



# THE RISK OF MISLEADING INFORMATION ON FINANCIAL STATEMENTS OF MSMEs AS THE ISSUERS IN SECURITIES CROWDFUNDING: IMPLEMENTING BLU AS AUDITOR TO ENSURE PROTECTION OF INVESTORS

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## ABSTRACT

Securities Crowdfunding (SCF) is expected to be a fast, cheap, and massive alternative funding system for Micro, Small, and Medium Enterprises (MSMEs). However, its implementation is far from ideal. Several studies in China, United Kingdom, and United States concluded that SCF is one of the riskiest investment instruments. This is closely related to the lack of implementation of audit obligations on the financial statements of MSMEs as Issuers. To analyze the above problems, this study applied doctrinal research methods and Reform Oriented Research. This study aimed to analyze the urgency of establishing the Public Service Agency of Securities Crowdfunding (BLU SCF) in the implementation of the SCF ecosystem in Indonesia and design the idea of regulating BLU SCF as an SCF auditor. This research found that: (1) the urgency of establishing BLU SCF includes the high default risk by the Issuers, the responsibility exemption from the Issuers and the Organizers for the truth of the financial statements, and there is a potential conflict of interest between the Issuers and the Organizers; (2) BLU SCF will be authorized to audit the reports and other financial documents published by the Issuers through the Organizers. Institutionally, BLU SCF will be under the auspices of the Ministry of Cooperatives and Small and Medium Enterprises. This idea is expected to improve the practice of SCF implementation in Indonesia, by prioritizing the protection of Investors' rights to the truth of the Issuer's financial statements.

**Keywords:** Financial Statements; Securities Crowdfunding; MSMEs; Public Service Agency

## 1. INTRODUCTION

Transformation of Micro, Small, and Medium Enterprises (“MSMEs”) through financial inclusion is one of the efforts made by the government to maximize the potential of MSMEs.<sup>1</sup> In order to realize this mission, currently the government is in the process of simplifying the MSME licensing process and opening up the establishment of individual companies through Law Number 11 of 2020 concerning Job Creation (“Job Creation Law”).<sup>2</sup> This policy is aimed at facilitating MSME funding to support MSME investment and business expansion (financial inclusion).<sup>3</sup>

This policy is an important and strategic step that needs to be continuously supported and developed for the sustainability of MSMEs. Due to several important contributions, MSMEs have been relied upon so far as the key to the success of national economic development. According to the Ministry of Cooperatives and Micro, Small, and Medium Enterprises data, in March 2021, MSMEs were recorded as contributing up to 61.07% of the Gross Domestic Product. In addition, MSMEs absorbed up to 97% of the total workforce. This

- 1 Sailendra and Syahril Djaddang, “Meningkatkan Ketahanan UMKM Dengan Inklusi Keuangan Digital Pada Masa Pandemi Covid-19 Normal Baru,” *Pengmasku* 2, no. 2 (2022): 145, <https://doi.org/10.54957/pengmasku.v2i2.251>. especially since the Large-scale social restriction (LSSR)
- 2 Bambang Arianto, “Pengembangan UMKM Digital Di Masa Pandemi Covid-19,” *Prosiding Seminar Nasional Penelitian Dan Pengabdian Kepada Masyarakat* 6, no. 2 (2020): 235, <https://doi.org/10.24967/psn.v2i1.1452>.
- 3 Arianto, 236.

great success then encourages MSMEs to grow further and penetrate the agriculture, trade, and marine/fishery sectors which are the livelihoods of most Indonesian people.<sup>4</sup> This growth has continued to increase over the past two years and has made MSMEs a major macroeconomic force.<sup>5</sup> This phenomenon should be welcomed positively by placing MSMEs as the priority in the discussion of national economic development.

Therefore, in order to boost MSME development, which is not only massive but also sustainable, MSME transformation specifically needs to focus on the funding aspect. Funding transformation is a rational choice because funding is the main foundation that determines the sustainability of a business. Funding is the lifeblood of a business, starting from the production process to business expansion.<sup>6</sup> Therefore, it is not surprising that without adequate funding, let alone development, it is already difficult for MSMEs to survive.<sup>7</sup>

Even though Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises has guaranteed the facilitation and ease of funding for MSMEs,<sup>8</sup> the fact shows that banks and other financial institutions find it difficult to liquidate credit or financing applications submitted by MSMEs.<sup>9</sup> This is manifested in the strict terms and conditions that must be met by MSMEs, which are often associated with a high default risk by MSMEs. In other words, conventional banking and financial institutions are no longer the hope for a source of funding for MSMEs.<sup>10</sup>

Speaking of which, the paradigm of MSME funding sources then shifts to the *Securities Crowdfunding* discourse born from the development of financial technology. *Securities Crowdfunding* (“SCF”) is the improvement of *Equity Crowdfunding* (“ECF”). SCF is designed as an alternative source of funding for MSMEs that is fast, cheap, and massive.<sup>11</sup> This is in line with the initial goal of establishing ECF, which was to create financial inclusion for all people, especially small businesses.<sup>12</sup>

Based on the results of OJK research, as of the third quarter of 2021, the amount of funds collected by SCF was 362.068 billion rupiah.<sup>13</sup> Then these funds increased to 721.84 billion as of the fourth quarter of 2022.<sup>14</sup> The funds raised came from 11 SCF Providers, which were obtained from 120,422 investors. This has been channeled to 302 issuers or MSME. This number has a very significant effect on the development of MSMEs.<sup>15</sup> How could it not be, funding is the first foothold that MSMEs must go through when planning to increase their productivity and investment.<sup>16</sup> In SCF, the financial statements have an essential role, because from these statements investors can determine the projected increase in MSEs’ capital or at least potential risks and profits in the future.

SCF is normatively regulated in the Regulation of the Financial Services Authority of the Republic of Indonesia Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based

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4 Nur Rahmah Sari et al., “Equity Crowdfunding for SMEs: Sharia Compliance Challenge amid the Covid-19 Pandemic,” *Jurnal Iqtisaduna* 6, no. 2 (2020): 22, <https://doi.org/10.24252/iqtisaduna.v6i2.19037>.

5 Abdurrahman Firdaus Thaha, “Dampak Covid-19 Terhadap UMKM Di Indonesia,” *Jurnal Brand* 2, no. 1 (2020): 150, <https://ejournals.umma.ac.id/index.php/brand/article/view/607>.

6 Irawati, “Tinjauan Yuridis Pemanfaatan Equity Crowdfunding Bagi Pengembangan Usaha Kecil dan Menengah di Indonesia,” *Diponegoro Private Law Review* 4, no. 2 (2019): 24, <https://ejournal2.undip.ac.id/index.php/dplr/article/view/6543>.

7 Irawati, 7.

8 Arianto, “Pengembangan UMKM Digital Di Masa Pandemi Covid-19,” 12.

9 Irawati, “Tinjauan Yuridis Pemanfaatan Equity Crowdfunding Bagi Pengembangan Usaha Kecil dan Menengah di Indonesia,” 7.

10 Irawati, 7.

11 Irawati, 7.

12 Irawati, 11.

13 Otoritas Jasa Keuangan, “Laporan Triwulan III 2021” (Jakarta, 2021), 59, <https://www.ojk.go.id/id/data-dan-statistik/laporan-triwulanan/Pages/Laporan-Triwulanan-III---2021.aspx>.

