

Legal Review of Donation-Based Crowdfunding System Arrangements in Indonesia

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Abstracts

This article aims to find out how the legal review of the regulation of the donation-based crowdfunding system in Indonesia and find out how the legal responsibility of online fundraisers to the donation-based crowdfunding system in Indonesia. This research uses normative methods with case approach and comparative approach. Data sources are obtained from primary and secondary data, primary data consists of laws and regulations, and official records. Dor secondary i.e., books, journals, and other relevant sources. The results obtained from this study are that Indonesia already has regulatory instruments for donation collection activities, but has not fully guaranteed legal protection for donors considering that there are still unclear rules regarding the form and mechanism of enforcement against alleged misuse of donation funds. In addition, legal responsibility for the online donation-based crowdfunding system according to positive law in Indonesia has been in the form of accountability arrangements for platform operators, or fundraising in the form of annual financial statements by foundations to be audited by public accountants.

Keywords

Arrangement; Liability; Crowdfunding system

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INTRODUCTION

The development of technology gave rise to the diversity of digital media in this internet era. Various media converge can be used for various purposes, one of which is for fundraising or crowdfunding activities. Media convergence allows for the rapid participation of large audiences in crowdfunding activities without geographical distance constraints. Effectiveness and efficiency in participating are very necessary, especially when faced with the Covid-19 pandemic that has hit Indonesia today demanding the government to focus more on fulfilling the right to health, as well as the right to a better life as a form of fulfilling the human rights of its citizens. In man, the right of the state is the carrying out of obligations. State obligations take three forms: respect, protect and fulfill.¹

One of the things that are present in today's era is online fundraising, which is online funding which is usually used for entrepreneurs who are looking for external funding. Funding activities involving this website can be called crowdfunding. The term crowdfunding is a derivative of crowdsourcing or in Indonesian means crowdfunding. Judging from the existence of the rule of law in Indonesia, no regulation specifically regulates crowdfunding activities so the potential for disputes cannot be anticipated properly. Now, crowdfunding is mostly done by entrepreneurs in the creative economy to raise funds.²

The Financial Services Authority (OJK) has so far grouped crowdfunding into 4 (four) types, namely equity-based crowdfunding (crowdfunding based on capital/share ownership), lending-based crowdfunding (crowdfunding based on credit/debit receivables), reward-based crowdfunding, and donation-based crowdfunding (which is donation-based).³ In this discussion, we will focus on the donation-based crowdfunding system.

Disbursement of funds in Indonesia itself is generally driven by charitable organizations or NGOs (Non-Governmental Organizations). The method used is a traditional method, for example by raising funds directly face-to-face. But now it is driven by the technique of donation-based crowdfunding, which is online fundraising, be it a website or application-based. Several institutions in Indonesia have used donation-based crowdfunding techniques, such as Kita bisa.com, baik.com seeds, and we care. id. and the ACT Foundation (*Aksi Cepat Tanggap*).⁴

¹ Waode Mustika, Nova Septiani Tomayahu, and Mellisa Towadi, "The State's Responsibility in Fulfilling Human Rights during the COVID-19 Pandemic" (2nd International Conference on Law and Human Rights 2021 (ICLHR 2021), Atlantis Press, 2021), 113, <https://doi.org/10.2991/assehr.k.211112.014>.

² Safira Hasna and Irwansyah, "Pengaruh Inovasi Crowdfunding Terhadap Keputusan Berdonasi," *Digital Zone: Jurnal Teknologi Informasi Dan Komunikasi* 10, no. 2 (November 1, 2019): 146, <https://doi.org/10.31849/digitalzone.v10i2.2719>.

³ Iswi Hariyani and Cita Yustisia Serfiyani, "Perlindungan Hukum Sistem Donation Based Crowdfunding Pada Pendanaan Industri Kreatif Di Indonesia (The Legal Protection Of The Donation-Based Crowdfunding System On The Creative Indusry In Indonesia)," *Jurnal Legislasi Indonesia* 12, no. 4 (2018): 4.

⁴ Wahyu Nurhadi and Irwansyah Irwansyah, "Crowdfunding Sebagai Konstruksi Sosial Teknologi Dan Media Baru," *Jurnal Komunikasi Dan Kajian Media* 2, no. 2 (November 1, 2018): 2, <https://doi.org/10.31002/jkkm.v2i2.769>.

