

Application of Maqashid Sharia Principles In Islamic Security Crowdfunding Contracts in Indonesia

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ABSTRACT

This study aims to identify the issues of maqashid sharia and the importance of supervision in implementing Islamic Security Crowdfunding (ISF) contracts. Sharia compliance regulation is an essential subsystem within the Islamic social finance ecosystem. This research is a legal study utilizing legislative and conceptual approaches. Indonesia is one of the countries with a rapidly growing Sharia financial sector. The findings on Sharia compliance regulation in ISF are a comprehensive approach to developing a sustainable Islamic social finance ecosystem. Platforms and issuers in ISF must implement Maqashid Sharia. Therefore, it is crucial to consider the requirements of Maqashid Sharia in ISF contracts.

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INTRODUCTION

The use of technology in Crowdfunding offers a means to match individuals who need funds with those who have capital, helping to reduce economic inequality and encourage a more equal distribution of wealth in society. The existence of Crowdfunding also increases work efficiency by reducing waiting times, travel and transaction duration, so that people can use their time for other more productive activities. Indonesia, with a Muslim-majority population that reaches 80% of its 250 million people, offers a very potential market for Crowdfunding development. This technology is also ideal for collecting and distributing zakat, infaq, alms, and waqf, providing significant benefits for many people.

Crowdfunding services are divided into two sub-categories: loan/financing-based models and equity/ownership-based models. In equity-based services, those who inject funds are called investors, because they receive returns or profit sharing from the actors in the financing campaign that takes place on the crowdfunding platform, within a predetermined time period. Investments start from a minimum nominal value of IDR 50,000 to IDR 1,000,000, with varying levels of risk and return.

As an innovation in the financial sector that is based on Islamic principles and modern technology, Islamic Crowdfunding is an alternative choice to meet the financial needs of the Indonesian people. The element that differentiates sharia crowdfunding services from conventional ones is the type of contract used, where contracts in sharia services are under the supervision of the MUI Sharia Supervisory Board (DPS) to ensure the absence of elements of maysir (speculation), gharar (uncertainty) and usury.

Islamic Security crowdfunding is one of the fast-growing sharia financial technology (fintech) sectors with a market size of \$79 billion in 2021, which is projected to reach \$179 billion in 2026. Malaysia, Saudi Arabia and Indonesia lead in terms of Global Islamic

Fintech Index scores (GIFT). However, low sharia compliance is still a problem in implementing ISF. This problem is caused by insufficient regulatory support and suboptimal monitoring of sharia compliance. One of the main challenges in Islamic crowdfunding is the lack of regulations regarding Islamic Security Crowdfunding (ISF), because until now, there is no Financial Services Authority Regulation (POJK) that specifically regulates Sharia Security Crowdfunding. This causes the involvement and position of DSN-MUI to be legally uncertain in creating ISF investments that are free from elements of *riba'*, *maysir* and *gharar*. So the share offering method which utilizes information technology and the internet by issuers to sell shares directly to investors, also faces legal uncertainty regarding sharia compliance. To prevent speculation, uncertainty and usury in ISF, strict regulations are needed that ensure effective supervision of this practice. Studies show that good DSN supervision has a significant impact on ensuring compliance with sharia law in crowdfunding.

This encourages further research on ISF in the context of implementing fair technology principles in accordance with *Maqashid Syariah*. On the one hand, Sharia compliance is ISF's main principle in Sharia Governance. The application of sharia principles is the main differentiator from conventional crowdfunding. In essence, these sharia principles refer to Islamic sharia, which is mainly guided by the Koran and Hadith. Sharia principles prohibit Islamic financial operations that contain elements of *maysir* (gambling), *gharar* (betting), and *riba* (interest). *Maqasid Sharia* is a key concept in Islamic discussions that aims to produce human welfare. This principle, which is rooted in the objectives of Islamic law originating from the Al-Qur'an and Hadith, encourages humans to make *ijtihad* in identifying goodness that can be applied in everyday life. . Legal issues related to ISF practices must be monitored by the National Sharia Board to ensure compliance with *Maqashid Syariah*, so that the public feels safe and confident when investing or using sharia-based security crowdfunding platforms.