14 Otoritas Jasa Keuangan, “Laporan Triwulan IV 2022” (Jakarta, 2022), 24–25, <https://www.ojk.go.id/id/data-dan-statistik/laporan-triwulanan/Pages/Laporan-Triwulan-IV---2022.aspx>.

15 Otoritas Jasa Keuangan, “Laporan Triwulan IV 2022.”

16 Irawati, “Tinjauan Yuridis Pemanfaatan Equity Crowdfunding Bagi Pengembangan Usaha Kecil dan Menengah di Indonesia,” 6.

Crowdfunding Services as amended by the Regulation of the Financial Services Authority of the Republic of Indonesia Number 16/POJK.04/2021 concerning Amendments to the Regulation of the Financial Services Authority of the Republic of Indonesia Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services (“**POJK SCF**”). Even so, these arrangements are still not sufficient to cover the mitigation aspects of misleading information on financial statements.<sup>17</sup> This is evident from the absence of a clause that comprehensively regulates risk mitigation of misleading information on financial statements but instead leaves arrangements regarding risk mitigation on financial statements to the parties themselves in civil relations through standard agreements.<sup>18</sup>

The aspect of risk mitigation is very important to balance the interests and bargaining power between the parties involved in SCF, namely Investors, MSME (“**Issuers**”), and SCF Platform Organizers (“**Organizers**”). In terms of economic interests, Issuers have an interest in raising funds as much as possible from Investors.<sup>19</sup> Organizers have an interest in collecting commission fees starting from each *crowdfunding* project up to the cost of holding a *crowdfunding* event.<sup>20</sup> Meanwhile, Investors have an interest in obtaining returns or material benefits from the funds deposited to fund *crowdfunding* projects.<sup>21</sup>

Of the three actors above, it is obvious that Issuers and Organizers have the same interests. The more *crowdfunding projects* that are run, the more the service fees or commission fees Organizer will get.<sup>22</sup> On the other hand, even though Investors pay commission fees to the Organizers, the Issuers will certainly pay a higher commission fee as an accumulation of commission fees, contract design, to holding crowdfunding events offline.<sup>23</sup> Therefore, the risk of conflict of interest is prone to occur.<sup>24</sup>

The existence of a conflict of interest tends to make the Organizers lose their objectivity in organizing the SCF platform. The Organizers will endeavor to create as many crowdfunding projects as possible and minimize the screening process accordingly in order to maximize profits (*service fees*).<sup>25</sup> In fact, it is not uncommon for Organizers to intentionally manipulate investor’s financial statements to increase the credibility of Issuers to massively increase crowdfunding funds.<sup>26</sup> In this case, the Organizers have strong potential to negate the audit mechanism which has an essential function to ensure the truth in published financial statements. As a matter of fact, Investors have an interest in obtaining accurate and credible information from Issuers and Organizers to project profits and risks.<sup>27</sup> Meanwhile, if investors intend to use independent audit services, the costs required are too expensive. Finally, investors tend to simply believe in the published financial statements, while on the other hand, the truth of the published financial statements cannot be ascertained. Under such circumstances, Investors will inevitably bear all the risks of loss and default of Issuers, even from the initial stages of new funding.<sup>28</sup>

In other words, the existing funding mechanism is far from being fair and ideal because investors do not have access to credible financial statements. Meanwhile, on the other hand, Issuers have an interest in collecting funding as effectively as possible in order to ensure the sustainability of their business. If this condition is allowed to turn into a public scandal, SCF’s credibility will definitely be questioned, and it has the potential to hinder the achievement of its financial inclusion mission because investors flee the market.<sup>29</sup>

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17 Fithriatus Shalihah, M. Habibi Miftakhul Marwa, and M. Farid Alwajdi, *Equity Crowdfunding Di Indonesia* (Yogyakarta: UAS Press, 2022), 57.

18 Shalihah, Marwa, and Alwajdi, 57–58.

19 Lin Lin, “Managing the Risks of Equity Crowdfunding: Lessons from China,” *Journal of Corporate Law Studies* 17, no. 2 (July 3, 2017): 330, <https://doi.org/10.1080/14735970.2017.1296217>.

20 Lin, 331.

21 Lin, 333.

22 Jim Verdonik, *Crowdfunding Opportunities and Challenges* (Morrisville: Lulu Publishing Services, 2016), 381.

23 Verdonik, 382.

24 Verdonik, 382–83.

25 Rainer Lenz, “Take Care of the Crowd!” – *Legal Protection of Retail Investors in Crowdfunding Is Long Overdue*, *Rochester* (New York: Elsevier BV, 2015), 4, <https://doi.org/10.2139/SSRN.2702243>.

26 Lin, “Managing the Risks of Equity Crowdfunding: Lessons from China,” 336.

27 Lin, 336.

28 Lin, 340.

29 Lin, 341.

This study aimed to evaluate the SCF mechanism in its status quo in order to find the root causes of SCF. Furthermore, based on this evaluation, this paper sought to find the most appropriate formulation, which was by considering the relevance and probability of establishing a public service agency (*Badan Layanan Umum* “BLU”). As is well known, BLU is a third party or representative of the state, so it is expected that it can provide higher quality and credible public services. Thus, in the end, this study will have answered two formulations of the problem. First, what is the urgency of establishing BLU SCF in the development of the MSME ecosystem? Second, how is BLU SCF regulated in the laws and regulations in Indonesia?

In connection with the theme of SCF development, several previous studies have participated in discussing similar topics. Nur Indah and Rianda’s research discussed the use of litigation and alternative dispute resolution to overcome fraud in presenting information and the financial status of Issuers.<sup>30</sup> It is in contrast to this research which focuses on the formation of independent auditors (BLU SCF) to solve similar problems. Then there was also Indramayu’s research which discussed the solutions at the post-funding stage by applying default lawsuits and unlawful acts as a step to resolve the fraud.<sup>31</sup> Meanwhile, this study refers to the role of BLU SCF at the pre-funding stage. Two other studies by Rahmadi Indra Tektona,<sup>32</sup> and Muhammad Rusydi Kadir,<sup>33</sup> focused more on shariah compliance with sharia securities (sukuk) and supervision by the DSN-MUI and the Sharia Supervisory Board. However, this research examines the issue of the risk of misleading information in securities financial statements in general. Finally, research from Adelia Kusuma Wardhani described the implementation of the principle of proportionality in agreements between Issuers and Organizers to protect Investors. It contrast with this research that initiated the formation of BLU SCF as a form of state accountability in realizing legal protection for investors through a public law perspective.<sup>34</sup>

Based on the review of the five studies above, the authors found that there has been no research yet that specifically examines the formation of BLU SCF as an independent auditor in order to prevent or at least minimize the risk of misleading information on the financial statements of MSME issuers. This idea will work from the pre-funding stage which is the root of the problem. The previous studies only reviewed legal issues at the post-funding stage (post factum) with approaches that tend to be repressive and cost a lot of money. This research is expected to fill the research gap on the risk of misleading information on financial statements which has not been accommodated by the previous five studies.