Indonesia itself already has regulatory instruments for donation collection activities, namely Law Number 9 of 1961 concerning the Collection of Money or Goods (Law No. 9 of 1961), and Government Regulation Number 29 of 1980 concerning the Implementation of Donation Collection (Law No. 29 of 1980). Especially for online donation collection activities, it must comply with the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 11 of 2015 concerning Standard Operating Procedures for Free Lottery Permit Services with Prizes and Collection of Money or Goods with an Online System, as amended by Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 22 of 2015. To protect donors, online donation collection activities must also be subject to the provisions in Law Number 8 of 1999 concerning Consumer Protection. However, in reality, the existence of regulations as mentioned above has not been able to fully guarantee legal responsibility for online fundraising for the donation-based crowdfunding system considering that there are still unclear rules regarding the form of business entities or the legality of establishing institutions/organizations to be able to operate legally. It is necessary to first ascertain the legality of the establishment of the organization that carries out the online-based collection of donations.

Some platforms are established in the form of legal entities of the Foundation, so their establishment is subject to Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004 (Law No. 28 of 2004), but seen in Government Regulation Number 29 of 1980 concerning the Implementation of Donation Collection (PP No. 29 of 1980) article 3 paragraph (1) states that "the effort to collect donations is carried out by organizations and voluntarily without direct and indirect coercion". Law No. 9 of 1961 and PP No. 29 of 1980 in this case do not explicitly mention the form of business entities or organizations that are allowed to carry out money donation collection activities.

The above proves the need for a progressive legal presence, because the presence of progressive law is not something coincidental, not something born without cause, nor is it something that falls from the sky. Progressive law is part of a process of searching for the truth that does not stop. Progressive law, which can be viewed as a concept that is seeking identity, departs from the empirical reality of legal work in society, in the form of dissatisfaction and concern for the performance and quality of law enforcement.⁵

In addition to the legality of the business of crowdfunding site managers who carry out community fundraising as mentioned above, various things must be considered, namely the amount of the levy that can be used by fundraising organizers for development costs and the form of responsibility for fundraising organizers.

Based on a search of online donation websites, it is stated that these platforms are supported by a Limited Liability Company for technology development. Regarding the collection of online-based donation fees, foundations, organizations, or limited liability companies (parties organizing fundraisers) are only allowed to collect 5%-10% of the funds obtained for technology development.⁶

The reality is that in the field some fundraising organizers take more levies than they should, such as the case of the ACT (Rapid Response Action) which led to their recognition,

⁵ Faisal, *Menerobos Positivisme Hukum*, Cet. 1 (Yogyakarta, Indonesia: Rangkang Education, 2010), 99.

⁶ Republic of Indonesia, "Government Regulation Number 29 of 1980 Concerning Implementation of Donation Collection" (1980).

they used 13.5% of the funds for company operations and other purposes. In addition, they also do not provide transparency reports and publications for the public to know, which is contrary to article 23 of the Minister of Social Affairs Regulation Number 8 of 2021 concerning the Implementation of Collection or Goods (Permensos No. 8 of 2021) which states that "The public can supervise the implementation of PUB by the provisions of laws and regulations." As well as article 26 paragraph 2 letter b of the Permensos No. 8 of 2021 states that collections above IDR 500,000,000.00 (five hundred million rupiahs) must be reported through the audit documents of the public accountant to the supervisor. In this case,⁷ it includes the public if it refers to article 23 of the Permensos No. 8 of 2021.⁸ Based on the things above, it can be seen that there is a difference between implementation and existing concepts. Thus, the author is interested in raising a study on the Legal review of the regulation of the donation-based crowdfunding system in Indonesia.

There is good implementation of DBC system from several other countries which can be used as a comparison, In Italy, under general private law, platforms might be held liable for omitted information or control depending on whether they act as hosting provider or content provider. In the first case, they play a rather neutral role: in fact, as soon as the platform carries out some controls on the projects prior to the publication, even in the presence of exemption and indemnity clauses regarding the platform's liability, the platform may be subject to redress claims by damaged backers. The second case, instead, implies an active role with regard to the organization and the processing of the information received by the project owner and so the liability of the platform would be more stringent.⁹ This is very good, because the regulations implemented by the Italian state in DBC itself, not only allow Crowdfunding organizing institutions to provide transparency, but also involve responsibility for compensation for every person or donor who experiences losses, this should be an example for Indonesia to be implemented, in addition to providing responsibility for collection, a Crowdfunding Institution must be charged compensation, if it is involved in a fraud case such as that carried out by the Italian state.

