

DONATION BASED CROWD FUNDING REVIEWED FROM THE SADD ADZ-DZARI'AH PERSPECTIVESyaifuddin Zuhdi¹, Sarah Camila Octavian²¹ Fakultas Hukum, Universitas Muhammadiyah Surakarta (sz123@ums.ac.id)² Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100190147@student.ums.ac.id)**ABSTRACT**

Uncertainty regarding regulations regarding the implementation of donation-based crowdfunding in Indonesia has resulted in a weak supervisory function carried out by the Ministry of Social Affairs. so this creates the potential for misappropriation of funds, donation fraud, money laundering and other criminal acts. Sadd Dzari'ah as a method of preventing harm is used to weigh the level of harm in implementing donation based crowdfunding. The aim of this research is to find out what the concept of donation based crowdfunding is in Indonesia, and how the legal status of donation based crowdfunding is viewed from a sadd dzari'ah perspective. The research method used is normative, the type of research is descriptive qualitative, and the data collection method is a literature study of legal and non-legal materials regarding donation based crowdfunding obtained by reading, viewing, listening or searching. The result of this research is to prohibit the implementation of donation-based crowdfunding based on Sadd Dzari'ah's analysis that eliminating harm takes priority over taking benefits.

Keywords: Donation Based Crowdfunding, Sadd Dzari'ah, Sharia Crowdfunding

INTRODUCTION

One form of financial technology that is recognized by the public is donation-based crowdfunding.¹ According to Saifullah in Tantimin (2021) explains that the implementation of donation based crowdfunding is the same as almsgiving, donors do not expect any reward for their donations made by a number of people using electronic payment methods on the donation platform.² Coordination is needed to organize the entire donation process from collection, counting, processing, to distributing donations to disaster victims, which of course requires cooperation from several parties to make this assistance a reality.³

According to data released by the Kitabisa.com platform regarding the impact of online donations throughout 2021, more than 3 million people donated online through the Kitabisa.com application.⁴ This growth needs to be supported by the presence of a strong monitoring system from the government so that it is not misused. The existence of cases of fraud under the guise of donations and misappropriation of donation funds proves the weakness of regulations regarding crowdfunding in Indonesia. On the other hand, Indonesia also does not yet have specific legal regulations regarding donation-based crowdfunding. This is not comparable to the high growth of online donation platforms in Indonesia. The legal umbrella used refers to the rules regarding collecting donations, including Law Number 9 of 1961 concerning PUB,

¹ Jeremias Palito, et.al., 2021, *Pertanggungjawaban Hukum Platform Donation Based Crowdfunding Berbasis Sistem Elektronik Terhadap Para Pihak Yang Terlibat Di Indonesia*, Kadarkum: Jurnal Pengabdian Kepada Masyarakat, Vol 2 No 1, hal 29.

² Tantimin, T., & Ongko, J. S, 2021, *Penegakan Hukum Terhadap Penipuan Bermodus Donasi Aksi Kemanusiaan Di Indonesia*, Jurnal Pendidikan Kewarganegaraan Undiksha, Vol 9 No 3, hal 803.

³ Suad, Fikriawan, 2018, *Crowdfunding Dalam Perspektif Hukum Islam (Analisis Skema Akad Sewa pada Website Kitabisa.com)*, El-Barka: Journal of Islamic Economics and Business, Vol 01 No 2, hal 184..

⁴ Iskandar, 2021, 15:02 WIB: Kitabisa: 3 Juta Orang Indonesia Berdonasi Online pada 2021, 82 Persen Diantaranya Anonim, dalam <https://www.liputan6.com/tekno/read/4833301/kitabisa-3-juta-orang-indonesia-berdonasi-online-pada-2021-82-persen-diantaranya-anonim>, diunduh 17 Oktober 2022 pukul 10.30.

PP Number 29 of 1980 concerning the Implementation of Pubs, Minister of Social Affairs Regulation Number 8 of 2021 concerning PUB, and also the ITE Law.