To analyze the urgency and ideas of BLU SCF as described above, this research is structured as follows. Following the Introduction, Section 2 discusses the types of research methods and approaches used to dissect the existing problem formulations. Furthermore, Section 3.1 analyzes the urgency of establishing the BLU SCF in implementing the SCF ecosystem in Indonesia. Here is discussed the high default risk, discharge of responsibility by Issuers and Organizers, and the magnitude of the potential for conflict of interest in the implementation of SCF. Then Section 3.2 presents conceptual ideas regarding the ideal arrangement of BLU SCF in legislation based on existing urgencies. Finally, Section 4 draws conclusions on the deductive discussion of the urgency and concept of the BLU SCF arrangement.

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- 30 Nur Indah Putri Ramadhani and Rianda Dirkareshza, “Penyelesaian Sengketa Terhadap Risiko Yang Dihadapi Pemodal Pada Securities Crowdfunding Di Indonesia,” *Small Business Economics* 6, no. 2 (2021): 310, <https://doi.org/10.26623/jic.v6i2.3774>.
  - 31 I Indramayu and Y S Barlinti, “Pertanggungjawaban Hukum Penyelenggara Securities Crowdfunding Terhadap Pemodal Efek Bersifat Utang Atau Sukuk,” *Jurnal Hukum Mimbar Justitia* 8, no. 1 (2022): 140, <https://doi.org/10.35194/jhmj.v8i1.2075>.
  - 32 Rahmadi Indra Tektona, “Tanggung Jawab Hukum Dewan Pengawas Syariah Terhadap Securities Crowdfunding Syariah Di Indonesia,” *Journal Justiciabelen* 2, no. 2 (2022): 150, <https://doi.org/10.35194/jj.v2i2.2066>.
  - 33 Muhammad Rusydi Kadir, “Shariah Compliance Pada Investasi Sukuk Dalam Securities Crowdfunding Di Indonesia,” *Jurnal Ilmu Perbankan Dan Keuangan Syariah* 3, no. 1 (2021): 27, <https://doi.org/10.24239/jipsya.v3i1.36.15-29>.
  - 34 Adelia Kusuma Wardhani, “Proporsionalitas Perjanjian Penerbit Dan Penyelenggara Securities Crowdfunding,” *Officium Notarium* 6, no. 2 (2022): 201, <https://doi.org/10.20885/jon.vol2.iss2.art1>. the clauses to be included in such agreement have been regulated through Regulation of Financial Services Authority (POJK

## 2. RESEARCH METHOD

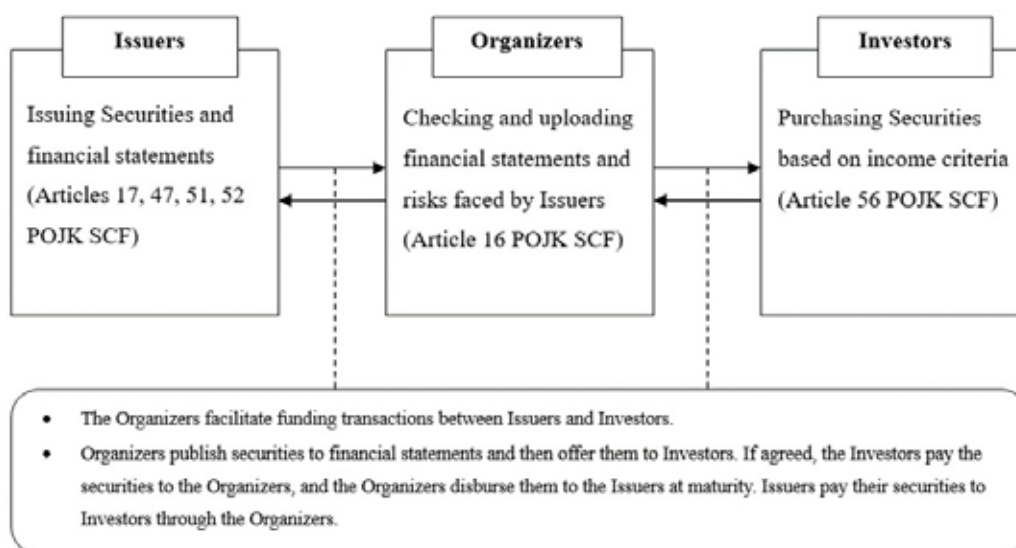
This research is doctrinal research combined with the Reform Oriented Research method. Doctrinal legal research is used to find out the policies regarding the formation of BLU in the development of SCF.<sup>35</sup> The Reform Oriented Research method is applied to assess the quality of various regulations that are currently in force to determine what recommendations are needed for improvements.<sup>36</sup> This methodology is based on an in-depth study of the law to get to the heart of the matter. Furthermore, based on these findings, Reform Oriented Research directed researchers to formulate solutions in the form of reforms (changes) to the law.<sup>37</sup> In its analysis, this research applied statutory, conceptual, and case approaches. Most of the analysis departed from a literature review consisting of scientific literature and laws and regulations. This method is needed to figure out the findings of previous literature on similar issues in order to ensure that the novelty raised by this research is coherent, clear, and pithy, as well as complementing and correcting the shortcomings of previous research.

## 3. DISCUSSION

### 3.1 The Urgency of Establishing Securities Crowdfunding of Public Service Agency in the Implementation of the SCF Ecosystem in Indonesia

SCF in the form of crowdfunding services is one of the fintech products that brings together Issuers with Investors through the Organizers' electronic system or information technology. As a financial service outside the monetary sector and payment system, OJK has the authority to regulate and supervise this business. In this case, OJK has issued technical regulations related to SCF, namely POJK SCF. To provide an overview, the following is a chart of SCF transaction flows between Issuers, Organizers, and Investors.

**Figure 1. SCF transaction flowchart**



(source: POJK SCF (2021))

Issuers	Organizers	Investors
Issuing Securities and financial statements (Articles 17, 47, 51, 52 POJK SCF)	Checking and uploading financial statements and risks faced by Issuers (Article 16 POJK SCF)	Purchasing Securities based on income criteria (Article 56 POJK SCF)

35 This research begins by dissecting the positive legal framework, then looking at the considerations of problems that have implications for the law, and examining the legal politics that underlie it. See: Wing Hong Chui and Mike McConville, *Research Methods for Law*, vol. 104 (Edinburgh University Press Edinburgh, 2007), 20–21.

36 Aan Efendi, Dyah Ochtorina Susanti, and Rahmadi Indra Tektona, *Penelitian Hukum Doktrinal* (Yogyakarta: LaksBang Justitia, 2019), 34, <https://repository.unej.ac.id/handle/123456789/96657>.

37 Efendi, Susanti, and Tektona, 34.

- The Organizers facilitate funding transactions between Issuers and Investors.
- Organizers publish securities to financial statements and then offer them to Investors. If agreed, the Investors pay the securities to the Organizers, and the Organizers disburse them to the Issuers at maturity. Issuers pay their securities to Investors through the Organizers.

The existence of SCF is expected to facilitate effective funding success. SCF is also expected to provide opportunities for non-professional investors to invest more inclusively.<sup>38</sup> In other words, POJK SCF should also provide sufficient legal protection for Investors. However, the a quo regulation is not sufficient to guarantee legal protection to Investors.