The author presents some points of novelty in this article by comparing several points from articles that discuss similar topics. First, an article written by Jeremias Palito et al., entitled "*Pertanggungjawaban Hukum Platform Donation-Based Crowdfunding Berbasis Sistem Elektronik Terhadap Para Pihak yang Terlibat di Indonesia*", was published in KADARKUM: Journal of Community Service, Vol. 2 No. 1, 2021.¹⁰ This article emphasizes more on finding

⁷ Juli Hantoro, "Ini Fakta Perjalanan Kasus ACT Hingga Petinggi Jadi Tersangka," Tempo, July 26, 2022, <https://nasional.tempo.co/read/1615828/ini-fakta-perjalanan-kasus-act-hingga-petinggi-jadi-tersangka>.

⁸ Republic of Indonesia, "Regulation of the Minister of Social Affairs Number 8 of 2021 Concerning the Implementation of Collection or Goods" (2021).

⁹ Eugenia Macchiavello and Chiara Valenti, "Beyond the ECSPR and Financial-Return: The Regulation of Donation and Reward-Based Crowdfunding in the EU," *SSRN Electronic Journal*, 2022, <https://doi.org/10.2139/ssrn.4169286>.

¹⁰ Jeremias Palito, Enni Soerjati Priowirjanto, and Tasya Safiranita Ramli, "Pertanggungjawaban Hukum Platform Donation-Based Crowdfunding Berbasis Sistem Elektronik Terhadap Para Pihak Yang Terlibat di Indonesia," *KADARKUM: Jurnal Pengabdian Kepada Masyarakat* 2, no. 1 (June 3, 2021): 28–38, <https://doi.org/10.26623/kdrkm.v2i1.3223>.

what responsibilities Crowdfunding-based platforms have. In this article, Jeremias Palito et al. compare more specifically the management of each platform and do not highlight the discussion of laws in it. Second, an article written by Tara Aziza Adelia, entitled "*Aspek Perlindungan Hukum Pendanaan Donatur dan Penerima Donasi Melalui Platform Donation Based Crowdfunding (Studi Empiris di PT Kita Bisa Indonesia)*", was published in *Jurnal Privat Law*, Vol. 11, No. 1, 2023.¹¹ In this study, Tara Aziza Adelia dissects important aspects of regulatory instruments regarding Indonesia's online collection system of money and goods. Some of the rules presented were not discussed specifically, and minimal solutions were offered to minimize fraud on Crowdfunding-based Donation Platforms.

From the two articles above, the novelty brought by this article is by presenting a more thorough discussion of the law relating to the Donation-Based Crowdfunding System According to Indonesian Positive Law, and comparing it with the implementation of Crowdfunding systems abroad which is not carried out in the two articles above.

METHOD

In this study, the authors will use the normative type of Law research. As we all know that normative research is research that focuses on the study of legal norms as well as juridical reviews. In this normative legal research, the author uses a statute approach and case approach, this is done by examining all laws and regulations related to the legal issues being handled. Data collection techniques are carried out through literature studies carried out by analyzing legislation, journals, and reading books and other sources that are directly related to existing problems. To analyze the data collected from literature searches, the authors use qualitative juridical analysis.

DISCUSSION AND ANALYSIS

Legal Arrangements Related to Donation-Based Crowdfunding System According to Indonesian Positive Law

Until now, there are several Online Donation Based Crowdfunding arrangements in the Indonesian Legal System. In this section, the author will describe the arrangements for fund-raising activities, both direct/general fundraising and online fundraising in Indonesia. Some of the regulations that must be considered include: (1) Law Number 9 of 1961 concerning the Collection of Money or Goods; (2) Government Regulation Number 29 of 1980 concerning the Implementation of Donation Collection; (3) and Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 11 of 2015 concerning Standard Operating Procedures for Free Lottery Permits with Prizes and Collection of Money or Goods with an online system.

Law Number 9 of 1961 concerning the Collection of Money or Goods

This law is the main rule of a general nature regarding the activity of collecting money

¹¹ Tara Aziza Adelia, "*Aspek Perlindungan Hukum Pendanaan Donatur Dan Penerima Donasi Melalui Platform Donation Based Crowdfunding (Studi Empiris Di PT Kita Bisa Indonesia)*," *Jurnal Privat Law* 11, no. 1 (July 19, 2023): 153–60, <https://doi.org/10.20961/privat.v11i1.45528>.

or goods. The scope of this rule is for fundraising activities by conventional methods, without involving Internet technologies. According to Article 2 of Law No. 9 of 1991, the legality of organizing the collection of donations must be based on the existence of permission from authorized officials, except for activities to collect money or goods required by religious law, customary law and customs, or those organized in, a limited environment.