In ISF operations, crowdfunding site managers usually establish standard contracts or Terms and Conditions to manage interactions between fund recipients and managers. However, these contracts often contain clauses that tend to benefit the entrepreneur while harming the recipient of the funds due to an imbalance of positions in the contract. The standard contract only gives recipients of crowdfunding funds two choices, namely accepting or not accepting the agreement given to them. This creates negative factors that can cause losses to other parties who are vulnerable to these clauses. The application of standard clauses is usually carried out in unbalanced conditions, namely that it only benefits the business actor while the recipient of the funds suffers a loss. Regulations allow the government to take steps to protect the community and all parties involved in ISF, especially if there are problems due to breach of contract. Therefore, the author feels it is necessary to research and study more deeply regarding the development of ISF according to *Maqasid Syariah*, so that it is hoped that Securities Sharia crowdfunding can develop better than before.

Literature review

The basic philosophy for digitizing the sharia economy is *maslahah* (murlah), namely the benefit which is the essence of Islamic sharia. al-Ghazali defines benefit as: "Maintenance of the objective intent of the law consists of five things, namely the

maintenance of religion, soul, reason, lineage and property. Anything that contains efforts to maintain these five principles (ushul) is called *maslahah* and anything that eliminates these five principles is called *mafsadat*.

This is based on the purpose of sharia, which according to Imam al-Syatibi is one of Allah's decisions in establishing sharia (*qashdu al-shari'a fi wadh'i al-shari'ah*), which means that Allah has a purpose why a rule was revealed which aims to the benefit of His servants. This concept was first introduced by Imam al-Juwaini in his book *al-Burhan*, then refined by Imam al-Ghazali and Imam al-Syatibi. The benefits of the classical *maqashid* concept are divided into three levels, namely: *Dharuriyah* needs are primary needs that must exist; without this, personal safety in the afterlife is threatened, such as maintaining religion (*hifdz al-din*), caring for the soul (*hifdz al-nafs*), maintaining reason (*hifdz al-'aql*), caring for offspring (*hifdz al-nasl*), and protecting property (*hifdz al-mal*). These five primary needs are called *al-kulliyah al-khamsah*, or the five basic principles of Islamic law, by Imam al-Ghazali and al-Syatibi. Furthermore, *Hajiiyah* needs are secondary needs. This need will not threaten personal safety if it is not met, but life will be difficult to live, for example because it is necessary to fulfill economic activities such as buying and selling, renting, and cooperation.. With the law of *muamalah*, of course human life will be far from difficulties. Lastly, *Tahsiniyyah* needs are tertiary needs. This type of need is an additional need to live a perfect life that is adapted to the habits, customs and moral patterns of the surrounding environment, such as protecting young children and women, maintaining cleanliness, and others. This type of benefit focuses on ethics and aesthetics to improve the quality of life. This is as depicted in the *Maqashid Syariah* pyramid below

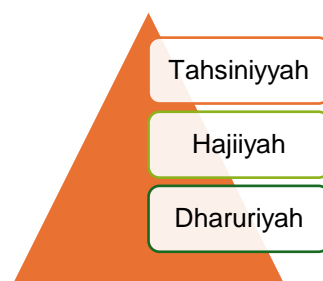


Figure 1 Pyramid of *Maqashid* Sharia

Referring to the philosophy of convenience in Islam, the digitalization of the sharia economy is to make it easy for people to be able to access sharia economic, business and financial services anytime and anywhere. This philosophy will provide many benefits including effectiveness, efficiency and benefits in its implementation.

The theory of *Maqāṣid al-Sharī'ah* aims to achieve good and prevent damage. In Islam, the formation of law must aim for the well-being of mankind as a whole. Every time Allah SWT establishes a provision, there is an additional benefit intended for human well-being; the laws are not made without a purpose. In the context of digitalization of the sharia economy, maintaining sharia *maqashid* focuses on improving welfare through providing easy access and ensuring the quality and security of sharia economic, business and financial transactions by utilizing technology. So that people will feel safe and protected when carrying out sharia transactions via digital technology. Efforts to realize the benefits of

using technology in the fields of sharia economics, business and finance must refer to Islamic sharia principles.

Currently, the phenomenon of financial digitalization is increasing. Online sites raise the concept of donating to the online sites of each social institution. Meanwhile, social institutions prefer to collaborate with investors to raise funds. These investors can be people or institutions that can collect funds from many people. Even some individuals or institutions grow waqf through crowdfunding service websites. Collecting funds for social causes is the main idea in crowdfunding sites for business facilities.

