

Legal Responsibility for Misuse of Online Crowdfunding

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ABSTRACT

The phenomenon of abuse of online donation funds by recipients has become a legal issue that requires serious attention, particularly in the realm of civil law. This research aims to address two main problem formulations. First, what are the legal rules regarding the acceptance and management of online donation funds? Second, what is the legal accountability for recipients of donations who commit abuse? This research employs a normative juridical method with a regulatory approach (statute approach). Primary legal materials include: Law No. 9 of 1961 concerning the Collection of Money or Goods, the Civil Code Article 1365, Government Regulation No. 29 of 1980 concerning the Implementation of Collection of Donations, and Minister of Social Affairs Regulation No. 8 of 2021 concerning the Organization of Fundraising. From the discussion results, the researcher concludes that first, the collection of money or goods, which can be interpreted as crowdfunding according to Article 1 of Law No. 9 of 1961, means any effort to obtain money or goods for development in the fields of social welfare, mental/religious/spiritual, physical, and cultural must have prior permission in accordance with applicable legal regulations and the elements contained therein. Second, based on Article 1365 of the Civil Code, any unlawful act that causes loss to another person results in the obligation of the perpetrator to compensate for such loss. In this case, a recipient of donations who uses the funds not according to their intended purpose may be held civilly accountable if it is proven to meet the elements of unlawful acts, namely the existence of an unlawful act, fault, loss, and a causal relationship between the act and the loss. Clarification of these elements serves as the basis for determining civil legal responsibility. This research underscores the importance

of tighter legal regulation and oversight of digital donation activities to provide legal protection for donors.

Keywords: Donations, Fund Misuse, Legal, Crowdfunding.

Introduction

In the digital era, humanitarian organizations can utilize various fundraising methods to attract donors to support and fund their programs. One method that is gaining popularity among humanitarian organizations, both small and large, is crowdfunding. This method is considered effective because it makes it easier for both organizations and donors to channel their contributions.¹

This phenomenon aligns with the emergence of various crowdfunding platforms, in the form of websites and applications, used by humanitarian organizations to raise funds with a broader reach through the use of information technology and social media. Several platforms, such as Baznas.com, Kitabisa.com, Ayopeduli.id, and Benihbaik.com, have become popular choices not only for community organizations but also for individuals, public figures, and government officials participating in fundraising activities for social and humanitarian causes².

The activity of collecting donations according to the provisions of Law Number 9 of 1961 Article 1 is stated as "What is meant by collecting money or goods in this law is every effort to obtain money or goods for development in the fields of social welfare, mental/religious/spiritual, physical and cultural fields". From these provisions, it can be understood that collecting donations is an activity that has social and humanitarian goals, not solely for personal or commercial interests. This activity is aimed at supporting various development programs that are oriented towards improving community welfare, strengthening religious and moral values, physical development, as well as preserving and developing national culture.

The implementation of Law Number 9 of 1961 is often suboptimal, particularly for donations conducted through online platforms. In practice, donations provided by donors should be used according to the original purpose promised by the recipient or the fundraising platform. However, in reality, not

¹ Ja'far Shodiq and Susi Winanda, *Legal Provisions for Settlement of Plagiarism of Digital Fiction Works*, Jurnal Independent 12, no. 2 (2024), h. 215

² Adi Kurniawan, *Penyertaan Modal Perseroan Terbatas Sebagai Alternatif Strategi Penggalangan Dana Organisasi Kemanusiaan Dengan Legalitas Yayasan*, Jurnal Penelitian Hukum, Vol. 6 No. 4 (2024) h. 11035

all donations are allocated appropriately, and some individuals even misuse the funds for personal gain. Several cases of misappropriation of donation funds in Indonesia demonstrate weak regulation and oversight of the use of donation funds, ultimately harming donors and eroding public trust in both the fundraising platform and the recipient. Legally, donations are often based on an agreement or contract between the donor and the recipient. In this context, donors indirectly place their trust in the administrator to manage the funds according to the stated purpose. Some donors also provide funds directly to the recipient, bypassing third parties such as foundations or other entities.

Fundraising or goods for humanitarian purposes is generally carried out by legal entities in the form of foundations. Foundations, as legal entities, are regulated by Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations. According to this law, a foundation is a legal entity consisting of assets separated and allocated to achieve specific objectives in the social, religious, and humanitarian fields, which does not have members. Institutions or entities planning to carry out organized philanthropic activities with large-scale fundraising are required to obtain a permit from the Ministry of Social Affairs and must comply with all applicable regulations regarding the formation of institutions that manage donation funds. PUB organizers are required to submit transparent and accountable reports on the use of funds. Violations of these provisions may result in criminal sanctions, including imprisonment and fines, as well as confiscation and use of funds for similar social welfare efforts.

Regulations regarding the provision of legal aid are regulated by law. Law Number 18 of 2003 concerning Advocates, in Article 1 number 9, defines legal aid as legal services provided by advocates free of charge to clients who cannot afford it. Meanwhile, Law Number 16 of 2011 concerning Legal Aid, in Article 1 number 1, states that legal aid is legal services provided by legal aid providers free of charge to legal aid recipients³.