According to Article 4 paragraph (1) of this Law regarding the granting of permits, officials who are authorized to grant permits for the collection of money or goods are the Minister of Social Affairs for the scope of foreign affairs to the entire territory of the country, the Governor for the scope of the entire province, and the Regent/Mayor for the scope of the entire district/city area. Article 8 paragraph (1) of this law threatens criminal sanctions for implementers of unlicensed money or goods collection activities, with imprisonment for a period of 3 (three) months or a fine of up to Rp. 10.000. (ten thousand rupiah).¹²

Behind the very high concern and enthusiasm of the community in helping others, there is still joint homework that must be completed by stakeholders related to money and goods collection activities, namely the revision of Law Number 9 of 1961 concerning the Collection of Money or Goods which increasingly feels incompatible with the development and needs of the times, according to the author, Law Number 9 of 1961 concerning the Collection of Money or Goods must be revised because is no longer relevant to the current situation, this follows a case of misappropriation of funds by the Philanthropy of *Aksi Cepat Tanggap* (ACT) institution, this is momentum to, revise Law Number 9 of 1961. Revisions to this arrangement are necessary because they have a different nature and atmosphere to the current conditions.

According to the author, the sanctions regulated in Law No. 9 of 1961 are too light so they are irrelevant to current conditions. The issuance of a new law must have been preceded by a need, especially since 1961 has been too long and now it is 2023 meaning that new regulations are urgently needed as a complement to fill the shortcomings by following the pattern of symptoms that exist in society as the time's change. In the current era, the Law on the Collection of Money or Goods promulgated in 1961 must be reviewed because of existing and various donation collection institutions, such as the Indonesian Red Cross, the National Amil Zakat Agency, and others that were previously unborn and now exist, Similarly, the conditions and procedures for the formation of its institutions considering that in fund-raising activities, especially those from the community, there needs to be strict management because The responsibility is public accountability, therefore, the Law on the Collection of Money or Goods must be aligned with current conditions, if the revision to Law No. 9 of 1961 is implemented, the issue of licensing needs to be emphasized.

Licensing remains necessary because the presence of the country is not to hinder but at least to monitor the direction of the use of the collection of funds in question. Do not let the funds be used for negative things, money, and goods collection activities at least with the knowledge or permission of the regional leadership. According to the author, this does not mean intervention but a form of openness and accountability that the state is present so that if there is a problem, it can be addressed or supervised so as not to deviate from the purpose of using the funds concerned.

¹² Republic of Indonesia, "Law Number 9 of 1961 Concerning Collection of Money or Goods" (1961).

Government Regulation Number 29 of 1980 concerning the Implementation of Donation Collection

This regulation is an implementing regulation of Law No. 9 of 1961. According to Article 1 number 3 of this PP, the collection of donations is an effort to get money or goods for development in the fields of social welfare, mental/religious / spirituality, physical affairs, education, and cultural fields. According to Article 6 of this PP, the implementer of donation collection activities is allowed to deduct the proceeds of donation income as much as 10% (ten percent) of the proceeds from the collection of donations concerned. The author argues that the rule justifies the collection of fees, so it is quite possible to make a profit from fund-raising activities.

This Government Regulation regulates, a Decree relating to a donation collection permit that is determined for a maximum period of 3 (three) months and can be extended 1 (one) time for a maximum period of one (one) month. To protect donors and to achieve order, donation collection activities should be monitored. According to Article 13 of this PP, supervision of granting permits is the responsibility of the Minister. Article 14 paragraphs (1) and (2) give an obligation to the permit holder/organizer of the collection of donations, to account for the use of donations collected to the approver. The permitting officer shall make periodic reports to the Minister.

In the event of an action that gives rise to potential deviations, according to Article 18, efforts will be made to regulate with preventive and repressive measures. And according to Article 20, duties in the field of supervision are carried out by employees of the Ministry of Social Affairs. Irregularities in the use of funds that meet the elements of a criminal offense will be further processed by the Investigator.

According to the author of PP No. 29 of 1980, it is no longer compatible because so far the regulation does not have a clause that states that it must provide budget transparency to the public, especially since this transparency clause is important so that the public can know how charitable institutions such as the ACT, Kitabisa, Yappika, and others carry out audits conducted by public accountants on fund management and parties who cooperate with the institution in this regard that transparency needs to be carried out by charities related to the distribution of funds collected.