Sharia crowdfunding is crowdfunding based on Islamic rules guided by the Koran and Sunnah. Therefore, businesses that are given funds and the products and services offered and the funds that will be used must be halal. Sharia crowdfunding places great importance on the concepts of equity, justice, freedom of enterprise, and moderation. This concept is in accordance with the legal basis of sharia crowdfunding in QS Al Maidah verse 2 to help each other and help each other in goodness. So far the projects funded have been in the form of social projects such as helping those experiencing poverty, helping to build housing and assistance to those experiencing financial difficulties, including philanthropy for refugees and so on.

Maqashid Syariah is essential in the overall implementation of crowdfunding. The implementation of QS Al Maidah is translated into several forms of donation-based crowdfunding. The aim is to collect donation funds for social projects such as building schools in villages, renovating orphanages, helping with disasters, paying zakat, waqf fees and so on. People who deposit funds are called donors, because they do not receive a return of the capital they spend. In Indonesia, there are several platforms that accommodate donation-based crowdfunding services such as kitabisa.com, wujudkan.com and ayopeduli.com.

Crowdfunding activities involving 3 (three) parties, namely the Owner, Fund Recipient, and Site Manager. The Site Manager is an intermediary/bridge that brings together Fund Owners with Fund Recipients. In crowdfunding activities, the Fund Owner does not directly provide funds to the Fund Recipient, nor does the Fund Recipient offer support proposals directly to donors. All activities are carried out through the platform, namely the crowdfunding site.

The Site Manager has formulated a Contract himself which is usually known as Terms and Conditions (Terms and Conditions) to regulate the course of crowdfunding. This contract is a standard contract that regulates the relationship between the three parties as mentioned above. A standard contract is a form of contract whose clauses have been standardized in advance by one party, while the other party does not have the opportunity to make changes to its contents. Standard contracts are formulated to increase legal efficiency, certainty and practicality.

DISCUSSION AND DISCUSSION

Application of the Concept of Justice in Standard Sharia Crowdfunding Contracts

a. Advantages in standard sharia crowdfunding contracts

Security Crowdfunding is regulated in Financial Services Authority Regulation (POJK) no. 57/POJK.04/2020 concerning Securities Offerings through Information Technology-

Based Crowdfunding Services (Securities crowdfunding) and POJK No. 16/POJK.04/2021 concerning Amendments to Financial Services Authority Regulation no. 57/POJK.04/2020. According to PJOJK, security crowdfunding includes financial service activities that are under the auspices of the capital market, but the share offering through the Crowdfunding Service (security crowdfunding platform) is not through the stock/stock exchange. Crowdfunding security services can also be provided by financial institutions ranging from sharia cooperatives, BMT, vetura capital companies, banks, securities companies and so on or by crowdfunding platforms.

Then in the POJK article 35 regulates that issuers who will offer sharia shares through Crowdfunding Services (crowdfunding platform), must include: articles of association, activities and type of business as well as how to manage them based on sharia principles in the capital market; and has a Sharia Supervisory Board (DPS).

Since the release of the POJK, the development of this industry has been quite good. Thus, public interest in sharia equity crowdfunding has quite good potential, especially since there is legal certainty even though there are no specific regulations yet. Sharia fintech-based services in general in Indonesia are regulated by the Fatwa of the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI) No: 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles.

b. The concept of mudharabah and murabahah in standard sharia crowdfunding contracts

Because the security crowdfunding mechanism is similar to the issuance of sharia securities on the sharia stock exchange, the contract form based on Bapepam regulations can be used as a contract between investors and business actors. Intermediaries provide a security crowdfunding platform and act as intermediaries between publishers and investors. In Islam, this can be referred to as an intermediary in trade. Al Bukhari said in his Sahih book: That Ibnu Sirin, 'Atha, Ibrahim and Al Hasan consider it not wrong if the broker takes wages. This is reinforced by the hadith narrated by Ahmad, Abu Daud, Hakim and others that the Prophet Muhammad Shallallahu'alaihi wasallam said: "Muslims depend on their conditions (agreement)

In terms of sharia principles, the contract that is in accordance with sharia fintech security crowdfunding is a mudharabah contract because it takes the form of handing over capital from the investor (shahibul mal) to the issuer (mudharib). The mudharabah agreement in the security crowdfunding system is a contract that has high investment risk opportunities because it is full of information asymmetry. The asymmetry that can occur in mudharabah contracts usually takes the form of moral hazard carried out by the mudhorib (issuer) by disclosing financial information that is not in accordance with the facts. Security crowdfunding platforms have relatively higher information asymmetry because there are obstacles in terms of collecting information, monitoring business developments and providing input for investors. This obstacle is caused by the lack of communication between investors and publishers. In the capital market there is the possibility of speculative behavior from market investors. Speculation is not an investment but taking advantage of capital market uncertainty for short-term profits. Investors always pay attention to market changes, make various analyzes and calculations to take stock buying and selling actions. Speculation has increased unearned income for a group of people and even taken profits at the expense of society. di *Wall Street* pada 1992 dan masalah mata uang Franc 1969.