### 3.1.1 High Default Risk by Issuers

The default risk is one of the root problems faced by SCF Investors. It shows how big is the risk that Investors do not receive the payment of funds promised by the Issuers when the crowdfunding product is due and how is the law able to provide protection to Investors.<sup>39</sup> This aspect is of course a logical choice because the core goal of crowdfunding (investment) is to make a profit in the future.<sup>40</sup> This happens because the lack of certainty regarding guaranteed returns tends to place investors as victims of fictitious investment games.<sup>41</sup>

So far no research describes the default rate of SCF issuers in Indonesia. Even so, there are several studies that describe the high default risk of SCF. According to Walthoff-Borm, the default rate of SCF-based funding is 8.5 times higher than that of conventional funding, like banks.<sup>42</sup> SCF is considered the riskiest type of non-leverage investment when compared to other types of investment.<sup>43</sup> The risk of SCF is largely due to: (1) uncertainty towards aspects of commercialization, implementation of business ideas, and the profitability of MSMEs as Issuers; (2) high commission fees, serious disinformation on SCF products, and differences of interest that cause conflict between Investors, Issuers and Organizers; (3) lack of proper real assets and operational track record of MSMEs; and (4) lack of secondary markets for pricing, liquidation, and exit ways.<sup>44</sup>

In general, Investors can see the default risk by looking at the financial statements published by the Issuers. Therefore, POJK SCF regulates several matters relating to the publication of financial statements through a number of articles. First, the issuers are required to implement the principle of disclosure of information as implied by the provisions of Article 16, Article 17, and 47 of POJK SCF.<sup>45</sup> Several types of information that must be disclosed to investors are: i) information pertaining to the material aspects of the company and its changes that may affect the investment decisions of the investors; ii) information relating to the main risks faced by the Issuers. This information must contain at least an explanation of business risks, investment, liquidity, and the scarcity of dividend distribution.<sup>46</sup> Submission of such information must then

38 Rafael La Porta et al., "Investor Protection and Corporate Governance," *Journal of Financial Economics* 58, no. 1–2 (2000): 5. [https://doi.org/10.1016/S0304-405X\(00\)00065-9](https://doi.org/10.1016/S0304-405X(00)00065-9).

39 Amini Mahfuzoh and Nurma Khusna Khanifa, "Perlindungan Hukum Investor Bagi Pemegang Sukuk Ritel Terhadap Risiko Gagal Bayar," *Syariat* 5, no. 1 (2019): 83, <https://doi.org/10.32699/syariat.v5i01.1187>.

40 Shalihah, Marwa, and Alwajdi, *Equity Crowdfunding di Indonesia*, 41.

41 Fictitious investments occur because of stock offerings with the prospect of very high returns that exceed the reasonable limits of the Issuer concerned. Dian Husna Fadlia and Yunanto Yunanto, "Peran Otoritas Jasa Keuangan (OJK) Dalam Perlindungan Hukum Bagi Investor Atas Dugaan Investasi Fiktif," *Law Reform* 11, no. 2 (2015): 210, <https://doi.org/10.14710/lr.v11i2.15768>.

42 Xavier Walthoff-Borm, Tom Vanacker, and Veroniek Collewaert, "Equity Crowdfunding, Shareholder Structures, and Firm Performance," *Corporate Governance: An International Review* 26, no. 5 (2018): 22–23, <https://doi.org/10.1111/corg.12259>.

43 Sharon Yamen and Yoel Goldfeder, "Equity Crowdfunding - A Wolf in Sheep's Clothing: The Implications of Crowdfunding Legislation under the JOBS Act," *Brigham Young University International Law & Management Review* 11, no. 1 (2015): 62–63, <https://digitalcommons.law.byu.edu/ilmr/vol11/iss1/4>.

44 Lin, "Managing the Risks of Equity Crowdfunding: Lessons from China," 365–66.

45 Shalihah, Marwa, and Alwajdi, *Equity Crowdfunding di Indonesia*, 58.

46 Shalihah, Marwa, and Alwajdi, 48.

be carried out with a mechanism capable of showing the real condition of the Issuer's business.<sup>47</sup> Second, the issuers are required to submit annual financial statements based on Article 50 of POJK SCF, which contain information about the actual use of funds from the offering of equity securities in the form of shares through Crowdfunding Services.

Third, the issuers are required to submit quarterly reports in accordance with Article 51 POJK SCF, which contain at least information regarding: a) realization of the use of funds from the offering of debt Securities or *Sukuk* through Crowdfunding Services; and b. project progress including the constraints, if there are any. Fourth, the issuers must submit incidental reports according to Article 52 POJK SCF; such reports are submitted in case of material events or information that could affect the sustainability of the Issuer's business or the Issuer's ability to make a refund.

If looked closely, these articles are still very weak in providing legal protection to Investors, especially in order to avoid or at least minimize the consequences of the default risk by Issuers for a number of reasons. First, these Articles and the entire SCF POJK Articles do not stipulate any obligation for Issuers to submit or at least attach annual financial statement. This then raises a big question: what if the Issuers actually provide documents that are against the actual conditions.<sup>48</sup>

Second, POJK SCF does not state at all regarding any requirement for independent supporting professionals to audit documents or information provided both pre and post-bidding.<sup>49</sup> Moreover, Article 24 paragraph (5) POJK SCF states that an audit of financial statements is only optional.<sup>50</sup> This is important to discuss because the absence of an independent third party will greatly affect the quality of audit information, for example in efforts to prevent misleading information, such as discrepancies between actual information and the information conveyed in financial statements, which can lead to fraud due to the absence of an audit obligation by the independent auditor.<sup>51</sup> In addition, the presence of an independent auditor also determines whether the information in the documents presented is free from conflicts of interest between Issuers and Organizers, who more or less have an interest in profits and sales of SCF products. Meanwhile, on the other hand, this information is the main parameter for Investors to assess the extent of the Issuer's ability to return Investor funds. In short, the farther the document information is from independence and truth, the greater the default risk borne by Investors.

Third, even when compared to investors in the capital market, protection for SCF Investors is still unclear. The securities trading system in the capital market provides protection for investors through a mechanism of information transparency or full disclosure of information (full disclosure principle) and is strengthened by the existence of rules to prevent market manipulation, including the prohibition of insider trading.<sup>52</sup> In this case, inaccurate or unclear information presented in the prospectus or financial statements as a form of information disclosure in the capital market sector can have legal consequences.<sup>53</sup> It is in contrast to SCF's arrangements which until now have not provided strict sanctions to Issuers or Organizers for inaccuracies and unclear financial statements published on the SCF platform.

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47 Shalihah, Marwa, and Alwajdi, 58.

48 Shalihah, Marwa, and Alwajdi, 44.

49 Shalihah, Marwa, and Alwajdi, 58.

50 Article 24 paragraph (5) POJK SCF states: "Otoritas Jasa Keuangan dapat menetapkan: a. laporan keuangan yang dimuat dalam laporan tahunan sebagaimana dimaksud pada ayat (2) huruf a wajib disertai laporan akuntan dalam rangka audit atas laporan keuangan;...".

