

Regulatory Evolution: Addressing Challenges and Enhancing Legal Certainty in Indonesian Donation-Based Crowdfunding Services

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Abstract

Donation-based crowdfunding (DBC) has grown in Indonesia, and to ensure sustainability and fairness in DBC services, there is a need for adequate regulation. One approach that can be taken to achieve this is through regulatory evolution. The transformation of regulation in Indonesia's DBC services reflects the ability to adapt to challenges that arise over time. This article discusses the regulatory developments that have been made in response to the dynamics and complexity of DBC services, as well as efforts to improve legal certainty in them. The centre of attention in this regulatory evolution is to respond to the various challenges faced by organizers and participants in the DBC ecosystem. With increased legal certainty, it is hoped that a strong foundation can be built for the growth of crowdfunding services in Indonesia for the welfare of society.

Keywords: Regulation, Donation-Based Crowdfunding, Challenges, Legal Certainty, Indonesia

INTRODUCTION

Legal certainty in donation-based crowdfunding (DBC) services is a crucial aspect of forming a rigorous legal foundation for the implementation of this online-based crowdfunding activity. Legal certainty has a significant role in ensuring that the implementation of DBC services by the fundraising platform is carried out with full integrity, transparency, and compliance with applicable regulations. Stakeholders in this DBC service, including the organizing platform, fundraisers, donors, and beneficiaries, will receive solid legal protection (Noor et al., 2022). The legal foundation of DBC services must ensure that donors, as one of the parties involved, have the right to know how their donated funds are used. Donors can be assured that their donations will not be misused by the DBC platform or the party conducting the crowdfunding.

Theoretically, DBC is a form of fundraising where individuals, projects, or companies receive donations from the public based on philanthropic motivations without expecting financial or material rewards (Zhao & Shneor, 2020). This activity is carried out by various organizations, both foundations and corporate entities, that can manage it professionally. Crowdfunding can be done through the Internet or directly from the public. In Indonesia, DBC services have become an integral part of the community's social life, driven by the religious affiliation of the majority of the population, who are Muslims. The teachings of this religion encourage the practice of charity and donation, along with the culture of "gotong royong" inherent in community life. Donation is the voluntary giving of property by a person (the donor) without expectation of reward or obligation from the recipient (Abdullah, 2016). This unique social and cultural structure makes Indonesia the most valuable country for charities and donations. Based on the World Giving Index 2022 report published by the Charities Aid Foundation (CAF), Indonesia maintained its position as the highest scoring country for the fifth consecutive year with an index of 68 percent. The ranking has remained relatively flat since 2020, at 69 percent. In particular, Indonesia recorded the highest share of funds donated to charity, with a donation rate of 84 percent (Charities Aid Foundation, 2022).

The report is reinforced by the achievements of kitabisa.com, one of the donation-based crowdfunding (DBC) services in Indonesia, which managed to raise donations reaching IDR 1.07 trillion in 2021 (kitabisa.com, 2023). The funds are then used for humanitarian activities, medical and health assistance, natural disaster management,

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and other social activities for crowdfunding. Apart from Kitabisa.com, BenihBaik.com also recorded positive achievements until October 2023 by raising more than IDR 272,000,000,000 for humanitarian activities (benihbaik.com, 2023). This fact reflects that DBC is not just a tool to raise funds but also a mirror of the humanitarian and religious values and the spirit of cooperation inherent in the daily lives of Indonesians. Through active participation in DBC, people can directly contribute to helping others and supporting various charitable initiatives that are in line with their values. Thus, giving and donating have become a culture that is highly accepted and applied in various walks of life.

However, amid the development of DBC as one of the sources of social funding in Indonesian culture, fundraising through the Internet has not provided legal certainty. This is supported by Fauzianti and Amirullah's study, which states that one aspect that shows the weakness of legal certainty is the existence of a legal vacuum related to the obligation to obtain a certificate of reliability in the implementation of DBC (Fauzianti & Amirulloh, 2023). A similar opinion was expressed by Kusumaputra et al., who stated that juridically, there needs to be a regulation that specifically has binding force on the technical implementation of crowdfunding (Retnowati, Ardhiwinda Kusumaputra, Ronny Winarno, 2020). Meanwhile, the Indonesian Consumers Foundation states in its research that many organizers of donation-raising services do not carry out the implementation in a professional, accountable, transparent, and the fulfillment of financial accountability is minimal (Sularsi, 2018). These opinions are in line with what Harina stated, that regulation is needed regarding the collection of technology-based donations, or what is known as crowdfunding (Citra Harina, 2019).