Uncertainty regarding regulations regarding online donation activities in Indonesia will have an impact on the possibility of criminal acts involving donation management. Sadd adz-dzari'ah is a method of closing a road or wasilah for work that was previously permitted, which could cause damage or prohibition.⁵Simply put, sadd adz-dzari'ah is a preventive effort so that something doesn't happen that has a negative impact. Because the aim of Islamic law is to create benefits and avoid mafsadah (damage). If an action that has not been carried out is expected to definitely cause mafsadah (damage), then things that lead to that action are not permitted.

Thus, this research seeks to find out whether the weak legal regulations regarding donation-based crowdfunding, which are feared to have detrimental impacts in its implementation, can affect the legal status of the permissibility of using online donation platforms as viewed from a sadd adz-dzari'ah perspective. Therefore, based on the explanation above, the author determined the title of this research with the title "Donation Based Crowdfunding Viewed from the Perspective of Sadd Adz-Dzari'ah." So the formulation of this research problem is: (1) What is the concept of donation based crowdfunding in Indonesia, (2) What is the legal status of donation based crowdfunding viewed from a sadd dzari'ah perspective.

RESEARCH METHODS

The approach method used is normative law with a qualitative descriptive research type that focuses on explaining the concept of donation based crowdfunding. Sources and Types of Data used are secondary data including primary, secondary and tertiary legal materials. The data collection method is carried out by literature study of primary, secondary or tertiary legal materials, and non-legal materials obtained from viewing, reading and searching.⁶The author also uses interviews as supporting material.

RESULTS AND DISCUSSION

CONCEPT OF IMPLEMENTING DONATION BASED CROWDFUNDING IN INDONESIA

Basically, the concept of organizing crowdfunding is an action of helping each other in a good way. The parties involved in donation based crowdfunding activities include:

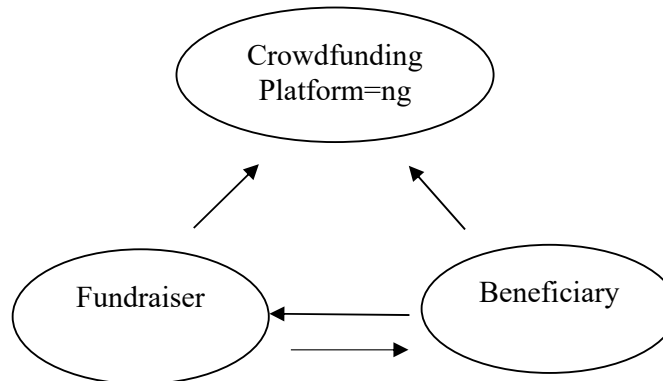
1. Platform managers: are responsible for ensuring that the information provided by fundraisers and recipients of donations is accurate and transparent. Apart from that, it is also a party that facilitates transactions between donors and recipients of donations, as well as providing protection against misuse or fraud;
2. Fundraiser: Responsible for creating an attractive campaign to collect funds from donors, must describe clearly and in detail the campaign and how the funds will be used, as well as provide regular updates and reports to donors regarding the progress of the campaign;
3. Donors, namely parties who voluntarily contribute donation funds, and
4. The recipient of the donation.⁷

⁵ Intan Arafah, 2020, *Pendekatan Sadd Adz-Dzari'ah Dalam Studi Islam*, Al-Muamalat: Jurnal Hukum & Ekonomi Syariah, Vol 5 No 1, hal. 70.

⁶ I Ketut Suardita, 2017, *Pengenalan Bahan Hukum (PBH)*, Bali: Fakultas Hukum, Universitas Udayana, hal 2.

⁷ Thommy B., Rahel Octora., 2019, *Perlindungan Hukum Bagi Donatur dalam Kegiatan Donation Based Crowdfunding Secara Online*, Jurnal Kertha Patrika, Vol 41 No 3, hal 233.