51 Shalihah, Marwa, and Alwajdi, *Equity Crowdfunding Di Indonesia*, 58.

52 Shalihah, Marwa, and Alwajdi, *Equity Crowdfunding Di Indonesia*, 45.

53 This provision is reflected in Article 81 paragraph (1) of Law Number 8 of 1995 concerning Capital Market states: "Setiap pihak yang menawarkan atau menjual efek dengan menggunakan prospektus atau dengan cara lain, baik tertulis maupun lisan, yang memuat informasi yang tidak benar tentang fakta materiil atau tidak memuat informasi tentang fakta materiil dan pihak tersebut mengetahui atau sepatutnya mengetahui mengenai hal tersebut wajib bertanggung jawab atas kerugian yang timbul akibat perbuatan dimaksud."

### 3.1.2 Responsibility Exemption of Issuers and Organizers in Fulfilling Investors' Rights for the Truthfulness of Financial Statements

Instead of accommodating the rights of investors to comprehensively accurate and credible financial statements, POJK SCF instead delegated legal protection for the rights of investors to standard agreements made by organizers for investors. This means that the legal relationship that exists is a civil relationship. Thus, the role of the Financial Services Authority as a regulator becomes inadequate.<sup>54</sup>

This statement, among others, is supported by Article 64 paragraph (1) of POJK SCF. Article a quo reads: "The agreement for the operation of Crowdfunding Services between the Organizers and Investors as referred to in Article 61 letter c can be set forth in the form of a standard agreement by fulfilling balance, justice, and fairness." Furthermore, POJK SCF also does not regulate the structure of standard agreement provisions at all. This fact can be seen from the following standard agreement formulation which clearly ignores the rights of Investors to the truth of financial statements by exempting themselves from legal responsibility for problems that may arise from the issuance of these financial statements.

This claim is proven by the SCF Santara Platform's "*Terms & Conditions of Investors*". In the section "X - Obligations of the Organizers", Santara did not mention at all the obligations of the Organizers in ensuring the accuracy and credibility of the financial statement information from the Issuers. This also applies to the "*General Terms and Conditions*" of the SCF Bizhare platform. The clause essentially states that based on the standard clause, Investors are forced to release the Organizers from all claims, lawsuits, or disputes that may arise as a result of the Organizers' risk management errors in connection with the issuance of financial statements or other financial documents belonging to the Issuers. These risks include all matters relating to the quality, accuracy, or completeness of financial statements. In other words, no incentive can encourage or oblige the Organizers to conduct an audit or check the truth of the Issuer's financial statement information. This occurs because no accountability will be borne by the Organizers in the event of misleading information, while all risks related to the truth or quality of the financial statements must be fully borne by the Investor. Furthermore, this is again the case with Danasaham's policy, where in the standard clause it is stated explicitly that Danasaham is not responsible for the quality, accuracy, and completeness of the information provided by the Issuers. In addition, Danasaham also does not require an audit of the Issuer's financial statements.

In the clause that should accommodate the rights of Investors, it turns out that the Organizers are not at all responsible for the risk of loss arising from incorrect information on the Issuers' financial statements. In other words, the Organizers through the standard agreement exempt themselves from responsibility for the accuracy of the information provided by the Issuers. Furthermore, in the standard agreement, Bizhare again emphasized that Investors bear part or all of the investment risk. Bizhare also stated that the risk calculation and analysis presented in the investment proposal is not a promise or guarantee of a return of funds, but only historical records that are not audited by accounting standards. Meanwhile, to mitigate the default risk by Issuers, Bizhare's efforts are limited to promoting consumer testimonials and product diversification owned by Issuers. Meanwhile, from the issuers' point of view, the form of accountability recognized by the issuers is not clear on the parameters, so it looks like mere entertainment. Issuers declare themselves responsible for the truth and accuracy of business/project information provided to Organizers for reference by Investors, but there is no clause on how the form of accountability will be carried out. There is also no clause requiring the Issuer to conduct an audit before the financial statements are published to the SCF platform, as referred to in 24 paragraph (5) of the POJK SCF.

The absence of an obligation for Issuers and Organizers to audit financial reports violates the interests of Investors to obtain accurate and credible information from Issuers.<sup>55</sup> This is exacerbated by investors who have absolutely no bargaining power except to reject the agreement. Meanwhile, even if agreed, the entire contents of the standard agreement have been arranged in such a way as to generate as much profit as possible for the Organizers and Issuers.<sup>56</sup> As a consequence of this kind of legal construction, in the end, the rights of

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54 Shalihah, Marwa, and Alwajdi, 58.

55 Dede Agus, "Perlindungan Konsumen Atas Penggunaan Perjanjian Baku Dalam Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Nurani Hukum* 1, no. 1 (2018): 72, <http://jurnal.untirta.ac.id/index.php/nhk/article/view/4817>.

56 Agus, 73–75.



investors, such as getting protection for the accuracy and credibility of financial statement information, tend to be reduced.

Such an arrangement also seems inconsistent with the objective of holding SCF to create financial inclusion.<sup>57</sup> Without good financial risk mitigation, SCF will actually change its function to become a means of creating financial exclusivity because the lack of a financial safety net will actually discourage investors from investing their funds in SCF. In other words, Investors will be interested in investing in SCF only if the SCF ecosystem provides strong and adequate financial risk mitigation, in particular by providing audited financial statements.<sup>58</sup>

### 3.1.3 Potential Conflict of Interest between SCF Issuers and Organizers as a Result of No Obligation to Audit Financial Statements

From the point of view of *Law and Economics*, the legal construction above is certainly far from ideal, even close to being useless. The relevance of using this theory is due to the risk mitigation discourse which is directly related to the welfare of investors in making investments, and the sustainability of the MSMEs. Several aspects need to be criticized in connection with the low utility value of the many regulations.

According to *pareto superiority* efficiency, the existence of a rule should at least make one party experience better progress, and on the other hand, no party is defeated or disadvantaged.<sup>59</sup> Observing the provisions regarding the obligation to disclose information above, in the end, efforts to mitigate investors' risks, in the form of disclosing material information to financial reports, are in vain. This is because the absence of an independent auditor who guarantees the truth and honesty of the information has the potential to cause a conflict of interest.

Without an independent audit of the Issuer's financial documents, the issue of collusion arose. Rational probability occurs because the Organizer is the party that accommodates the Issuer's report and has an interest in the sale of Securities on its platform.<sup>60</sup> In this case, the Organizers will try their best to make the Securities on their platform generate profit by all means, for example by manipulating financial documents with the Issuers. Due to this regulation, Investors experience regression. Investors are not able to identify the accuracy and credibility of the information, it is even less likely that Investors are able to estimate potential losses accurately. In short, this regulation fails or at least has very low utility or usefulness in preventing collusion, fraud, or misleading information. From the view of *Cost and Benefit Analysis* ("**CBA**") which supports this theory, it is clear that these regulations ultimately provide too large costs to Investors and benefits that are not the right of Issuers and/or Organizers.<sup>61</sup>

To clarify the problem and the potential for conflict of interest if this situation is allowed to continue, the following is a description of the facts that have occurred in China.<sup>62</sup> SCF Organizers in China derived the main revenue from Securities deposited by the Issuers.<sup>63</sup> For this reason, the Organizers charged a commission of 3-5% of the total funds collected. In addition, the Organizers also took additional benefits from the various financial services offered, such as meeting services between Investors and Issuers and due diligence services. This is reasonable because with all the limited funds, in general MSMEs do not have internal auditors and tend to wish for funding in a short time as the shortcuts. This means that the Organizers have an orientation to sell as many Securities as possible and as quickly as possible in order to maximize profits. While on the other hand, Investors did not pay the Organizers at all or only a little, but with a high return value, Investors were even more interested in buying the offered Securities. This then creates a potential conflict of interest.<sup>64</sup>

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57 Shalihah, Marwa, and Alwajdi, *Equity Crowdfunding Di Indonesia*, 107.