Therefore, a reliable fintech mechanism is needed to prevent speculation so that ISF fintech business activities can run in accordance with Islamic muamalah principles.

Another contract applied in the issuance of shares is the syirkah musahamah contract, which is an evolution of the 'inan syirkah (partnership) contract. In the context of sharia, syirkah 'inan refers to a cooperation agreement between two or more parties to run a particular business, where each party contributes funds/capital. Profits from the business are shared according to an agreed ratio or proportionally, while losses are charged to all parties according to the proportion of their contributions. Syirkah 'inan which has evolved into syirkah muusahamah has several distinctive characteristics, especially in terms of the provision that the syirkah contract cannot be canceled by one of the partners unless the business is dissolved, so that the transfer of capital in syirkah is realized through the process of buying and selling shares. Thus, syirkah musahamah is defined as a syirkah 'inan contract where the capital ownership of partners or investors is based on the capital contribution paid, which is represented in the form of share units.

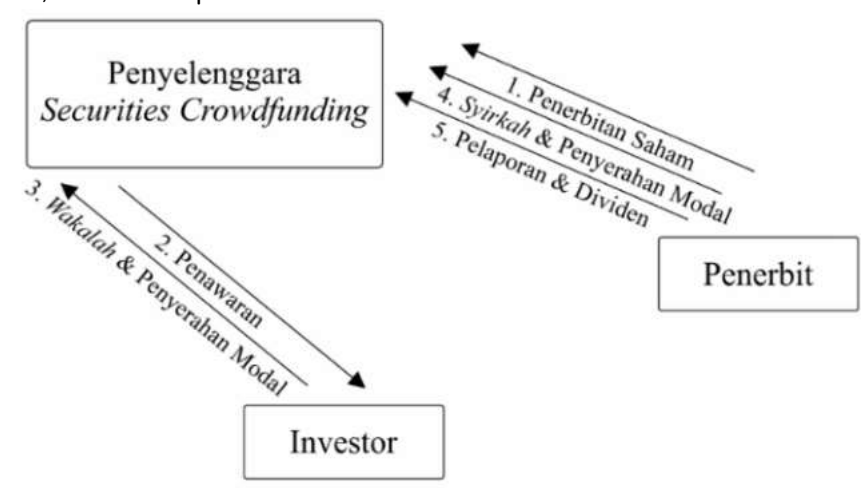


Figure 1 Security Crowdfunding Implementation Process

Based on the picture above, the process of implementing a syirkah musahamah contract within the framework of securities crowdfunding involves several steps:

1. ISF organizers begin the process by issuing shares
2. Through the ISF platform, shares are offered to potential investors
3. Interested investors submit bids to the issuer and then delegate their authority (wakalah) and funds to the ISF organizer, who acts on behalf of the investor to confirm the syirkah musahamah contract with the issuer
4. ISF organizers, acting on behalf of investors, enter into syirkah musahamah contracts with publishers
5. The issuer periodically provides profit reports and distributes dividends to investors at specified time intervals

Based on DSN MUI Fatwa Number 140/DSN-MUI/VIII/2021 concerning crowdfunding of sharia securities relating to the offering of sharia securities in the form of shares, the book *Fiqh al-Mu'amalat al-Maliyah* by Rafiq Yunus al-Mishri emphasizes that the number of shares owned is responsible. Responsibility towards shareholders is in accordance with the number of shares and distribution of profits or losses is borne by shareholders in

accordance with the proportion of shares owned. The book *al-Fiqh al-Islami wa Adillatuhu* which explains the *syirkah musahamah* contract according to Wahbah al-Zuhaili emphasizes *syirkah* transactions which means there is no prohibition on making *syirkah musahamah* based on the capital ratio responsibilities included because this is what is already understood among the people who are involved in *muamalah*. Thanks to science, the element of fraud (*gharar* practices) in this contract can be eliminated for all parties who are members of the *syirkah* contract. Meanwhile, if shares are traded in the secondary market or capital market through securities trading, Wahbah al-Zuhaili in his book *al-Fiqh al-Islami wa Adillatuhu* emphasizes the meaning: "For several official channels (media) that offer shares to the public, they can do stock trading due to circulation cannot be perfect without the presence of intermediary traders (*samsarah*), or parties who are given dispensation to do so. This practice is permitted because the implementation of trading through official channels is real which can bring great benefits."