Crowdfunding Concept Scheme



Meanwhile, the concept of sharia crowdfunding must be based on the Al-Qur'an and Sunnah in transactions. The concept proposed by the sharia crowdfunding system includes:

1. Project initiators/proposers can come from individuals, organizations and companies.
2. Potential funders are investors from the community who can be individuals or groups.
3. In this case, the crowdfunding operator is the platform organizer.
4. The sharia board, in Indonesia in this case includes DSN-MUI and DPS.⁸

In general, this activity is carried out online via a donation platform. The platform's position is as an intermediary that connects campaigners with donors without having to meet. All stages are carried out online, starting from verifying and validating donation application documents, activating donation campaigns that have passed verification, donors supporting a campaign, to the process of disbursing funds and transparency in the distribution of donations made by campaigners. Campaigners are parties who are closely related to the entire platform, donors and beneficiaries.

The benchmark in implementing donation-based crowdfunding is participation in voluntary donations.⁹Problems commonly encountered in implementation are related to conflict resolution when there are allegations of fraud or misuse of donation based crowdfunding activities. In reality, the implementation of collecting, distributing, allocating and monitoring donations cannot function properly because there are no special regulations regarding donation based crowdfunding. In general, the regulations still refer to conventional collection of donations, namely Law Number 9 of 1961, PP Number 29 of 1980, and Minister of Social Affairs Regulation Number 8 of 2021. Even though the Minister of Social Affairs Regulation contains the concept of crowdfunding, it cannot yet support it in a clearer and more detailed manner.

Donation-based crowdfunding activities implemented by a donation platform must have permission from the Ministry of Social Affairs because its implementation covers all regions of the country and even abroad.¹⁰ Article 3 of Law No. 9 of 1961 explains that this permit is only permitted for social associations or organizations that do not conflict with statutory regulations.¹¹Then it is explained in more detail in Article 3 of the Minister of Social Affairs Regulation No. 8 of 2021 regarding social organizations in the form of associations or foundations that have legal entities.¹²However, in practice, the crowdfunding model of raising donations is often applied individually through each person's personal social media. This is not included in the three existing legal umbrellas.

Regarding transparency and accountability held by campaigners, it is actually a form of

⁸ Ibid.

⁹ Theresa Novita I, 2019, *Perlindungan Hukum Donatur Dalam Sistem Donasi Online Di Indonesia*, Skripsi: Fakultas Hukum, Universitas Muhammadiyah Surakarta, hal 34.

¹⁰ Pasal 9 ayat (2) Permensos Nomor 8 Tahun 2021.

¹¹ Pasal 3 UU Nomor 9 Tahun 1961..

¹² Pasal 3 Permensos Nomor 8 Tahun 2021.

implementation of Article 25 paragraph (1) letter b in Minister of Social Affairs Regulation No. 8 of 2021, namely "providing reports regarding the implementation of PUB accompanied by proof of accountability."¹³ The implementation, management and distribution of donations is the campaigner's responsibility, so the transparency report on the "campaign update" page is also important for the platform, so that it is not only a form of accountability for funds to donors but also to the platform. Because this will be closely related to proof of platform accountability to the Ministry of Social Affairs. A number of online donation platforms in Indonesia apply an average operational fee of 5%, this is allowed because it is in accordance with Article 6 of PP No. 29 of 1980 which regulates deductions. a maximum contribution of 10% of the proceeds from the collection of donations.¹⁴

Regarding supervision of the implementation of donation collection in accordance with Article 18 of PP Number 29 of 1980, it includes preventive and repressive measures carried out by the authorities in this field.¹⁵ A form of preventive effort for the implementation of donation based crowdfunding is carried out by the Ministry of Social Affairs as the licensing official, this is in line with Article 19 of PP No. 29 of 1980, namely "The licensing official is obliged to carry out control efforts within the limits of his authority."¹⁶ Preventive efforts from the Ministry of Social Affairs include permits for collecting money and goods, guidance for implementers who have received PUB permits, supervision carried out by internal government and the task force for ordering and community participation, monitoring and evaluating the implementation of PUB to identify all forms of irregularities and ensure that the implementation of PUB is in accordance with these regulations.¹⁷ If we analyze the entire function of the Ministry of Social Affairs regarding the implementation of donation crowdfunding, it is only limited to realizing the obligations of PUB organizers to comply with the provisions in the PUB Permit Decree and providing reports along with evidence of accountability including details of the results of collection, distribution, aid distribution letters, statements of absolute responsibility, audit results documents, documentation of distribution implementation.¹⁸

