and/or educational purposes, as regulated under Law No. 16 of 2001 in conjunction with Law No. 28 of 2004 on Foundations. A foundation has no shareholders, and its governance is carried out through an organizational structure consisting of the Board of Trustees, the Management Board, and the Supervisory Board, each of which holds specific duties and authority in directing and ensuring the continuity of the foundation. The assets of a foundation are legally separated from the personal assets of its founder, a separation intended to prevent conflicts of interest and to safeguard the accountability and sustainability of fund management.

The primary advantage of a foundation lies in its capacity to attract donations or contributions from the public, including individuals, corporations, and philanthropic institutions. Owing to its social and non commercial orientation, a foundation generally enjoys strong moral legitimacy and public support, particularly in areas such as

education, community empowerment, health, and environmental protection. This makes the foundation an effective vehicle for mobilizing non commercial resources. However, from the perspective of profit-oriented financing, foundations face significant limitations. One fundamental constraint is the explicit prohibition on engaging in business activities aimed at generating profits for founders or specific parties, as stipulated in Article 5 paragraph (1) and Article 7 of the Foundation Law. Consequently, foundations are not suitable entities for raising funds through equity-based crowdfunding or debt crowdfunding schemes, which are designed to generate profits and provide financial returns to investors or contributors.

The relationship between foundations and securities crowdfunding (SCF) is limited and indirect. Foundations are not permitted to participate in SCF schemes in the capacity of securities issuers, as SCF under Financial Services Authority Regulation No. 57/POJK.04/2020 is exclusively designed for incorporated business entities in the form of Limited Liability Companies that conduct commercial business activities. Consequently, foundations lack both the legal standing and the business model required to operate within profit-sharing-based SCF mechanisms. Nevertheless, foundations may retain limited relevance in the context of donation-based or socially oriented crowdfunding. For instance, where a crowdfunding platform provides features for social projects that do not offer financial returns, foundations may serve as legitimate recipients of public funds. This model is comparable to donation-based crowdfunding, which, although not specifically regulated under the POJK SCF framework, has developed within the broader sphere of social financial technology (fintech). Such schemes may be employed to mobilize funds for the construction of educational facilities, disaster relief, public health programs, or other social initiatives. In essence, foundations are more appropriately associated with social crowdfunding rather than securities crowdfunding, and they continue to play an important role in Indonesia's equitable economic ecosystem through the mobilization of social capital rather than profit-oriented financial capital.

Based on this understanding, it can be asserted that incorporated business entities occupy a crucial position within the SCF framework. Their existence enables the separation of personal assets from business assets, provides legal protection for business actors and investors, and ensures accountability in the conduct of business activities and the use of public funds. Incorporated entities, including Limited Liability Companies, cooperatives, and foundations, possess independent legal personality recognized by law and are capable of entering into contracts and bearing legal obligations independently of their founders. The selection of an appropriate incorporated business form therefore constitutes a fundamental and strategic step in technology-based financing schemes such as SCF. Only through legally recognized incorporated entities can mechanisms of accountability, transparency, and investor protection be effectively implemented in a manner consistent with principles of sound and sustainable corporate governance, thereby contributing to the realization of national financial inclusion.

*f. Limitations of Investor Rights in Non-Corporate Crowdfunding*

A clear illustration of non incorporated business entities can be found in partnership arrangements (see Table 3). Partnerships are contractual associations between two or more parties who collectively conduct business activities. Under this

structure, each partner bears personal and joint (solidary) liability for all obligations arising from the partnership’s operations.