The audit report is one of the proofs that the charity is carrying out transparency, such as the purpose of using funds for the relief of victims of natural disasters in an area. In addition, charities must also include proof of symbolic handover of assistance both online and offline assistance to local governments or community representatives. The government must also make efforts to revise this regulatory arrangement because it only prioritizes regulatory aspects, or has not reached aspects, such as the target of disbursement of funds collected, the revision of PP No. 29 of 1980 also needs to be directed at the transparency aspect of the distribution target of public funds that have been collected by charitable institutions because the current regulations are many public fund collection institutions in the name of humanity.

Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 11 of 2015 concerning Standard Operating Procedures for Free Lottery Permits with Prizes and Collection of Money or Goods with an online system

This regulation is a complementary regulation to the pre-existing regulations that

specifically regulate the activities of Collecting Money or Goods with an online system and regulate the implementation of licensing in an administrative, coaching, and supervisory manner. Based on Article 19 of the Permensos No. 8 of 2021, guidance, and supervision are carried out by the Central Government, Provincial Governments, and District/City Governments to ensure that the activities carried out are by the permits granted and to prevent irregularities. The government must also conduct monitoring to find out any irregularities. In addition to the active role of the government, community participation is needed in the context of monitoring donation collection activities.

As a form of transparency and accountability, each organizer must submit a report on the results of the collection of funds, provided that the PUB organizer submits a report on the implementation to the Minister of Social Affairs through echelon II officials in charge of PUB implementation affairs by uploading: (1) details and amount of collection results; (2) details of aid distribution; (3) Statement of absolute responsibility; (4) Audit Results of public accountants for collection above Rp.500.000.000,00 (five hundred million rupiahs); and (5) documentation of the implementation of the distribution.

The above provisions govern the principles and technicalities of online donation collection activities. Fundraising activities from the community cannot be viewed as just an activity that is in the realm of private law alone. Government participation is needed in terms of supervision

Based on the research conducted on the rules and regulations described above, the author observes, some things need to be considered in connection with the arrangement for collecting donations online, including:

- 1) Regarding the legality of institutions/organizations that carry out online donation collection activities.
- 2) Regarding the enforcement process in the event of irregularities in donation collection activities.

According to the author's observations, based on the above rules, further actions after provincial governments and district/city governments make complaints to the Central Government, have not been explicitly regulated so this is contrary to the concept of legal certainty theory as well as to legal protection theory.

If refers to the above theory regarding the absence of explicit rules for further action after provincial governments and district/city local governments make complaints to the Central Government, not fulfilling the concept of legal protection for preventive and repressive government actions as a necessity of the nature of the law which should be predictive and anticipatory. This is because according to the author, there is a vagueness of existing rules and policies, in fact, contrary to the provision that the existing rules should aim to prevent disputes from occurring, which directs the government's actions to be careful in the formulation of rules and decision-making based on discretion, as well as resolving disputes, including handling them in the government to the judiciary.

Based on the description of the findings above, the author concludes that there have been legal arrangements related to the donation-based crowdfunding system according to Indonesia's positive law. In the form of Law No. 9 of 1961 and PP No. 29 of 1980 and Permensos No. 11 of 2015.

The two basic regulations above only regulate the bureaucratic and licensing system, there are no rules regarding accountability and sanctions in case of fraud or misappropriation and misuse of funds. It is seen that the shortcomings in the above legal instruments are not in line with the concept of protection and legal certainty. So, to realize justice and legal certainty. The author argues that it is very necessary to make clearer arrangements and detail and strengthen sanctions through the revision of the Law in legal arrangements related to the donation-based crowdfunding system according to Indonesia's positive law.¹³

In addition, according to the author's observation of the PP No. 11 of 2015, related to Guidance and Supervision, the author considers that the Government is ignorant in the case of *Aksi Cepat Tanggap* (ACT), where this organization always gets reasonable without exceptions or WTP, this is contrary to the existing case, based on the above the author concludes that WTP does not mean that it is free of KKN. WTP opinion is given to show the fairness of financial report information, not specifically to state that the entity receiving a WTP opinion is free from corruption. If an entity receives a WTP opinion, it is likely that the entity's financial governance is generally good.

One theory that is quite popular is the Gone Theory, which states that there are four main factors that cause corruption, namely:

- 1) Greeds (greed), related to individual behavior and character
- 2) Opportunities (opportunities), related to the state of agencies, systems and situations that give rise to opportunities or chances for someone to easily commit fraud;
- 3) Needs, related to factors needed by individuals to support life;
- 4) Exposures, related to the actions or consequences faced by perpetrators of fraud if they are found to have committed fraud.