The importance of a rigorous legal basis for DBC is, among others, to ensure that the implementation of DBC is carried out by fulfilling the principles of accountability, transparency, and meeting good financial accountability standards. Indonesia, as a state of law, must ensure that the implementation of DBC has a clear and rigorous legal basis. This is not only to provide legal certainty but also to maintain justice, expediency, and integrity in society. In the face of the fact that Indonesia has become the most generous country in the world, regulations that can provide legal certainty as an implementation of Article 1 Paragraph 3 of the 1945 Constitution must be realized so that donation raising in Indonesia has a rigorous legal basis and to ensure that the funds collected are useful and by the original purpose of raising for the welfare of the Indonesian people.

RESEARCH METHOD

Based on a focused study, this research is a qualitative study that uses primary data in the form of laws and regulations as primary legal materials, supported by legal literature, journals, and related publications as secondary legal materials. The aim is to explore the history, development, and changes in regulations related to donation-based crowdfunding services in Indonesia, as well as to deeply understand the challenges faced and steps taken to improve legal certainty. This research can also be categorized as empirical normative juridical research (Noor, 2023), combining normative analysis of regulations with an empirical approach to the facts or cases of DBC service delivery. The data obtained is analyzed descriptively and qualitatively, following the focus of this research. This approach is expected to provide a comprehensive understanding of the regulatory evolution and dynamics of Indonesian DBC services.

DISCUSSION

Challenges of Donation-Based Crowdfunding in Indonesia

Fundraising through donation-based crowdfunding (DBC) has become a phenomenon that cannot be ignored in Indonesia. The existence of DBC in the country not only reflects the spirit of gotong-royong but also marks the high level of social care in society, in line with the values of Pancasila, which is the foundation of the nation's philosophy. The existence of this internet-based crowdfunding platform shows that the development of information technology has played a key role in giving birth to various financial technology start-ups, including facilitating the practice of DBC in Indonesia (Noor et al., 2023). In the digital era, it is now easier for people to make transactions online, including fundraising. Fundraising using the Internet has become the center of attention because it is considered a potential source of funds that can support various initiatives in the social, community, and religious fields for the welfare of the Indonesian people (Muryani et al., 2023). Thus, DBC is

not only a means of collecting funds but also a concrete manifestation of dynamic changes in society that continue to adapt to the times.

Although the development of donation-based crowdfunding (DBC) promises positive potential, DBC is also faced with several challenges that need to be overcome so that this fundraising activity can make an optimal contribution to the welfare of society in general. These challenges faced by DBC in Indonesia should be taken seriously to form the basis of an in-depth understanding of the dynamics of the development of fundraising practices in Indonesia (Noor et al., 2023). These challenges in donation-based crowdfunding in Indonesia indicate the existence of complex dynamics involving social, economic, legal, and technological factors. Some of the challenges of DBC in Indonesia include:

Legal Uncertainty: The legal certainty in DBC is a crucial foundation for this activity to run transparently, fairly, and safely, maintain integrity, and be by applicable legal norms. Weak and incomprehensible regulations in donation-based crowdfunding create legal uncertainty (Afif Noor, Dwi Wulandari, 2023). This can make it difficult to manage and supervise the platform, as well as increase the risk of misuse of funds and potentially harm the parties involved in the fundraising, including organizers, fundraisers, and donors.

Lack of Public Trust: Public trust is key to the success of using the DBC platform to raise donations. The misuse of donations by the Aksi Cepat Tanggap Foundation as one of the DBC platforms in mid-2022 and the misuse of funds by "Cak Budi" are examples of actions that can reduce public trust in DBC (Hutari Dwi Putri & Sita Devi, 2022; Sastrawanto Ongko, 2021).

Personal data security: in the operation of DBC, fundraisers always provide their identity to the DBC service provider platform. This can lead to security risks or the use of personal data by irresponsible people, given the sensitive data collected from fundraisers and donors. Personal data is a basic right of every citizen that is protected by the state constitution (Noor & Wulandari, 2021). For this reason, incidents of privacy violations that can harm the platform's reputation and reduce public interest in participating in DBC must be anticipated by the platform that organizes DBC services by strengthening the security of its platform system.

Digital education and literacy: digital literacy for all elements of society is needed to support the success of DBC in raising donations. This digital literacy is not only related to providing understanding to the public about the management of funds collected through the DBC platform, security, and positive impacts of making donations but also to providing education to be careful when using the services provided by the DBC platform.

Technological Innovation: Technological development is a challenge for DBC service providers to utilize blockchain technology and artificial intelligence. The information technology can be an opportunity for the DBC platform to carry out transparency and system security in the operation of DBC. Innovative technology utilization will increase operational efficiency, build trust, and expand the reach of fundraising.