58 Shalihah, Marwa, and Alwajdi, 146.

59 Kristianus Pramudito Isyunanda, "Pemanfaatan Law and Economics Sebagai Metodologi Analisis Hukum Di Indonesia," *Mimbar Hukum* 34, no. 1 (2022): 132, <https://doi.org/10.22146/mh.v34i1.2063>.

60 In practice, the Organizer even needs to conduct a campaign so that sales of securities increase. Njatrijani, "Perkembangan Regulasi dan Pengawasan Financial Technology Di Indonesia," 467.

61 Isyunanda, "Pemanfaatan Law and Economics Sebagai Metodologi Analisis Hukum Di Indonesia," 128.

62 Lin, "Managing the Risks of Equity Crowdfunding: Lessons from China," 327–30.

63 Lin, 335.

64 Lin, 336–40.

With such a business model, Organizers get incentives from the faster and more Issuer's Securities are sold, because this can increase the Organizers' income.<sup>65</sup> These incentives are ultimately correlated with each other. Issuers want their Securities to be sold as quickly and as much as possible so they can obtain maximum funding, while on the other hand, Investors want a high return on funding. Because the relationship and the same interests meet each other, eventually the potential for cooperation between the Organizers and the Issuers to manipulate the credibility of financial statements and other financial documents emerges. The absence of an independent auditor who is able to verify the accuracy of these financial documents also encourages the emergence of manipulation of financial credibility.<sup>66</sup>

This claim was proven in July 2016, one start-up in China, 36Kr Global, was reported to have made false financial information.<sup>67</sup> As a result of this manipulation of financial information, 36Kr Global Investors even suffered losses of up to 30 million RMB. In addition, 43 SCF platforms were also shut down due to fraudulent fundraising, misrepresentation of financial information, internal conflict, and lack of funds. These incidents have cumulatively undermined investor confidence in the SCF industry, thereby hampering national economic growth.<sup>68</sup> After being traced, the main cause of the failure of the SCF system in China was the lack of adequate audit and due diligence in the implementation of SCF.<sup>69</sup>

Koren M. Jo found that most UK Issuers have systematically inflated the probabilities of sales, earnings, profits, and asset increases, thus underestimating the leverage of SCF projects.<sup>70</sup> The risk of the project increases due to the lack of experience and excessive optimism of the Issuers, causing information bias for Investors.<sup>71</sup> Similar findings were also stated by John Aland. Based on a survey he conducted, it was found that the majority of issuers in the United States did not have adequate knowledge and understanding of their financial statements which cover operating cash flows, investing cash flows, and financing cash flows.<sup>72</sup> The survey was the result of a certified auditor's assessment of the Issuers regarding their understanding and knowledge of financial reports, where the Issuers only got an average score of 2.38 out of 5.00.<sup>73</sup>

This certainly indicates the need for an audit of the Issuers by a certified auditor. Jing Gong in his research also stated that the results of audits by certified auditors on Issuers had a positive impact on the success of SCF and the amount of funds raised.<sup>74</sup> In addition, the audit process for Issuers will balance the interests of the parties, minimize non-compliance with regulations, and eliminate mistrust between Issuers, Investors, and Organizers.<sup>75</sup>

In order to guarantee the interests of Investors and provide proper rights to Investors, existing regulations must be evaluated. This is in line with Law and Economics theory which states that if a regulation no longer meets the eligibility requirements (based on efficiency reviews, CBA, rationality, utility functions, and economic consequences as described in the analysis above), then the regulation should be updated (*ex ante*).<sup>76</sup>

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65 Lin, 341.

66 Lin, 342–43.

67 Lin, 334.

68 Lin, 335.

69 Lin, 335.

70 Koren M. Jo and Shuo Yang, "Is There Crowd Wisdom in Accounting? Evidence From Forecasts in Equity-Based Crowdfunding," *Journal of Accounting, Auditing and Finance* 36, no. 4 (October 1, 2021): 1, <https://doi.org/10.1177/0148558X20912100>. We study detailed financial forecasts provided by entrepreneurs who seek funds via equity-based crowdfunding on a leading U.K. platform. We investigate (a

71 Jo and Yang, 21. we study detailed financial forecasts provided by entrepreneurs who seek funds via equity-based crowdfunding on a leading U.K. platform. We investigate (a

72 John Aland, "Exploring the Knowledge Gaps of Crowdfunding Firms: A Survey of Crowdfunding Firms and Auditors," *Journal of Accounting and Finance* 22, no. 5 (2022): 21, <https://doi.org/10.2139/ssrn.4224812>.

73 Aland, 39.

74 Jing Gong, Jayanthi Krishnan, and Yi Liang, "Securities-Based Crowdfunding by Startups: Does Auditor Attestation Matter?," *The Accounting Review* 97, no. 2 (2022): 213, <https://doi.org/10.2308/TAR-2018-0412>.

75 Gong, Krishnan, and Liang, 220.

76 Ex ante analysis using Law and Economics methodology has the following benefits. First, to determine the rule of law that should apply (development of *das sollen* analysis). Second, it predicts effects (including human behavioral responses). And third, justify the rule of law that needs to exist. Isyunanda, "Pemanfaatan Law and Economics Sebagai Metodologi Analisis Hukum Di Indonesia," 146.

In the future, independent auditors need to be involved to verify the accuracy of the financial statements and guarantee the disbursement of funds. That is, there must be the certainty that the disbursement of funds from Investors to Issuers has provided Investors with sufficient guarantees for refunds which are measured rationally from an analysis of financial statements and other financial documents.

The presence of a certified independent auditor will then take the form of a Public Service Agency (“BLU”) which is at the same time a form of the state’s responsibility in securing the backbone of its economy, which is MSMEs. As previously explained, if investor confidence is damaged due to minimal default risk mitigation, MSME funding will also falter. Apart from that, the existence of a neutral and independent regulator is also a solution for the potential exploitation of Investors by Providers as reflected in the standard Santara agreement. This means that the risk mitigation mechanism should not be allowed to be regulated through private law, but must be regulated by the BLU which is positioned as a counterweight to the interests of the parties in the SCF ecosystem.

In short, BLU’s role is to share the burden of default risk which has so far been fully borne by Investors. This is done utilizing an independent audit on the Issuer’s financial information. The presence of BLU with the authority it has ultimately becomes important to guarantee protection for investors against the default risk and the sustainability of the SCF and MSME ecosystems.

### 3.2 The Arrangement Concept of Public Service Agency as the Auditor of Securities Crowdfunding

Basically, BLU SCF is a special work unit that is formed and managed like a business/company. This model theoretically in the administrative concept is known as New Public Management (NPM) or agency.<sup>77</sup> This theory says that traditional public organizations need to be reformed in order to create public services with standards that promote results for customer satisfaction based on the principles of efficiency, effectiveness, and productivity.<sup>78</sup> This concept is certainly in accordance with the objectives and characteristics of SCF as a modern business platform that demands a fast turnaround of funds cheaply and massively to achieve financial inclusion.