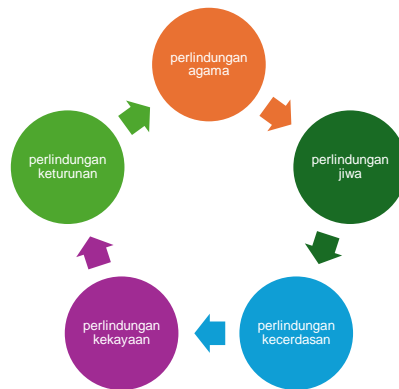
The responsibility of each partner is determined based on their share of capital, and is accompanied by the rule that the *syirkah* contract cannot be canceled by any partner until the *syirkah* itself is dissolved. The process of implementing a *syirkah musahamah* agreement through the Securities Crowdfunding (SCF) platform begins with the issuer issuing shares through the platform. Then, the issuer offers its shares to potential investors via SCF's application. Investors who are interested in the offer will provide power of attorney (*wakalah*) and funds to the SCF operator, who functions as the investor's representative, to enter into a *syirkah musahamah* agreement with the issuer. The SCF operator, representing the investor, then enters into a *syirkah musahamah* agreement with the issuer. After the contract is executed, the issuer periodically provides reports regarding profits and dividend distribution to investors, maintaining transparency and trust in the investment process.

The sharia principles applied in the *syirkah musahamah* contract include several key provisions. First, the liability of capital owners is limited by the amount of capital they invest, and they are not permitted to cancel the contract unless the company is dissolved. Second, capital invested by partners or shareholders is considered an asset of the company, which in turn is considered to belong to the partners together. Third, the right to participate or work is regulated through a deliberation mechanism at the General Meeting of Shareholders, with votes weighed based on the proportion of share ownership. Fourth, the contract between the company and the manager is determined as an *ijarah* (rental) agreement, *wakalah bil istitsmar* (representative for investment) agreement, or *mudharabah* (investment contract) agreement. Fifth, the work agreement with employees is an *ijarah* agreement. Sixth, distribution of profits to shareholders must come from company profits. Seventh, profits are distributed to shareholders as dividends based on the proportion of capital or shares owned, or according to the agreed ratio, unless there is another decision at the General Meeting of Shareholders. Lastly, corporate assets are considered separate from shareholders' personal assets, emphasizing the separation between corporate and individual finance.

Maqasid Syariah in Islamic Security Crowdfunding

Maqasid Syariah refers to a series of goals that Islamic sharia establishes to ensure the well-being of humanity. It refers to specific goals pursued through the enactment of

certain laws, with the basic premise that the regulations established by God are intended for the benefit of humans. In the context of Securities Crowdfunding, this practice is regulated to be in accordance with the objectives and principles of Maqashid Syariah, ensuring its compliance with Islamic teachings.



Gambar 2 Lima manfaat Utama dalam *Maqashid syariah dharuriyah*

Sharia crowdfunding, from a sharia maqasid perspective, includes:

- Religious protection (Ad-Din), where the Al-Qur'an, Hadith and other Islamic laws are used as the main basis for designing ISF systems and products. The presence of the National Sharia Council (DSN) adds legitimacy to Islamic values and norms in the ISF, increasing the trust of the community, especially Muslims, in the ISF. Although currently, there is no Financial Services Authority Regulation (POJK) that specifically regulates Sharia Security Crowdfunding. However, several ISF platforms have officially obtained permission from the OJK, such as Santara, Bizhare, Crowdana, and SHAFIQ. These platforms operate in accordance with sharia principles and are supervised by a Sharia Supervisory Board to ensure compliance with Islamic law
- Protection of the soul (Al-Nafs), in which peace of mind is guaranteed by maintaining peace of mind, which contributes to a more blessed and noble life, can be achieved through various means, including the practice of muamalah which is in accordance with sharia law. Sharia fintech has implemented procedures established by the MUI National Sharia Council (DSN), specifically through the MUI DSN Fatwa No: 177/DSN-MUI/II/2018, which ensures that the products and services offered comply with sharia principles, thereby helping to maintain the faith of its users. Even though there is no special POJK that explicitly regulates ISC, the permits given to these platforms show that there is a regulatory framework that allows their operations to comply with sharia requirements. By implementing contracts that comply with sharia, the souls of sharia fintech users are maintained and feel calm because they operate in accordance with sharia principles. This includes the obligation for financing recipients to use capital wisely and manage the business in accordance with Islamic values, including avoiding usury, maysir and gharar in their operations.
- Maintaining intelligence (Al-Aql) is an important aspect in sharia securities crowdfunding, which has been regulated by law to ensure compliance with sharia. The importance of keeping intelligence directly related to knowledge, forces Muslims to study modern transactions from the perspective of sharia, law, and risk