The rules in the donation based crowdfunding platform state that they are not responsible if service users experience losses. This has become a debate due to incompatibility with existing regulations. In donation-based crowdfunding, the raising party, donors and donation recipients are the parties who use the service. In general, the platform organizer has the highest position compared to other parties. This can be interpreted as meaning that the user is actually only following the mechanism that has been created by the service provider.¹⁹ Several cases of donation based crowdfunding violations that have occurred in Indonesia are:

- Case of misuse of donations carried out by Cak Budi for a campaign to raise funds on his Kitabisa platform which was actually used to buy a Fortuner car and an iPhone cell phone for operational needs.
- Case of fraud under the guise of donations by Laman Sure which raised funds on behalf of Palu-Donggala earthquake victims. He learned this action after seeing a fundraiser on the Internet.
- Case of misappropriation of funds by a number of high-ranking officials from the Aksi Cepat Tunjangan platform who used cuts in operational funds of 13.7% and also misappropriated donation funds belonging to the heirs of victims of the Boeing Lion Air JT-610 plane crash amounting to IDR 107.3 billion.

Then there are also weak provisions for criminal sanctions which cannot provide a deterrent effect on perpetrators. If you refer to Article 8 of Law No. 9 of 1960, it only regulates a maximum prison sentence

¹³ Pasal 25 ayat (1) huruf b Permensos Nomor 8 Tahun 2021.

¹⁴ Pasal 6 PP Nomor 29 Tahun 1980.

¹⁵ Pasal 18 PP Nomor 29 Tahun 1980.

¹⁶ Pasal 19 PP Nomor 29 Tahun 1980.

¹⁷ Pasal 21 – 24 Permensos Nomor 8 Tahun 2021.

¹⁸ Pasal 25 Permensos Nomor 8 Tahun 2021.

¹⁹ Christian Wahyu Adi, 2020, *Penerapan Donation Based Crowdfunding Terkait Tanggung Jawab Penyelenggaraan Sistem Elektronik Ditinjau dari UU ITE*, JUSTITIA: Jurnal Ilmu Hukum dan Humaniora, Vol 9 No 3, hal 1534.

of 3 months or a maximum fine of IDR 10,000,²⁰ Meanwhile, Minister of Social Affairs Regulation No. 8 of 2021 regulates administrative and criminal sanctions for organizers who have or do not have a PUB permit. These administrative sanctions are in the form of written warnings, suspension of permits, and/or revocation of permits, the granting of which can be adjusted to the provisions in Articles 27 to 29.²¹

LEGAL STATUS OF DONATION BASED CROWDFUNDING AS SEEN FROM SADD DZARI'AH

In the language, sadd means "to close", and the word dzari'ah means wasilah or the path to a goal. Meanwhile, according to the definition of ushul fiqh, sadd al-dzari'ah means: "When someone carries out an activity that is actually permissible because it contains benefits, but in the end the activity ends up inviting mafsadat."²² Meanwhile, in terms of terms, Ibn Rushd defines adz-dzari'ah as something that is halal but being a wasilah (intermediary) for something that is haram, such as when trading transactions that can give rise to usury. Agrees with Al-Qarafi who defines sadd adz-dzari'ah as a link (wasilah) to fulfill a certain goal, a kind of link to the haram is haram and a link to the obligatory is obligatory.²³

The act of adz-dzari'ah as an object of sharia law acts as a way/medium/intermediary to fulfill a legal purpose, can be one of the five taklifi laws: obligatory, haram, sunnah, makruh, and permissible. An action that is a way to realize something that is obligatory, then the law is obligatory; a path that causes something that is sunnah, then the law is sunnah; and so on. So it is ordered to be carried out for actions that become a medium for bringing about benefit, while the law is prohibited if an action becomes a medium that causes benefit.²⁴ Basically, the acceptance of sadd dzari'ah as a method of determining Islamic law is a review of the consequences of an action.²⁵