From this theory it can be seen that Greeds and Needs cannot be reached by WTP, so corruption can still occur.

The Indonesian Constitution has stipulated that Indonesia is a country The law is stated in the constitution Article 1 paragraph (3) of the Law of the Republic of Indonesia of 1945. As a country of law, in Indonesia Law has a very basic role in the life of the nation and the State This means that the law must display its role as a central point in the entire life of individual people as well as the life of the nation and state.¹⁴

Now that Indonesia has entered an era of reform in all fields including the field of law, the empowerment of the legal field is an absolute thing. because from what we already know together the constitution has clearly outlined that Indonesia is a country of law, not a country based solely on power. So, it is appropriate that the current reforms are directed

¹³ Azhar Bagas Ramadhan, "BNPT Usul Revisi UU Pengumpulan Uang demi Cegah Penyelewengan ke Teroris," detiknews, July 8, 2022, <https://news.detik.com/berita/d-6168946/bnpt-usul-revisi-uu-pengumpulan-uang-demi-cegah-penyelewengan-ke-teroris>.

¹⁴ Ahmad Ahmad and Novendri M. Nggilu, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution," *Jurnal Konstitusi* 16, no. 4 (January 28, 2020): 785, <https://doi.org/10.31078/jk1646>.

towards legal reform i.e., seeing and adding and subtracting anything less and more in the body of the law itself.¹⁵

Legal Responsibility of Online Fundraising for Donation-Based Crowdfunding System According to Indonesia's Positive Law Sub-heading of the discussion

All sources of funds derived from public funds must be transparent in their management and accountability. Moreover, the funds come from almsgiving. The responsibility of the fund is a responsibility to Allah SWT, and also a responsibility to the community that provides the funds, The concept of real responsibility does not only concern the law but also concerns the question of moral values or general decency adopted by a society or groups in society, this is done so that the accountability is addressed by fulfilling justice.¹⁶

According to the author, fundraising conducted online against the donation-based crowdfunding system that is widely carried out by fundraising platform organizers in Indonesia forms a legal entity, namely a foundation in raising funds that are socially oriented. Provisions regarding foundations are regulated in Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations.

Article 1 number 1 states that: " A foundation is a legal entity consisting of segregated wealth and intended to achieve certain goals in the social, religious, and humanitarian spheres, which have no members. The Foundation shall submit its annual report which is regulated in articles 48 to 52, in article 48 states that "*Article 48 (1) The Management shall make and keep records or writings containing information about rights and obligations and other matters relating to the business activities of the Foundation. (2) In addition to the obligations as referred to in paragraph (1) the Management shall create and maintain financial documents of the Foundation in the form of bookkeeping evidence and supporting data for financial administration.*"¹⁷ So that all financial transactions carried out by the foundation management are required to make books and keep all evidence in carrying out the Foundation's business activities.

Article 49 explains that (1) within a period of no later than 5 (five) months from the date the Foundation's financial year closes, the Board shall prepare an annual report in writing containing at least: a. a report on the state and activities of the Foundation during the past financial year and the results achieved; b. financial statements consisting of statements of financial position at the end of the period, statements of activity, statements of cash flows, and notes of financial statements. (2) If the Foundation enters into a transaction with another party that gives rise to rights and obligations for the Foundation, the transaction shall be included in the annual report.

Article 50 explains that paragraphs 1 and 3 explain that the annual report is signed by the management and supervisors by the provisions of the articles of association, and ratified by the meeting of trustees. And if the annual report is untrue, or misleading, then the administrators and supervisors are responsibly responsible for the aggrieved party, this

¹⁵ Zamroni Abdussamad, "Kebijakan Hukum Menuju Sistem Hukum Nasional (Suatu Kajian Terhadap Undang-Undang Nomor 11/PNPS/1963 Tentang Pemberantasan Kegiatan Politik Dalam Reformasi Hukum Dewasa Ini)," *Jurnal Inovasi* 7, no. 3 (2010): 5.

¹⁶ Hanafi Amrani, *Sistem Pertanggungjawaban Pidana* (Jakarta: RajaGrafindo Persada, 2015), 16.