Equity crowdfunding can be defined as a process in which the public or investors purchase shares in private companies (small companies) in the hope

³ Zahra Hayat, *Peran Advokat Dalam Memberikan Bantuan Hukum Berdasarkan Undang-Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum*, Jurnal Bimbingan & Konseling Keluarga, Vol 5 No 2 (2023) h.358

of generating future profits. In Indonesia, equity crowdfunding first gained legal standing through Financial Services Authority Regulation No. 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Share Offerings. This regulation defines the term equity crowdfunding, providing a legal basis for the concept of equity crowdfunding (ECF)⁴.

Research Method

In this study, the researcher employed a normative research method, focusing on the legal basis for the law on misappropriation of donation funds. The researcher also employed a normative juridical legal research method, meaning that this research used approaches to address the problem under study by reviewing applicable laws and regulations or examining library materials.

The approach applied in this research is a statutory approach. This statutory approach is conducted through an in-depth study of all laws and regulations related to the validity of Law Number 9 of 1961 concerning the Collection of Money or Goods.

To solve legal problems and provide appropriate solutions, appropriate and relevant references and research sources are required⁵. The primary legal materials used in this study are: a. Law Number 9 of 1961 concerning the Collection of Money or Goods, b. Civil Code, c. Regulation of the Minister of Social Affairs No. 8 of 2021 concerning the Implementation of the Collection of Money or Goods, d. Regulation of the Financial Services Authority of the Republic of Indonesia, and e. Number 10/Pojk.05/2022 concerning Information Technology-Based Joint Funding Services.

Results and Discussion

1. Legal Regulations For The Acceptance And Management of Online Donation Funds in Indonesia

Legal regulations on online platforms, such as social media applications like TikTok, permit live streaming, as long as it complies with applicable laws and regulations and does not conflict with moral and religious principles. However, this practice must be conducted ethically,

⁴ Fithriatus Shalihah, *Equity Crowdfunding di Indonesia*, UAD PRESS, Yogyakarta (2022) h.7

⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2023 h. 181.

without demeaning one's dignity, and without exploiting public sympathy for personal gain. It is important for individuals considering soliciting donations through these platforms to ensure that their actions are legally valid and in accordance with applicable norms.

TikTok offers a "gift" feature that allows viewers to give virtual gifts to creators during live broadcasts. These gifts can be exchanged for money by the creator. However, TikTok has policies that restrict the use of this feature, particularly regarding fundraising for political purposes. Accounts categorized as "government, politician, and political party accounts" are automatically barred from requesting or receiving gifts through the live streaming feature. Additionally, TikTok is also enforcing a ban on live streaming for users under the age of 18 starting November 23, 2022, following an investigative report involving children in refugee camps using the platform to solicit gifts.

In Indonesia, online donations are currently not specifically regulated by law. This lack of regulation is due to various structural and normative factors that have not yet been fully accommodated by the national legal system. Structurally, the rapid development of digital technology is not always accompanied by the ability of law-making institutions to formulate regulations that adapt to the dynamics of the digital society. The Indonesian legal system, which tends to be reactive—that is, it only responds after a particular social phenomenon emerges—leads to the lack of comprehensive regulations regarding online donation activities. This is further exacerbated by the lack of clear coordination between relevant government agencies, such as the Ministry of Social Affairs, the Ministry of Communication and Information Technology, and the Financial Services Authority (OJK), in determining the limits of authority and oversight mechanisms for online fundraising activities.

Meanwhile, from a normative perspective, Indonesian positive law still focuses on regulating conventional fundraising as stipulated in Law Number 9 of 1961 concerning the Collection of Money or Goods, which has not yet adapted to the practice of fundraising through digital media. The provisions in the law emphasize the administrative aspects of licensing and supervision, without considering new forms of donation collection

involving digital platforms, electronic transactions, and the use of social media.

Normatively, conventional donations are regulated in Law No. 9 of 1961 concerning the Collection of Money or Goods. Article 8 paragraph (1) explains: "Anyone who: a) organizes, encourages, or assists in organizing the collection of money or goods without first obtaining a permit as referred to in Article 1 paragraph 1 shall be punished with imprisonment for a maximum of 3 (three) months or a maximum fine of Rp. 10,000 (ten thousand rupiah) if: a) organizing, encouraging, or assisting in organizing the collection of money or goods without first obtaining permission as referred to in Article 1 paragraph 1; b) does not fulfill the conditions and orders stated in the permit granting decision; c) does not comply with the provisions in Article 7."

In the context of fundraising or goods collection activities, updating provisions in laws and regulations is important to accommodate technological developments and various innovations in implementation methods. Article 5 paragraph (2) of Law Number 9 of 1961 concerning the Collection of Money or Goods stipulates the requirements for applying for a permit to organize such activities, which include six elements, namely: a) The purpose and intent of collecting money or goods; b) Implementation method; c) The organizer; d) Duration of the implementation; e) Scope of the implementation (region, group); f) Distribution mechanism.