management This creates an environment where ISF users are transparently informed about the details of the products on offer, enabling donors and fund recipients to make fair and informed joint decisions. Organizers must carefully evaluate financing requests based on transaction evidence and relevant information to ensure fairness and intelligence in each transaction.

- d. In maintaining wealth (Al-Maal), Islam requires income to be free from usury, maysir and gharar, with the aim of fintech to support prosperity while avoiding damage, both in this world and in the afterlife. ISF has criteria that do not involve usury, fraud, or negative impacts, guaranteeing the security and halalness of assets. This is reflected in every product offered and the legitimate and profitable allocation of funds. ISF can also be operated according to sharia principles, as permitted by Financial Services Authority Regulation (POJK) Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services, and its amendments in POJK Number 16/POJK.04 /2021, which is a revision of the previous POJK. TPOJK Number 57. Securities or securities issued through sharia SCF must comply with sharia principles that have been determined by the National Sharia Council's fatwa regarding these securities. Thus, sharia SCF can be interpreted as a method of offering securities by issuers through an information technology-based crowdfunding platform, directly to investors through an open electronic system, all operations of which are based on sharia principles.
- e. Protecting descendants (Al-Nasl) emphasizes the importance of transactions that comply with sharia to ensure the halal wealth obtained for the benefit of the family, including children, with halal products providing positive benefits for the family and the next generation. As in sharia contracts, the contract between the company and the manager is determined as an ijarah (rental) contract, wakalah bil istitsmar (representative for investment) contract, or mudharabah (investment contract) contract.

In the context of Maqashid Syariah, good cooperation between investors, organizers and business people is very necessary to avoid friction or conflict between parties. This is an implementation of maqashid sharia which aims to protect religion, soul, mind, wealth and offspring. One of the indicators can be seen in the ISF mechanism, where the organizer is required to carry out an analysis or screening in advance of the suitability of the publisher and the type of business project that is the basis for the publication, both in terms of law and conformity with sharia principles, through collecting various valuable documents as information. This analysis process certainly requires logical and realistic thinking based on the data received. In addition, to avoid conflicts and misunderstandings between parties, organizers need to convey information related to securities at fair prices as a reference for sellers and buyers

CONCLUSION

Until now there are no regulations governing Islamic security crowdfunding-based share investment, however you can refer to the DSN MUI Fatwa Number 140/DSN-MUI/VIII/2021 concerning Sharia Securities Offerings through Information Technology-Based Crowdfunding Services with Sharia Principles. From the research results, it can be

stated that from the implementation mechanism, there are contracts that are used and prohibitions that should not be implemented because they conflict with sharia principles for users of crowdfunding services, be they organizers, financiers, or publishers. This is in accordance with the explanations and views of classical and contemporary fiqh scholars, therefore the application of Maqashis sharia is very important. Islamic Securities Crowdfunding (ISF), although it has great potential, must continue to operate within the framework of Islamic law to achieve the objectives of maqashid sharia, which include five main benefits (al-kulliyah al-khamsah): protecting religion (hifdz al-din), protecting the soul (hifdz al-nafs), maintaining the mind (hifdz al-'aql), caring for offspring (hifdz al-nasl), and protecting wealth (hifdz al-mal). The application of these values is reflected in the I-SCF mechanism and the fatwa that regulates it, namely DSN-MUI Fatwa No: 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services with Sharia Principles and DSN-MUI Fatwa No: 140/DSN -MUI/VIII/2021 concerning Sharia Securities Offerings through Information Technology-Based Crowdfunding Services with Islamic Principles. The findings from this research are important for the development and utilization of ISF potential in Indonesia, showing that practically ISF provides maximum benefits for society without abandoning compliance with Islamic law.

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