Table 3. Comparative Overview of Non-Incorporated Business Entities

Business Entity	Advantages	Limitations	Relationship with Securities Crowdfunding (SCF)
CV ( <i>Commanditaire Vennootschap</i> or Limited Partnership)	<p>Relatively simple establishment process and low capital requirements.</p> <p>Suitable for small-scale enterprises with a simple ownership structure.</p>	<p>Lacks separate legal personality, resulting in unlimited liability borne primarily by active partners.</p> <p>Incompatible with equity based or debt based crowdfunding mechanisms.</p>	Limited applicability, as SCF schemes are primarily designed for incorporated, share-based entities such as limited liability companies (PT).
General ( <i>Firma</i> ) Partnership	<p>Appropriate for partnership-based business activities.</p> <p>Minimal administrative requirements.</p>	<p>Absence of legal personality leads to unlimited personal liability of partners.</p> <p>Ownership structure limits the ability to attract external investors.</p>	Incompatible with SCF due to rigid ownership arrangements that do not permit the issuance of securities to external parties.
Civil Law Partnership ( <i>Persekutuan Perdata</i> )	Low establishment costs. High degree of contractual flexibility.	<p>Absolute dependence on individual partners.</p> <p>Unlimited organizational liability.</p>	Not suitable for SCF, as the absence of legal personality and capital market instruments precludes the offering of securities.

Consequently, in the event of default, all partners may be held fully liable without limitation or proportional allocation of responsibility. One partnership form that remains prevalent in Indonesian commercial practice is the Commanditaire Vennootschap (CV), or limited partnership, which comprises active partners (*sekutu aktif*) and passive partners (*sekutu pasif*). Active partners are responsible for the day-to-day management of the enterprise and assume unlimited liability for all legal obligations incurred. Passive partners, by contrast, function primarily as capital contributors and are not involved in operational management, with liability that is, in principle, limited to the amount of capital invested.

In practice, however, the distinction between active and passive partners is frequently blurred, particularly in situations of financial distress or liquidation, where passive partners may participate in strategic decision making in an effort to sustain the business. Such involvement may result in the imposition of legal liability upon passive partners, thereby undermining the doctrinal foundation of limited liability that distinguishes their position from that of active partners. Despite these risks, the CV offers several practical advantages, including a relatively simple, swift, and low cost establishment process, rendering it attractive to small and medium-sized enterprises at an early stage of development. Its uncomplicated ownership and governance structure also enables efficient decision-making and operational flexibility in daily business activities. The fundamental weakness of a Commanditaire Vennootschap

(CV) lies in its status as a non-incorporated business entity. As a CV does not possess separate legal personality distinct from its founders, legal liability remains personally attached to the active partners. This condition gives rise to substantial legal and financial risks, particularly in circumstances where the business encounters financial distress or insolvency. Moreover, a CV is legally incapable of issuing shares or other securities. Consequently, from both a structural and legal standpoint, it fails to satisfy the requirements to qualify as an issuer within a securities-based crowdfunding (SCF) scheme.

Within the framework of Securities Crowdfunding, the limitations of a CV are therefore significant. Pursuant to Financial Services Authority Regulation (POJK) No. 57/POJK.04/2020, one of the essential prerequisites for an entity to offer securities through SCF is the possession of legal entity status. Accordingly, a CV is ineligible to act as an issuer in SCF arrangements. The regulatory design of SCF is instead primarily directed toward incorporated legal entities, such as limited liability companies, which are legally authorized to issue shares, bonds, and other debt securities. Nevertheless, a CV retains the potential to undergo institutional transformation into an incorporated legal entity in order to gain access to alternative financing mechanisms such as SCF. In practice, many MSMEs initially established as CVs subsequently convert into limited liability companies to secure access to more modern and inclusive sources of capital. With adequate governmental support and broader financial literacy initiatives, the transition from non-incorporated entities to incorporated legal entities is expected to become increasingly accessible, particularly in advancing MSME growth and strengthening Indonesia's digital financing ecosystem.

In addition to the Commanditaire Vennootschap (CV), other partnership-based business forms commonly employed in Indonesia include the *Firma* (general partnership) and the *Persekutuan Perdata* (civil law partnership). Both forms are classified as non-incorporated business entities, meaning that they do not possess legal personality separate from their founders. Although these partnerships offer certain advantages in terms of flexibility and administrative simplicity, they also exhibit structural limitations that render them unsuitable for modern financing mechanisms such as Securities Crowdfunding (SCF). A *Firma* is a partnership established on the basis of mutual trust among partners, in which each partner actively participates in the management of the business and bears full and personal liability for all obligations of the partnership.