According to Vigola, there are several fundamental principles for implementing NPM.<sup>79</sup> The first is a decentralized system, where every decision made must give priority to the recipient of the service. The second is downsizing, which is the simplification of the number as well as the scope and structure of the organization. The third is debureaucratization, which is bureaucratic restructuring with the aim of providing public services oriented towards the efficiency of service delivery rather than process (effectiveness). The fourth is managerialism, which is the concept of organizational management based on the private sector’s way of working.<sup>80</sup> Currently, the concept of NPM has been adopted by a number of developed countries in Europe and the United States.<sup>81</sup> By using Vigola’s NPM principles, BLU SCF will have the following format.

In the institutional aspect, BLU SCF is structurally a sub-organization placed under the auspices of the Ministry of Cooperatives and Small and Medium Enterprises (“Kemenkop UKM”). This is because the BLU SCF will indirectly participate in organizing government affairs related to cooperatives and small and medium enterprises, which are included in the scope, main tasks, and implementation of the functions of the Ministry of Cooperatives and SMEs.<sup>82</sup>

Given the huge contribution of MSMEs, the state must intervene as a form of legal responsibility. Therefore, the urgency of managing MSME funding through SCF should receive priority, because MSMEs

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77 Noviana, “Pengadaan Barang/Jasa Pada Badan Layanan Umum,” *Jurist-Diction* 3, no. 2 (2020): 600, <https://doi.org/10.20473/JD.V3I2.18206>.

78 Noviana, 601–2.

79 Noviana, 602.

80 Noviana, 602–3.

81 Indarto Waluyo, “Badan Layanan Umum Sebuah Pola Baru Dalam Pengelolaan Keuangan Di Satuan Kerja Pemerintah,” *Jurnal Pendidikan Akuntansi Indonesia* 9, no. 2 (2011): 2, <https://doi.org/10.21831/jpai.v9i2.962>.

82 See Article 4 of Presidential Regulation Number 96 of 2020 concerning the Ministry of Cooperatives and Small and Medium Enterprises.

have become a source of income for the majority of Indonesian people. As seen from the division of sectors, the UMKM society is a small-medium society which can be categorized as a weak economic society so it requires special protection from state authorities.<sup>83</sup>

From the staffing aspect of BLU SCF, it will be filled by both the State Civil Apparatus (“ASN”) and professionals.<sup>84</sup> Regarding the number or how the staffing is formed, this will be adjusted to the needs of the BLU SCF itself which will be reviewed later. The presence of ASN is useful for bridging bureaucratic flows vertically and horizontally, either internally or externally. Non-ASN employees are filled by professionals in the fields of law, finance, information technology, and so on to increase specialization and effectiveness of task implementation.<sup>85</sup> In the aspect of coaching, if it is related to financial matters, then the guidance should be handed over to the Minister of Finance. On the technical side, there will be several officials who carry out guidance, which is the Minister of Cooperatives and Small and Medium Enterprises and the OJK commissioner board as the organ that has the main authority in supervising financial service institutions.<sup>86</sup> In the inspection aspect, internally it is carried out by the Internal Examination Unit (“SPI”), while external audits are carried out by private external parties who have specialization and reputation in the field of SCF.<sup>87</sup> SPI will supervise a number of aspects of the BLU SCF, for example, production costs and staffing. The existence of SPI plays an important role because it is the main control that determines the quality and performance of the organization. In this case, the SPI BLU SCF will be under the direct auspices of the BLU SCF leadership in accordance with the provisions of Article 35 of Government Regulation Number 23 of 2005 concerning the Management of Public Service Agencies. The importance of the existence of SPI, for example, is shown by the results of Aristanti’s research, which found that the application of SPI proved to have a positive effect of 51% on the effectiveness of controlling production costs. It even managed to save the company from bankruptcy and mass layoffs.<sup>88</sup> The BLU SCF Supervisory Board consists of elements from OJK officials, the Ministry of Cooperatives and Small and Medium Enterprises, as well as experts in accordance with BLU SCF activities.

In the financial aspect, BLU SCF must be given the authority and flexibility to directly and autonomously manage its income to meet operational needs up to spend. It is expected that this will create acceleration of the BLU SCF in the context of providing public services in the MSME audit sector.<sup>89</sup>

In terms of Authority, the BLU SCF will have the main authority to audit the financial condition of the SCF Issuers which includes the reports, annual reports, and other financial/investment documents. This authority is also a verification process to seek the truth of financial documents. After the audit is complete and the Issuer’s financial information is declared appropriate, the BLU SCF will provide a certificate of audit results which will be displayed on the SCF platform (*audited financial statement*).

To be able to carry out audits effectively and efficiently, BLU SCF can consider audit automation using

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83 Laurensius Arliman S., “Perlindungan Hukum UMKM Dari Eksploitasi Ekonomi Dalam Rangka Peningkatan Kesejahteraan Masyarakat,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 3 (2017): 390, <https://doi.org/10.33331/rechtsvinding.v6i3.194>.

84 Waluyo, “Badan Layanan Umum Sebuah Pola Baru Dalam Pengelolaan Keuangan Di Satuan Kerja Pemerintah,” 13.

85 Waluyo, 13.

86 See Article 68 paragraph 3 of Law Number 1 of 2004 concerning State Treasury jo. Article 6. Articles 8 and 9 of Law Number 21 of 2011 concerning the Financial Services Authority. The position of OJK here is as ex officio supervisor as is common practice in government administration, for example, the National Police Commission supervised by the Coordinating Minister for Political, Legal and Security Affairs, or members of the Board of Commissioners of the Financial Services Authority which contains ex-officio representatives of the Ministry of Finance, and the Bank of Indonesia. The purpose of ex officio representation is to maintain the flow of coordination, as a form of cooperation, as well as policy harmonization in the financial services sector. See Article 10 and General Explanation of Law Number 21 of 2011 concerning the Financial Services Authority.

87 Waluyo, “Badan Layanan Umum Sebuah Pola Baru Dalam Pengelolaan Keuangan di Satuan Kerja Pemerintah,” 13.

88 Aristanti Widyaningsih, “Pengaruh Audit Internal Terhadap Efektivitas Pengendalian Intern Biaya Produksi,” *Fokus Ekonomi* 5, no. 1 (2010): 43–45, <https://doi.org/10.34152/fe.5.1.%25p>.