¹⁷ Republic of Indonesia, "Law Number 28 of 2004 Concerning Amendments to Law Number 16 of 2001 Concerning Foundations" (1961).

is regulated in article 51. The foundation's annual report should be posted on the notice board at the foundation's office, to provide financial transparency that can be seen by the public, and if a foundation is in this case. obtaining assistance from the state or other parties in the amount of \geq Rp 500 million in one financial year, or having a wealth outside the waqf property of \geq Rp20 billion. An overview of the foundation's financial statements must be announced in the Indonesian-language daily newspaper. The financial statements must also be audited by a public accountant, and for the results of the audit to be submitted to the foundation trustees and their copy to the Minister of Law and Human Rights and related agencies, some of these things are regulated in article 52 of the Foundation Law.¹⁸

If it is related to the theory of legal liability by Sugeng Istanto which states that liability means the obligation to provide answers which is a calculation of all things that occur and the obligation to provide recovery for losses that may be caused,¹⁹ if it is attributed to the subject of existing law, a form of criminal liability by the agency with corporate actions in the form of expropriation by the state of all assets of the ACT foundation including money that flowing to administrators and family members and redistributing to credible humanitarian agencies transparently to people in need, according to the author, the above provisions are a form of accountability of the foundation to the public in carrying out social activities. This refers to the provisions for fundraising carried out by the organizers and campaigners in the form of a foundation legal entity, which must submit an annual report as a form of calculation which is regulated in Law No.28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations.

There are several related provisions regarding the legal liability of online fundraising to the donation-based crowdfunding system in Indonesia's positive law as follows:

- 1) Law No. 9 of 1961
- 2) PP No. 29 of 1980
- 3) Permensos No. 11 of 2015

The provisions of the articles above, regulate the principles and technicalities of online donation collection activities. Fundraising activities from the community cannot be viewed as just an activity that is in the realm of private law alone. The government's participation is needed in terms of the necessary supervision because the law enforcement process in Indonesia seems to be facing obstacles related to the development of society that occurs. Various cases illustrate the difficulty of law enforcement finding ways to make the law appear to be in line with societal norms.

Several cases have come to the fore because they are a type of crime with a new technique and modus operandi. The condition of Indonesian society and the applicable criminal law have led to the emergence of ambiguous attitudes. This attitude is an attitude that can be taken so that the two interests can be protected without having to leave each other. Pitro's view is that a statute as a whole contains hundreds of thousands of sentences. The meaning and thoughts behind the sentence aim to meet needs that often contradict

¹⁸ Article 52, Ibid.

¹⁹ Sugeng F. Istanto, *Hukum Internasional*, Ed.1, cet.2 (Yogyakarta: Andi Offset., 1998), 41.

each other. Often an outdated law still has to be applied to a new, completely different situation.²⁰

According to the author, the legal responsibility of online fundraising to the donation-based crowdfunding system according to Indonesian positive law is a form of the consequence of the collection of funds from each individual carried out online by the platform organizers entrusted to the organizers to distribute the donations. So that there is a need for rules regarding criminal sanctions or administrative sanctions given to platform organizers, fundraisers (Campaigners), or donors in the event of misuse of donations, and this case, the platform organizers must be carried out in a Participatory, Transparent, and Accountable manner. For this reason, the platform organizers are required to submit their financial statements periodically to be audited by public accountants, these reports can be easily known by each individual who donates.

The transparency of financial statements must be conveyed to the public through the website, and the link containing the results of the report must be easily accessible to the public. Legal protection for donors / prospective donors can be fulfilled with the support of cooperation and community participation in terms of supervision, according to Lili Rasjidi and I.B Wisa Putra argues that the law can be used to realize protection that is not only adaptive and flexible but also predictive and anticipatory.²¹ Sunaryati Hartono said that the law is needed for those who are weak and not yet strong socially, economically, and politically to obtain social justice.²²

Gustav Radbruch said legal certainty is "*Scherkeit des Rechts Selbst*" (legal certainty about the law itself). Four things have a relationship with the meaning of legal certainty, including That the law is positive, which means that the law is legislation (*gesetzliches Recht*), the Law is based on facts (*Tatsachen*), and the Positive law should not be changed frequently.²³

The law is for man, so society expects expediency from the implementation or enforcement of the law. Do not let it happen, in the implementation or enforcement of this law, unrest arises in the community. In addition, the community is also interested in the implementation or enforcement of the law and pays attention to the values of justice. However, it must be remembered that law is not synonymous with justice because the law is general, binding on everyone, and is symbolic or does not discriminate against the circumstances, status, or deeds done by humans. For the law, for every crime by the litigants, then a criminal/punishment is imposed by what is stated in the article in the law so that justice according to the law is not necessarily the same as moral justice or community justice.²⁴

²⁰ Indra Feri Dalimunthe, Fenty U. Puluhalawa, and Fence M. Wantu, "Desain Penuntutan Hukum Pidana Dalam Sistem Peradilan Pidana Di Masa Yang Akan Datang," *Philosophia Law Review* 1, no. 1 (May 31, 2021): 2, <https://doi.org/10.56591/pilar.v1i1.10536>.