The principal advantages of a *Firma* lie in its simplicity. It is well suited for partnership based enterprises, requires minimal administrative formalities, and can be easily established by individuals who share a common business vision. Such a structure is particularly appropriate for family owned businesses or small partnerships in the early stages of development. However, the legal disadvantages of a *Firma* are substantial. Due to the absence of legal entity status, partners are subject to unlimited liability, which may extend to their personal assets in the event that the partnership incurs debts or other legal obligations. Furthermore, the tightly held ownership structure among partners significantly restricts the ability of a *Firma* to attract external investors, as profit distribution and voting rights are confined exclusively to the partners themselves.

Meanwhile, a civil law partnership (*Persekutuan Perdata*) is a form of cooperation between two or more parties who agree to combine capital, labor, or expertise in order to conduct a joint business activity, as regulated under the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*). Its advantages include low establishment costs and a high level of flexibility, making it a popular choice for micro scale business actors or family enterprises that wish to cooperate in an informal yet organized manner. However, similar to a *Firma*, a civil partnership also has several shortcomings. Dependence on the partners is very high, and there is no clear separation between business assets and personal assets. Consequently, if legal problems or business losses occur, all partners are personally and unlimitedly liable for obligations arising from the business activities.

In relation to Securities Crowdfunding (SCF), both *Firma* and *Persekutuan Perdata* do not meet the qualifications to act as securities issuers. This is due to their inflexible ownership structures and the absence of legal entity status that separates personal liability from business liability. Based on Financial Services Authority Regulation (POJK) No. 57/POJK.04/2020, SCF may only be utilized by legal entities such as limited liability companies (*Perseroan Terbatas-PT*), as only PTs have the capacity to issue shares and other securities that may be offered to the public or external investors. Therefore, although *Firma* and *Persekutuan Perdata* have their own place in the business sector—particularly for micro and small enterprises—the limitations of their legal structure and their lack of access to modern financing mechanisms render them incompatible with the SCF scheme. If business actors operating in the form of a *Firma* or *Persekutuan Perdata* intend to access securities based funding sources, a transition to a legal entity such as a limited liability company becomes necessary. Through such a transition, they may obtain the legality and credibility required to reach investors through SCF platforms in a lawful and secure manner.

In our previous study (Astuti et al., 2024a), we comprehensively elaborated on the risks associated with the use of non-incorporated business entities as the administrative basis for crowdfunding issuance schemes. These risks are structural in nature, as such entities do not provide legal separation between personal assets and business assets. The absence of limited liability generates legal uncertainty, not only for business founders but also for investors, particularly retail investors who often lack a thorough understanding of the latent risks inherent in such business structures. It should be noted that the majority of business actors accessing funding through crowdfunding platforms are newly established entities, characterized by high business failure rates and limited asset portfolios. In this context, investors are exposed to substantial risks, without any assurance that their financial contributions will generate adequate returns. Nevertheless, investors are entitled to expect the fulfillment of three fundamental principles in financial relationships: fairness, certainty, and utility. Early stage investors should therefore be positioned as strategic stakeholders who require not only transparency of information but also participatory rights in decision making processes that may influence the direction and future of the business entity. However, voting rights are normatively attached only to incorporated legal entities, such as limited liability companies (*Perseroan Terbatas - PT*). Within the PT structure, such rights are realized through formal mechanisms such as the General Meeting of Shareholders (*Rapat Umum Pemegang Saham*), which provides investors with a



forum to express their interests and contribute to the determination of corporate strategy and direction.