89 Waluyo, “Badan Layanan Umum Sebuah Pola Baru Dalam Pengelolaan Keuangan Di Satuan Kerja Pemerintah,” 11–12.

*Computer Assisted Audit Techniques* (“CAAT”) as implemented by the United States Federal Government.<sup>90</sup> With CAAT technology, BLU SCF can improve audit integration, and audit system independence, to credibility and reduce audit time and costs.<sup>91</sup>

Apart from that, to ease the burden on MSMEs as issuers, the Ministry of Cooperatives and SMEs can also consider setting a maximum limit for SCF offerings that are not required to be audited (*audit financial statement*). This refers to the practice of equity crowdfunding carried out in the United States, the Federal Government through the *United States Securities and Exchange Commission* (“SEC”) stipulates that the Issuers must disclose audited financial statements or company financial audits if the planned funds to be collected exceeding \$500,000 (five hundred thousand United States Dollars).<sup>92</sup>

As for the probability of implementation through the positive law itself, the BLU SCF has fulfilled all the requirements and conditions for establishing a BLU in Article 4 of Government Regulation Number 23 of 2005 as amended by Government Regulation Number 74 of 2012 concerning Financial Management of Public Service Agencies (“PP BLU”) as follows. First is the substantive requirements. In this case, BLU SCF has met the following requirements: i. management of special funds aimed at improving the economy or services to the society (in this case the MSME capital fund); ii. carry out public services that are operational in nature and produce public goods/services (organization of audit services on MSME’s financial statement); iii. in its activities it does not prioritize profit (basically BLU SCF is a representation of the Ministry of Cooperatives and Small and Medium Enterprises, which is the state authority responsible for providing public services in order to achieve general welfare). In this case, the practice of public services is provided on a non-profit basis, because the main objective is to help investors obtain an independent audit cheaply and affordably through state subsidies. Second is the technical requirements. In this case, the Ministry of Cooperatives and Small and Medium Enterprises as the main institution of BLU SCF has fulfilled the performance of main tasks and functions that deserve improvement and sound financial performance. This is evident from the fact that in 2022, the Ministry of Cooperatives and SMEs has received the title of unqualified opinion for 7 consecutive years from the BPK.<sup>93</sup> Third is administrative requirements, whose requirements have been fulfilled through the BPK audit results in 2022.

As for reaching a more technical and operational aspect, the BLU SCF arrangements as described above will be further regulated and formulated through a Regulation of the Minister of Cooperatives and Small and Medium Enterprises. This is because the BLU SCF is a sub-organization and an extension of the Ministry of Cooperatives and Small and Medium Enterprises which carries out its main function in the field of public services by providing independent audit services on MSME SCF reports.

At present, there are no countries that have implemented BLU as SCF auditors, including China, England, and the United States as the most advanced countries in implementing SCF,<sup>94</sup> so this study requires further research to perfect the existing ideas. However, this does not presumably reduce the urgency and probability of establishing the BLU SCF in Indonesia. Through the analysis and description above, several fundamental considerations and findings come up which are as follows. First, the establishment of the BLU SCF is the responsibility of the state to provide low-cost audit services, so it is expected that this will become an incentive for MSME Issuers to work together to improve the security and benefits of SCF. Second, the existence of an

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90 CAAT is a technology the United States Federal Government used to conduct internal audit management in government divisions. Stephen Kwamena Aikins, “An Examination of the Relationships Between Audit Automation and Performance Measurement Implementation in Government Internal Audits,” *Journal of Accounting and Finance* 20, no. 8 (2020): 85, [https://doi.org/https://doi.org/10.33423/jaf.v20i8.3955](https://doi.org/10.33423/jaf.v20i8.3955).

91 Aikins, 87.

92 Christopher H. Pierce-Wright, “State Equity Crowdfunding and Investor Protection,” *Washington Law Review* 91, no. 2 (2016): 870, <https://digitalcommons.law.uw.edu/wlr/vol91/iss2/21>. securities regulation has sought to protect investors from fraud and speculation. Historically, this meant precluding substantial numbers of small businesses from raising capital in the form of equity investments. In order to facilitate small-business capital formation, in 2012 the federal government passed the Jumpstart Our Business Startups Act (JOBS Act)

93 Dewan Perwakilan Rakyat, “Komisi VI Apresiasi Capaian Opini WTP Kemenkop UKM 11 Tahun Berturut-Turut,” 2022, <https://www.dpr.go.id/berita/detail/id/40271/t/Komisi+VI+Apresiasi+Capaian+Opini+WTP+Kemenkop+UKM+11+Tahun+Berturut-Turut>.

94 Lin, “Managing the Risks of Equity Crowdfunding: Lessons from China,” 327–30.

independent auditor has been proven to contribute positively to the success and amount of funds raised in the *crowdfunding* project. Third, normatively the idea of forming a BLU SCF has met the cumulative requirements as referred to in Article 4 of PP BLU, namely substantive, technical, and administrative requirements. Fourth, in the operational aspects of BLU audits, SCF will be supported by CAAT technology and audit liability exclusion rules for investments with a certain threshold. In addition to increasing audit credibility, this can also reduce operational costs.

Fifth, the institutional and structural outlines of BLU SCF will refer to the concept of NPM, so that in addition to simplifying bureaucratic problems, it will also make audit services more productive and reach all levels of society. Every BLU SCF decision and policy is always user-oriented, meaning that there is an ongoing periodic evaluation. Thus, the urgency of establishing the BLU SCF as an auditor is increasingly clear and convincing, especially since the existence of an audit obligation by an independent auditor has proven to have a positive impact on increasing the value of funding and the success of the SCF project.<sup>95</sup> Moreover, an audit is also a reflection of high prospects, as well as a security guarantee that can encourage Investors to invest in SCF projects.<sup>96</sup>

#### 4. CONCLUSION

First, one of the urgencies of establishing a BLU SCF is the high default risk by Issuers. This is also shown by studies in several countries, such as China, England, and the United States which state that SCF is the riskiest investment instrument. In addition, there are efforts to disclaim the responsibility of Issuers and Organizers for the accuracy and credibility of financial statements related to the protection of the accuracy and credibility of financial statements, which is a logical consequence of the absence of an audit obligation on the Issuer's financial statements. The existing legal constructions have not been able to prevent potential conflicts of interest between Issuers and Organizers so Investors will be the most disadvantaged party. On the one hand, Issuers want their Securities to be sold massively; on the other hand, the greater the funds collected from SCF, the greater the commission that will be received by the Organizers, so that in practice it is prone to manipulation of financial statements to attract Investors. The situation tends to potentially show a conflict of interest between the Issuer and the Organizer. This is exacerbated by the high cost of audits by independent auditors so this becomes a barrier for Issuers to obtain quality and low-cost audit services. Under such conditions, Investors will be the most disadvantaged, because from the start they did not receive accurate information regarding the Issuer's financial condition. As a matter of fact, to ensure the SCF ecosystem can run sustainably, the interests of Investors are variable that should be a priority besides the interests of Issuers and Organizers.

Second, establishing BLU SCF and requiring an audit of the issuer's financial statements by an independent auditor is the right solution to address the problems above. However, regulators may consider the option of setting a maximum limit for SCF offerings that do not require an audit. Under the regulation, BLU SCF will have the authority to audit reports and other financial documents published by Issuers through the Organizers. Institutionally, BLU SCF will be under the auspices of the Ministry of Cooperatives and Small and Medium Enterprises. The implementation of BLU SCF as an auditor must refer to the NPM concept which is able to support the provision of independent audit services effectively and efficiently. Regulators may consider applying CAAT technology to the BLU SCF to increase the credibility of audit results with the result in the form of an audit certificate to be issued on the SCF platform. The climax of this idea is expected to improve the practice of implementing SCF in Indonesia by prioritizing the protection of Investors' rights to the accuracy and credibility of the Issuer's financial statements.

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95 Gong, Krishnan, and Liang, "Securities-Based Crowdfunding by Startups: Does Auditor Attestation Matter?," 220–22.

96 Aland, "Exploring the Knowledge Gaps of Crowdfunding Firms: A Survey of Crowdfunding Firms and Auditors," 22–24.

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