This method seeks to prevent a person from possible damage and at the same time to achieve benefits by prioritizing various sharia provisions, even before the risk actually occurs.²⁶ Sadd adz-dzari'ah is closely related to maqashid al-syari'ah in terms of maintaining benefits. The function of sadd dzari'ah is to determine the law for new problems by measuring the level of benefits in objectives and impacts that will arise.²⁷ Therefore, it is important to know and determine the legal illat, because the assessment of possible risks relies on differences in perspective towards the illat itself.²⁸

In this case, Jasser Audah stated that basically the Sadd Adz-Dzari'ah method is a method of ijtihad whose application is based on the group of impacts caused. In the sense that it is only applied if the impact of the action leads to damage or is negative, so it is not absolutely valid to be applied continuously. Jasser Audah illustrates this with a picture or table as follows:



Jasser Audah's illustration²⁹

²⁰ Pasal 8 UU Nomor 9 Tahun 1961.

²¹ Pasal 27 – 29 Permensos Nomor 8 Tahun 2021.

²² Kasuwi Saiban, 2019, *Metode Penetapan Hukum Islam Membangun Madzab Fiqih Kontemporer di Indonesia*, Malang: Setara Press, hal 82.

²³ Andi Nurul Islamiah, 2020, *Aplikasi Sadd Adz-Dzari'ah Dalam Perkembangan Ekonomi Islam*, Justicia Ekonomika: Jurnal Magister Hukum Ekonomi Syariah, Vol 6 No 1, hal 392.

²⁴ Rahman Dahlan, 2016, *Ushul Fiqh*, Jakarta: AMZAH, hal 237.

²⁵ Ali Mutakin, 2017, *Hubungan Maqashid Al-Syari'ah Dengan Metode Istinbath Hukum*, Analisis, Vol 3 No 1, hal 129.

²⁶ Muhammad Farid Fad, 2021, *Perlindungan Data Pribadi Dalam Perpektif Sadd Dzari'ah*, MUAMALATUNA, Vol 13 No 1,

²⁷ Dara., L, Jabbar., S & Syarifuddin., U, 2018, *Eksistensi Bitcoin Dalam Perspektif Maqashid Al-Syari'ah*, Petita Jurnal Kajian Ilmu Hukum dan Syariah, Vol 3 No 2

²⁸ Nurdin Baroroh, 2017, *Metamorfosis "Illat Hukum" Dalam Sadd Adz-Dzari'ah dan Fath Adz-Dzari'ah (Sebuah Kajian Perbandingan)*, Al-Mazaahib: Jurnal Perbandingan Hukum, Vol 5 No 2,

²⁹ Ibid.

If Jasser Audah's standardization is linked to the implementation of crowdfunding-based donation raising, then:

1. Prohibition of raising funds online with the sole aim of instantly enriching oneself, especially for those who deliberately have bad intentions by using donations that are not appropriate for their intended purpose.
2. The ability to raise funds online is for those who from the start have good and noble intentions, namely to help and help others sincerely without any hidden bad intentions.
3. The need to raise funds online for those who due to urgent circumstances require a lot of money quickly. Usually carried out for disaster response programs or health programs that must be handled immediately.

Meanwhile, for Ibn Qayyim, everything that tends to evil (adz-dzari'ah) can be divided into 4, namely:

- Actions as a means that definitely cause damage, for example alcohol which causes drunkenness.
- Actions as a means are permissible but are intended to lead to damage, for example marrying a widow with the aim of reconciling her with her ex-husband.
- Actions as a means that are permissible and not intended to lead to damage, but if carried out cause greater harm than benefit, for example insulting the worship of another religion.
- Actions are permissible means and sometimes lead to bad things, but they contain more benefits than the bad things they cause.³⁰