By contrast, in organizational forms such as cooperatives, voting rights are often limited to permanent members or core management, who may not necessarily represent the interests of external investors. In many cases, investors are treated merely as providers of capital rather than as stakeholders with substantive interests in the sustainability of the enterprise. Further complexity arises in partnership based structures, including general partnerships and Commanditaire Vennootschap (CV), where business management is not legally separated from the partners themselves. If the business fails after raising funds through crowdfunding, the risk of loss is borne not only by the managers but may also be shifted to other partners, without any guarantee that their voting rights or strategic considerations were taken into account from the outset. In such scenarios, success in fundraising does not necessarily ensure business sustainability and may, in fact, place investors in a disadvantaged position, both economically and legally. Accordingly, it becomes evident that non-incorporated business entities suffer from significant structural limitations and are therefore unsuitable to act as issuers within the Securities Crowdfunding (SCF) framework. In order to establish a financing ecosystem that is secure, transparent, and fair to all parties, the use of incorporated legal entities, particularly limited liability companies (*Perseroan Terbatas*), represents the most appropriate option from both regulatory and normative perspectives.

*g. The Urgency of Incorporated Business and the Regulation of Securities Instruments in Crowdfunding*

From the perspective of investor protection, the existence of incorporated business entity is of critical importance. Incorporated entities provide legal certainty, accountable governance, and checks and balances through the exercise of voting rights. Regulatory frameworks that allow non-incorporated entities to access crowdfunding platforms without strict structural limitations create significant vulnerabilities, including the potential misuse of public funds and the emergence of moral hazard. In terms of legal clarity, it is essential to note that securities based crowdfunding is subject to a number of regulations, particularly Law No. 8 of 1995 on Capital Markets. This statute establishes a clear legal framework for the three principal types of securities commonly used in crowdfunding in Indonesia, namely shares, bonds, and sukuk. Shares represent ownership in an incorporated business entity, specifically a limited liability company. Shares confer not only the right to dividends and residual claims over corporate assets, but also voting rights in corporate decision making through the General Meeting of Shareholders (Rapat Umum Pemegang Saham).

This mechanism places investors in a more balanced and strategic position within the business relationship. By contrast, bonds are debt instruments that promise repayment of principal and interest within a specified period, thereby providing investors with greater certainty of cash flow, albeit without conferring voting rights in corporate management. Sukuk, meanwhile, are Sharia-compliant securities based on Islamic financial principles, which prohibit interest (*riba*) and instead employ Sharia contracts emphasizing ownership of underlying real assets and equitable risk sharing. In addition to these three principal categories of securities, the capital market also recognizes other instruments such as mutual funds, derivative securities, and asset-

backed securities. Mutual funds represent proportional ownership in an investment portfolio that is professionally managed by an investment manager. This instrument is particularly relevant for investors who lack the specialized expertise or time required to manage their own portfolios independently, yet still seek exposure to financial markets (Kurniadi, Martin, Rubianto, & Atmojo, 2023).

Furthermore, derivative securities, such as options, futures contracts, and swaps, derive their value from specific underlying assets. Derivatives are generally used as hedging instruments or for speculative purposes. Due to their inherent complexity, such instruments are less suitable for inexperienced retail investors, unless accompanied by adequate financial literacy and regulatory safeguards. Meanwhile, retail Asset-Backed Securities (Efek Beragun Aset or EBA) are the result of securitization processes, namely the transformation of pools of financial assets (such as receivables or credit facilities) into tradable securities in the capital market. These instruments provide alternative financing mechanisms and risk diversification, as investors' exposure is distributed across a broader portfolio of underlying assets. All of these instruments function both as investment vehicles and as means of capital raising in the capital market. Each possesses distinct legal, economic, and risk characteristics. Accordingly, their use within alternative financing schemes such as crowdfunding requires careful and specific regulation to prevent misuse. Nevertheless, existing regulations such as Financial Services Authority Regulation (POJK) No. 37/POJK.04/2018 on Equity Crowdfunding, POJK No. 57/POJK.04/2020 on Securities Crowdfunding, and POJK No. 16/POJK.04/2021 do not yet explicitly and comprehensively regulate the mechanisms governing the use of securities instruments in fundraising activities conducted by platform operators or issuers. This regulatory gap is particularly significant.