²¹ Lili Rasjidi and I. B. Wyasa Putra, *Hukum Sebagai Suatu Sistem*, Cet.2 (Bandung: Mandar Maju, 2003), 118.

²² Sunaryati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, Cet. 1 (Bandung: Alumni, 1991), 55.

²³ Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, vol. 1 (Jakarta: Kencana, 2010), 288.

²⁴ Sutrisno Sutrisno, Fenty Puluhalawa, and Lusiana Margareth Tijow, "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi," *Gorontalo Law Review* 3, no. 2 (2020): 168.

Based on the existing regulatory provisions, according to the author, there are already rules that regulate the principles and technicalities of online donation collection activities but do not detail the form of liability and sanctions in the misuse of online donation funds against the donation-based crowdfunding system. In addition, the public can also make complaints and then follow up by law enforcement. Misuse of donation funds can be categorized as a criminal offense (embezzlement of funds) according to Article 372 of the Criminal Code, and the perpetrators can be processed by the applicable criminal procedure law. In addition, the party organizing the fundraiser can also be subject to administrative sanctions if misappropriation is found, as happened in the case of the ACT which was sanctioned to revoke the Foundation's License.

In the regulation that has been discussed, the minor point that can be seen is there is no structure or form of regulation regarding the establishment of an ideal DBC Institution. The Law itself still does not provide maximum responsibility to the DBC Institution. This can be manifested in a legal vacuum regarding the misuse of money from donations. In the *ius constituendum*, the author hopes that the DBC Institute can be sued to be able to exchange misused donations because license revocation alone is not enough. And the state has the right to be an extension to channel funds seized from irresponsible DBC Institutions to be channeled toward similar activities.

In France, donation platforms must be authorized as IFP and are subject to several requirements, especially in terms of disclosure. In particular, the platform must act in a honest, fair, transparent and professional way, taking into account clients' rights and interests, and assume the organizational and conduct measures adequate to the type of the conducted activity (L548-6(1)-(3) CMF). In terms of disclosure, it has to make available on its website or in any advertising or correspondence material, some basic information about itself and its activity, including whether it holds a payment service provider license and publish, annually, a report about its activities in the previous year. of users, the eligibility conditions and selection criteria for projects and project owners.²⁵ Furthermore, before the conclusion the contract, the platform must disclose its remuneration and all the required fees, the conditions for the release of funds and their availability. Nonetheless, as anticipated the platform is also the instrument identified as the best one to channel the most important information from fundraisers to donors: for every campaign, it must ensure that the project is predetermined in terms of amount requested, financial projections, use of the funds, expected results and workplan as well as selection criteria used and resulting assessment of the project. The platform has to provide the contract template (in line with the legal model) and also request clients (both donors and donees) to provide identification information and to accept the general conditions of service. The law is silent anyway about the possible liability in case of frauds or unfaithful information published on the website.

²⁵ Autorité des marchés financiers, "S'informer sur le nouveau cadre applicable au financement participatif (crowdfunding)," AMF, accessed December 13, 2023, <https://www.amf-france.org/fr/actualites-publications/publications/guides/guides-professionnels/sinformer-sur-le-nouveau-cadre-applicable-au-financement-participatif-crowdfunding>.

CONCLUSION

Based on the results of the analysis and discussion that have been presented above, it can be concluded that Indonesia already has regulatory instruments for donation collection activities related to the donation-based crowdfunding system according to Indonesia's positive law, namely Law Number 9 of 1961 concerning Collection of Money or Goods and Government Regulation Number 29 of 1980 concerning the Implementation of Donation Collection. Especially for online donation collection activities are regulated in the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 11 of 2015 concerning PUB and UGB. In addition, based on the author's research referring to the findings of facts and the theory of legal responsibility, there has been a form of collection liability arrangement, namely annual financial statements by the Foundation for audit, but it does not regulate accountability to platform organizers or donors or fundraisers, in case of misuse of donations, which is in this regulation, namely reporting in the case of complaints to the central government. However, even so, if there is a misappropriation of funds, the party organizing the fundraiser may be subject to sanctions related to criminal acts (embezzlement of funds) according to Article 372 of the Criminal Code, and the perpetrators can be processed by the applicable criminal procedure law and may be subject to administrative sanctions for the revocation of the operating license.

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