In addition to these challenges, increased social awareness and public concern can be utilized to encourage participation in donation activities. For this reason, it is necessary to develop adequate regulations that provide legal certainty to create a fundraising ecosystem that is more organized, transparent, and safe, protects all parties involved, and treats parties involved in DBC services adequately. Thus, it will appear that DBC contributes to the welfare of the community.

Regulatory Evolution to Realize Legal Certainty of Donation-Based Crowdfunding Services in Indonesia

The evolution of regulations in realizing the legal certainty of crowdfunding services in Indonesia reflects the long journey of the information technology-based financial sector that continues to grow in Indonesia. In the era of digital transformation and rapid growth in the financial industry, regulation is crucial to harmonizing market dynamics with consumer protection, system stability, and sustainable growth (Arifin et al., 2023; Noor & Maskur, 2022). Regulations with legal certainty and fairness will create a conducive environment for the operation of DBC services in Indonesia and a solid foundation for maintaining integrity in the management and use of collected funds. Regulations with legal certainty can also ensure that DBC platforms comply with high ethical standards, avoid harmful practices, and conduct activities with high integrity.

To create regulations that provide legal certainty and fairness in DBC services in Indonesia, it is necessary to evolve regulations in line with the development of DBC services and address the various challenges it faces. An established DBC regulation is crucial because regulation is one of the elements in the crowdfunding ecosystem that can ensure safety and fairness for all other stakeholders, such as website providers, backers, founders, and traditional capital markets (Sirisawat et al., 2022). Unstable regulations can prevent creators and supporters from participating in the implementation of DBC services (Noonan, 2021). From the perspective of legal system theory proposed by Lawrence M. Friedman, regulation is a legal substance whose existence is necessary in a legal system (Friedman, 1975; Noor et al., 2021). Thus, DBC regulations are needed to assure legal certainty and justice in the operation of DBC services in Indonesia.

In Indonesia, the practice of DBC reflects the spirit of *gotong-royong* that has permeated the nation's culture and has deep roots in community life. Especially in rural communities, people often come together to help each other in various activities, such as building houses, working in the fields, or organizing traditional events that are integral to the nation's character. This practice of *gotong-royong* plays a role in maintaining social harmony and solidarity. In the early days of Indonesian independence, the spirit of *gotong-royong* was reflected in fundraising by the people of Aceh. They made an extraordinary donation of S\$120,000 Singapore dollars and 20kg of gold to buy an airplane for the Indonesian government's operations in 1948. In this period, as a newly independent nation that did not yet have regulations governing the collection of money or goods, each individual could raise donations according to the needs that became the basis of the donation collection activity. Thus, the collection of money or goods at the beginning of independence did not have legal certainty.

Regulations governing the collection of money or goods were enacted by the government in 1961 through Law No. 9/1961 on the Collection of Money and Goods. This law has the main objective of ensuring public security and tranquility, both through preventive and repressive measures against irresponsible behavior in society, as well as making the collection of money or goods a source of funds that can be used to improve the welfare of the people. This protection effort is applied by regulating that the collection of money or goods can only be carried out by institutions or organizations that have obtained permission from the competent authority, namely the Ministry of Social Affairs. Collections of money or goods that are required by religious law, customary law, or customs or that are organized in a limited environment do not require a permit.

Technically, Law No. 9 of 1961 was only followed up with a government regulation in 1980 through Government Regulation No. 29 of 1980 on the Implementation of Donation Collection. One of the crucial things regulated in the law is the requirement for individuals and organizations that want to conduct fundraising to obtain permission from government authorities according to the scope of the crowdfunding area. Crowdfunding with a national operation requires permission from the central government through the Ministry of Social Affairs. Fundraising with provincial or district coverage requires a license from the government at the appropriate level. In addition to licensing procedures, Government Regulation No. 29 of 1980 regulates the purpose of fundraising and the technical aspects of crowdfunding. However, this regulation does not cover online donation collection. In addition to these provisions, Government Regulation No. 29 of 1980 also states that for fundraising operational activities, only a maximum of 10% of the total donations obtained may be used.

In addition to the two regulations mentioned above, a new regulation on crowdfunding was issued four decades later with the issuance of Minister of Social Affairs Regulation No. 8 of 2021 concerning the Implementation of Collecting Money or Goods. This regulation states that to support social welfare, it is necessary to collect money or goods in an orderly, transparent, and accountable manner. This shows that this Minister of Social Affairs regulation is a technical regulation that functions to explain the collection of money or goods, whose basic norms are regulated in Law No. 9 of 1961, Government Regulation No. 29 of 1980, and Government Regulation No. 42 of 1981.