The absence of detailed regulation creates legal ambiguity and opens the possibility of deviations in practice. In equity based crowdfunding, for example, funds are typically raised from members of the public who have no direct relationship with business management. These contributors are early stage investors who entrust their capital with the expectation of future returns. In this position, investors require not only financial returns but also legal certainty regarding ownership status, voting rights, and balanced and transparent access to information. This underscores the importance of clear regulation concerning the types of securities employed and the rights attached to those securities. For instance, it must be clarified whether the securities issued genuinely confer ownership rights or merely serve as evidence of capital participation without corresponding control rights. In the absence of such clarity, the function of crowdfunding may become distorted, shifting from a productive financing mechanism into a high risk speculative activity lacking adequate legal protection. In the long term, such regulatory uncertainty may undermine the credibility of the crowdfunding sector itself, which was fundamentally developed to expand inclusive access to financing particularly for micro, small, and medium enterprises and startups that are underserved by conventional financing systems. Therefore, strengthening legal norms governing the definition, limitations, and supervisory mechanisms applicable to securities instruments in crowdfunding constitutes an urgent necessity, in order to establish a market that is fair, transparent, and characterized by integrity.

## **Discussion**

### *a. The Differences in Approaches and the Importance of Relevant Regulation*

In the context of securities based crowdfunding, the approach adopted by fundraising entities is highly dependent on the type of instrument offered to the public. Bond-based and sukuk-based crowdfunding, for instance, constitutes a form of fundraising that relies on a debt based scheme. Organizations that issue bonds or sukuk to the public undertake to repay the principal amount along with a predetermined return within a specified period. This scheme is contractual in nature and legally binding, whereby repayment constitutes an absolute obligation of the issuer toward investors. By contrast, equity based crowdfunding involves the collection of funds that do not take the form of debt but rather capital investment. Under this approach, supporters (investors) do not merely inject funds but also acquire proportional ownership interests in the business entity in the form of shares or other equity participations. Accordingly, they are entitled to voting rights, dividend rights (if any), and the right to participate in the company's strategic decision making processes.

Although both approaches rely on public participation as a source of financing, they entail markedly different legal, economic, and governance implications. It is therefore inadequate for regulators to subject all forms of crowdfunding to a single, uniform legal framework. On the contrary, these fundamental differences necessitate the formulation of regulations that are specific, contextual, and relevant to the particular type of securities instrument employed. A critical issue arises in cases of default in bond-based or sukuk-based crowdfunding.

*Under such circumstances, a fundamental question emerges: who bears responsibility for the losses incurred by investors? Should a guarantee mechanism akin to that provided by the Indonesia Deposit Insurance Corporation (Lembaga Penjamin Simpanan-LPS) for bank deposits be applied? Or should payment failure be treated merely as a business risk and categorized as force majeure, thereby absolving parties from further legal obligations?*

The absence of a clearly defined risk mitigation scheme in the current regulatory framework gives rise to legal uncertainty that may disadvantage investors, particularly retail investors with limited access to legal protection. This risk is further exacerbated when the issuing entity is not a legal entity with an accountable governance structure. Similar concerns apply to crowdfunding instruments based on mutual funds, retail Asset-Backed Securities (Efek Beragun Aset), and other derivative securities. These instruments are characterized by more complex risk structures, higher volatility, and deeper legal linkages to the underlying assets upon which they are based. If all forms of crowdfunding are regulated uniformly without due regard to the distinctive features of each instrument, it becomes difficult to establish effective compliance frameworks, supervisory systems, and fair and functional dispute resolution mechanisms.

Without careful regulatory differentiation, confusion is likely to arise in the implementation of governance principles, including due diligence processes, information transparency, risk disclosure, and the distribution of economic benefits to investors. When disputes occur regarding the use of collected funds, the legal positions of all parties become vulnerable, both investors and organizers or issuers. Accordingly, regulatory arrangements that remain at a general normative level without classification based on the type of securities and fundraising approach will result in regulatory overlap and obscure the principle of prudence. This challenge should constitute a serious concern for regulators, capital market authorities, and civil society

actors committed to the development of alternative financing mechanisms that are safe, fair, and sustainable.