The forms of sadd dzari'ah can be identified using 3 methods, including looking at the motive of the perpetrator, the consequences, and the purpose of the action.³¹ If analyzed, online donation activities do not yet have special regulations and a strong monitoring system from the government, so they can fall into the second category above, namely if there is no strict monitoring mechanism, there is a high possibility that it will lead to damage (mafsadat). If viewed from the aspect of harm, even though the donation based crowdfunding activity is basically not a prohibited act, it should be avoided because without regulations that regulate in detail the elements of implementing donation based crowdfunding, this will result in a weak supervisory function carried out by the Ministry of Social Affairs, so that This will give rise to the possibility that the use of donation based crowdfunding will lead to misuse of funds, donation fraud and other bad acts. This is in accordance with the rules of sadd adz-dzari'ah, namely:

may Allah bless him and give him peace and blessings

"Eliminating harm is more important than taking advantage"³²

Implementation of donation based crowdfunding carried out by various online donation platforms is a valid and justified transaction if it complies with Islamic law. When it contains things that are not in accordance with the sharia, the implementation of online donations can override the halal provisions of the activity. Based on DSN MUI Fatwa NO: 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles, a transaction must be based on sharia principles, namely, among other things, avoiding elements of gharar. Likewise, the Prophet's words read:

*"Leave behind everything that doubts you to take action Which don't doubt you"*³³

An act that does not have definite legal provisions, in its implementation contains elements of gharar, namely doubt, uncertainty and damage because there are no underlying rules. The Koran actually forbids all business deals that contain fraudulent factors.

If halal and haram are mixed then the essence is explained as follows:

³⁰ Muhammad Hanif B. H., 2021, *Kehujjahan Sadd Al-Zari'ah Sebagai Dalil Hukum Islam (Studi Perbandingan antara Mazhab Maliki, Syafi'i dan Zhahiri)*, Skripsi: Fakultas Syari'ah dan Hukum, Universitas Islam Negeri Ar-Raniry, Aceh, hal 27.

³¹ Muhlil Musolin, 2019, *Sadd Adz-Dzarai': Konsep dan Aplikasi Manajemen Pendidikan Islam*, Manageria: Jurnal Manajemen Pendidikan Islam, Vol 4 No 1, hal 76.

³² Amir Syarifudin, 2011, *Ushul Fiqh Jilid 2*, Jakarta: Kencana, hal 430.

³³ Amir Syarifuddin, Op. Cit., hal 431.

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"If the haram is mixed with the halal, then the haram overcomes the halal."³⁴

If in a case there are two laws, namely halal and haram, then what must be removed first is the haram, so as not to be trapped in error and sin. Because the haram elements will definitely be stronger when there is a mixture, haram laws are always a more prominent element than halal ones.³⁵

Based on the arguments above, from a sadd dzari'ah perspective, the danger of misuse of funds, fraudulent donations, money laundering and other criminal acts (damage) must be eliminated. Supervision of donation-based crowdfunding activities must be protected by all parties, including donors, fundraisers, beneficiaries, platforms and the government. Therefore, it is necessary to have a special policy regarding donation-based crowdfunding in a law as a preventive measure to prevent damage.

CONCLUSION AND SUGGESTION

The concept of implementing donation-based crowdfunding in Indonesia is basically the same as helping activities carried out voluntarily online, in Islam it is called online almsgiving. In principle, there is a difference between the concept of an online donation scheme according to Indonesian positive law and sharia crowdfunding, the most basic being the existence of a Sharia Supervisory Board whose task is to ensure that transactions in financing a campaign are legal and halal. Collecting donations has legal regulations but does not contain the concept of crowdfunding-based donations specifically. Current regulations are archaic and tend to regulate conventional donation collection.

Based on a review of the problems in implementation, according to Sadd Dzari'ah, namely closing the road to harm, it is best to avoid donating via crowdfunding. In accordance with the DSN MUI Fatwa NO: 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles, it is mandatory to be based on sharia principles for all forms of transactions, including one that must avoid elements of gharar. The absence of a clear regulatory mechanism will cause the emergence of elements of gharar, namely doubt, uncertainty and damage.

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³⁴ *Ibid.* hal 430.

³⁵ Abdul Jalil A, 2015, إذا اجتمع احلال واحلرام غلب احلرام, Makalah: Ushuluddin dan Ilmu Sosial, Sekolah Tinggi Agama Islam Negeri (STAIN) Kediri, hal 4.

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