Regulation of the Minister of Social Affairs No. 8 of 2021, among others, contains the requirement that organizations or individuals conducting fundraising must obtain permission from government authorities, including refusing, delaying, revoking, or canceling the permit of the organizer of the money collection service if the collection of funds is contrary to the public interest, disturbs the community and the use of funds

deviates from its purpose. This regulation also regulates the procedures for collecting money and goods that can be done through organizing performances, bazaars, auctions of goods, selling tickets or invitations to attend and or participate in a performance, marketing charity stamps, distributing lists of charitable activities, installing donation collection boxes in public locations, selling goods, materials, or services at prices that exceed the actual price, soliciting donations to the public through writing or orally, donations through short message service (SMS), rounding up the remaining change from consumer purchases, services performed through online service bank accounts, utilizing digital applications, providing electronic money services, interacting with social media, and other activities related to donation-based fundraising by applicable laws.

Although Minister of Social Affairs Regulation No. 8 of 2021 was issued after the development of information technology, the regulation does not regulate the mechanism of guidance and supervision of donation collection. Ideally, as a technical regulation, the Minister of Social Affairs Regulation should provide explanations and interpretations of regulations that are at a higher hierarchical level, including guidance and supervision mechanisms in the context of donation fundraising. Guidance and supervision of DBC is an action that needs to be taken to ensure that the implementation of DBC services is by the aims and objectives to be achieved by its existence. For this reason, there is a need for regulatory evolution to ensure the protection of DBC service users. One way is to create "smart regulation" (Sergi, 2021). Smart regulation is highly utilized as a regulatory model in activities that involve the roles of the government and the private sector (van Gossum et al., 2010). Some main criteria that are used as a reference in measuring smart regulations include protecting constituents, developing in line with advances in science and technology and global markets, and involving the private sector in its formulation to protect public interests (Noor, 2022). Smart regulations will help DBC develop as funding for public welfare. Some basic norms in the DBC regulations include:

Transparency and Information: Establishes the obligation of the organizer to provide transparent information regarding the purpose of fundraising, use of funds, and associated risks. Demonstrating transparency includes assurances from the DBC service provider to provide accurate and easily accessible information to donors based on information technology that is easily accessible to the public.

Consumer Protection: Provides provisions to protect donors from fraud and use of funds that are not in line with the original purpose of the fundraising. In addition, it also guarantees a refund process if the fundraising goal is not met or the specified conditions are violated.

Licensing and Supervision: Any person or organization involved in fundraising must meet licensing requirements. In addition, service providers or platforms must meet licensing requirements to ensure business continuity in accordance with the law. In addition, the DBC rules should also include monitoring mechanisms to monitor the activities of DBC service providers and monitor potential violations. These controls can be repressive or preventive.

Dispute Resolution: The DBC Rules should include a fair and effective dispute resolution mechanism to resolve disputes that may arise between the parties. Dispute resolution mechanisms can be conducted through litigation or non-litigation channels, such as mediation and arbitration.

Data Privacy and Security: A good DBC regulation must be able to guarantee the security and privacy of donor and recipient data related to DBC activities. Privacy and security of personal data are essential rights of every individual and must be guaranteed by law.

Financial provisions: DBC regulations must provide limitations on the maximum amount of funds that can be raised through DBC by fundraisers. Regulations should also ensure the obligation for DBC service providers to account for the use of money deducted from the total donations raised and ensure the imposition of fees and their use in facilitating fundraisers and donors.

Financial Education and Literacy: To maximum protection for DBC service users, each organizer should be required to conduct digital financial literacy. Thus, it is expected that service users, both donors and fundraisers, can make good decisions.

The inclusion of these norms in the DBC regulation is to create a fair, safe, and reliable crowdfunding environment for all parties involved. DBC regulation is significant to provide a clear legal framework for how

DBC should be conducted. Regulatory clarity for DBC service providers and users is important because both can understand their respective rights and responsibilities. Compliance with DBC regulations will be able to guarantee and ensure that crowdfunding activities are carried out by applicable legal provisions. Existing DBC regulations must be changed through regulatory evolution to help improve compliance and accountability in every fundraising activity through the DBC platform and the use of funds raised by fundraisers in each campaign.

CONCLUSION

The evolution of regulations in Indonesia's crowdfunding landscape has contributed significantly to strengthening legal certainty. By following the development of rules over time, the changes reflect the government's efforts to create a solid legal foundation that is adaptive to the dynamics of crowdfunding services. This transformation provides clarity for organizers and users in using DBC services, creating a legal environment that supports growth and innovation in Indonesia's crowdfunding sector.

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