*b. The Principle of Utility and Risk Mitigation Mechanisms in Crowdfunding*

The principle of utility constitutes a fundamental pillar in assessing the sustainability and fairness of a crowdfunding scheme, particularly within the context of a public participation-based economy. Within the framework of economic democracy, the act of raising funds from the broader public should not be understood merely as a unilateral pursuit of profit by fundraisers. Rather, crowdfunding ought to function as a collaborative instrument that generates reciprocal benefits—for both business actors and their supporters or investors. In equity based crowdfunding, the principle of utility is realized through the allocation of ownership interests to supporters who have assumed risk from the earliest stages. If the business grows and generates profits, supporters are entitled to receive dividends, capital appreciation in share value, and strategic voting rights in corporate decision making. This arrangement is consistent with the principle of fairness discussed earlier: supporters do not merely provide capital, but are also entitled to a fair return for their contribution to the growth of the business.

By contrast, in debt based crowdfunding schemes, the principle of utility is manifested through certainty regarding the repayment of principal and interest in accordance with the initial agreement. Under this structure, fundraisers are not required to confer ownership rights, but they are obligated to ensure the repayment of debt through clear and structured mechanisms. Non-compliance or default within such schemes not only undermines the principle of utility but also has the potential to erode the integrity of the crowdfunding system as a whole.

Therefore, it is imperative that Indonesia's crowdfunding regulatory framework explicitly incorporate risk mitigation mechanisms that are both proportional and practically applicable, particularly in relation to the protection of retail investors. Such mechanisms should, first, ensure transparency in the use of funds. Fundraisers must disclose detailed plans regarding the allocation of raised funds, including short-term targets, business plans, and contingency strategies should the project fail to perform in accordance with initial projections. This requirement is grounded in Article 87 of Law No. 8 of 1995 on the Capital Market, which mandates the submission of a registration statement containing complete and accurate information, as well as Article 18 paragraph (1) letters (b) and (c) of OJK Regulation No. 57/POJK.04/2020, which obliges issuers to disclose the intended use of offering proceeds and business development plans to investors.

In addition, the regulatory framework must provide for the protection of public assets. In the event of default, business assets should be safeguarded or liquidated in an equitable manner in order to recover investors' funds, in accordance with a clearly defined hierarchy of claims. This approach is consistent with Articles 222 and 224 of Law No. 4 of 2023 on Financial Sector Development and Strengthening (Pengembangan dan Penguatan Sektor Keuangan - PPSK), which emphasize consumer protection in technology-based financial services. In practice, liquidation and fund recovery mechanisms must also align with insolvency and civil law principles, particularly Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, should a crowdfunding entity enter formal legal proceedings.



Furthermore, for projects with elevated risk profiles, regulators may encourage platform operators to establish insurance schemes or guarantee funds as risk buffers. Although not yet expressly regulated in a single dedicated provision, this principle corresponds with the consumer protection mandate under Article 222 of the PPSK Law, which allows for the development of protective instruments in digital financial services, as well as Article 5 of OJK Regulation No. 57/POJK.04/2020, which requires platform operators to provide fair and transparent mechanisms for all parties involved.

Periodic audit and supervision also constitute an essential component of risk mitigation. Crowdfunding projects that have successfully raised funds should be subject to regular oversight by independent institutions or the capital market authority to ensure accountability and compliance with the proposed business plans. This obligation is reflected in Article 24 of OJK Regulation No. 57/POJK.04/2020, which requires platform operators to submit activity reports, financial statements, and system effectiveness reports to the Financial Services Authority (OJK), as well as Article 224 of the PPSK Law, which authorizes OJK to determine reporting and supervisory requirements for technology-based financial activities.

Finally, the classification of risk and assessment of project feasibility must be made accessible to the public. Platform operators are required to provide feasibility evaluations so that supporters can make informed decisions based on filtered and classified risk levels. This obligation aligns with Article 18 paragraph (1) letter (d) of OJK Regulation No. 57/POJK.04/2020, which mandates the disclosure of potential risks to prospective investors, and Article 224 of the PPSK Law, which imposes transparency and risk-literacy obligations on financial technology service providers, including the provision of adequate risk-screening and classification mechanisms.

Furthermore, the regulatory framework must draw clear boundaries among philanthropic, social, investment-based, and loan-based forms of crowdfunding. Each of these schemes entails differing expectations of utility and varying levels of risk; accordingly, their respective protection mechanisms and accountability regimes must be calibrated in a proportional manner. Absent a clear normative articulation of the principles of utility and risk protection, crowdfunding may shift from an instrument of financial inclusion into a vehicle for unchecked speculation, thereby placing investors in a vulnerable position. Over the long term, such regulatory ambiguity risks eroding public trust in the broader digital financing ecosystem and widening the gap between the normative ideals of economic democracy and their actual implementation in practice.

## CONCLUSION

Crowdfunding inherently reflects the principle of economic democracy. As a decentralized financing mechanism, it facilitates both the redistribution of economic resources and meaningful public participation in economic decision-making. This participatory character aligns with the broader welfare-state ideal, which emphasizes collective and inclusive economic development. Nevertheless, despite its strong philosophical alignment with economic democracy, the practical implementation of crowdfunding, particularly in commercial settings, raises significant legal and regulatory challenges. The effectiveness of crowdfunding as an instrument of national economic development ultimately depends on the existence of a legal framework that guarantees fairness, legal certainty, and reciprocal benefits for all parties. In this



sense, crowdfunding must function as a mutually beneficial system, supported by a clear, protective, and equitable regulatory structure. A central issue identified in this study is the legal form of the issuing entity. Non-incorporated business entities, such as partnerships (CV, *firma*, or *persekutuan perdata*), lack essential structural safeguards to responsibly support crowdfunding activities.

These entities do not provide a clear separation between personal and business assets, thereby exposing investors (particularly retail investors) to heightened legal and financial risks. In addition, the absence of formal governance mechanisms, including investor voting rights, undermines the participatory and fairness principles that underpin economic democracy. Consequently, the development of a legally robust and socially inclusive crowdfunding ecosystem in Indonesia requires the clear identification and institutionalization of an appropriate legal entity model. This study demonstrates that only incorporated legal entities with legal personality, asset separation, and formal governance structures, most notably the *Perseoran Terbatas* (PT or Limited Liability Company) are capable of meeting these requirements. The PT structure enables the lawful issuance of equity and debt instruments, accommodates investor rights such as transparency and participation, and provides legal certainty in cases of dispute, default, or dissolution. Based on these findings, this study recommends an urgent refinement of Indonesia's crowdfunding regulatory framework.

Regulators must clearly distinguish between non-commercial crowdfunding models, such as donation-based or reward-based schemes, and commercial crowdfunding models, including equity, lending, and securities crowdfunding. Commercial crowdfunding should be subject to stricter legal requirements, limiting access to public funding through crowdfunding platforms to entities that possess adequate legal form and governance capacity. Furthermore, regulatory authorities should adopt a differentiated compliance and investor-protection regime that corresponds to the risk level and complexity of each crowdfunding model. Preventive and risk-mitigation measures (such as disclosure obligations, capital adequacy standards, and insolvency safeguards) should be systematically integrated to protect investors and sustain public trust.

Overall, crowdfunding offers substantial potential to democratize access to capital, particularly for micro, small, and medium enterprises (MSMEs). However, this potential can only be realized if the ideal legal entity model is clearly defined, consistently applied, and effectively enforced. Through coherent, rigorous, and forward-looking legal regulation, crowdfunding can evolve into a sustainable, equitable, and empowering component of Indonesia's future economic development.

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