Article 5 paragraph (2) letter b has provided an explanation regarding the method of collecting money or goods, this provision still does not provide sufficient details regarding the implementation of this activity. In addition, Government Regulation Number 29 of 1980 as its implementing regulation also does not regulate this aspect, especially regarding collecting donations via the internet. This is becoming increasingly relevant considering that philanthropic activities are currently increasingly developing by utilizing social media and the internet⁶.

⁶ Karim, N. K., Sasanti, E. E., Lenap, I. P. *Transparansi Dan Akuntabilitas Pengelolaan Dana Zakat Berbasis Sistem informasi Pada Lembaga Pengelolaan Zakat di Indonesia*. Jurnal Riset Akuntansi Aksioma 2019. Vol.2 No.18 h.14

The relationship between donors and online donation platform providers is a legal relationship regulated within a consumer protection framework. Platform providers act as business actors providing fund distribution services, while donors function as consumers entitled to clear information, transparency, and accountability in the management of donation funds. To improve legal protection for donors, regulatory reforms and the establishment of a dedicated oversight body are needed to ensure that donation funds are distributed according to the agreed-upon purposes⁷.

Data in the digital economy doesn't physically move to predictable destinations as it does in the traditional economy. In economic relationships between individuals and private companies, physical storage of private and personal data becomes difficult to locate if transactions are conducted digitally. The storage of compromised data is no longer limited by national jurisdictions, as it can cross national borders⁸.

2. Legal Responsibility for Online Donation Recipients Who Commit Misuse

Donation recipients who misuse the funds they receive may be subject to criminal liability under a number of provisions in the Criminal Code (KUHP) and other relevant laws and regulations. Article 378 of the KUHP regulates the crime of fraud, which can be applied to donation recipients who intentionally provide false or misleading information to gain an advantage over another party.

Meanwhile, Article 372 of the Criminal Code regulates the crime of embezzlement, which can be imposed on donation recipients who illegally control the funds they receive for personal gain. Furthermore, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering stipulates that any individual who receives or controls assets that they know or should reasonably suspect are the proceeds of a crime can be sentenced to a maximum of 5 years in prison and a maximum fine of Rp1,000,000,000.00.

⁷ Kartika Sari, *Pertanggungjawaban Perdata Terhadap Pemberi Dana Donasi Masyarakat Secara Online*, Sibatik Journal, Volume 2 No.7 (2023) h. 1958

⁸ Muhammad chusnul khitam, Suisno, Fajar Seto Nugroho, Putri Ainiyatur Rizkiyah, *E-Consumer Privacy Policy on the Online Marketplace System*, Jurnal Independent, Vol.12 No.1 (2024) h.91

Information technology-based money lending services are positioned as a bridge between borrowers and transfer providers, allowing agreements to be made directly in rupiah. The Financial Services Authority (OJK) directly monitors the existence of fintech, but with rapid developments, the growth of illegal fintech is also increasing⁹.

In addition to criminal liability, recipients of donations who misuse funds may also be subject to civil liability under Article 1365 of the Civil Code, which requires perpetrators of unlawful acts to compensate for losses incurred as a result of their actions. Therefore, it is crucial for the public to exercise caution and ensure that funds distributed through donations are used for their intended purpose, and to choose institutions or individuals with a good reputation for managing donation funds

As a theory, the concept of legal protection provides a fundamental theoretical foundation for understanding the role of law in protecting the rights of individuals and groups in social and national life. This theory not only explains the normative function of law as a guardian of order, but also emphasizes that law must be systematically designed and implemented to ensure justice and legal certainty. Within this framework, legal protection is positioned as a fundamental principle in the national legal system, requiring the state to provide legal instruments capable of effectively guaranteeing and protecting the rights of legal subjects. This concept also serves as a reference in the formation of positive law, where every regulation and legal policy must contain clear, fair, and accessible mechanisms to guarantee the protection of these rights. Thus, legal protection serves as the foundation of a legal system that is just, responsive, and oriented towards the protection of human rights¹⁰.

Conclusion

Online donations in Indonesia have not been specifically regulated and there are no rules in the legislation due to several structural and

⁹ Ayu Dian Ningtias, Dhevi Nayasari S., Enik Isnaini, Suisno, *Enforcement of the Crime of Money Laundering in Digital Financial Transactions*, Jurnal Independent, Vol. 11 No.2 (2023) h.580

¹⁰ Anggun Rotami, *Tinjauan yuridis legalitas donation based crowdfunding sebagai instrumen penggalangan dana bagi lembaga bantuan hukum (crowdfunding based legal aid) di Indonesia*. Jurnal Ilmu Hukum, Vol 2 No 1 2024 h.27.

normative factors that have not been fully accommodated by the national legal system. However, the rules in conventional donations have been regulated in Law No. 9 of 1961 concerning the Collection of Money or Goods. Meanwhile, Responsibility for Misuse of Online Donation Recipients is regulated in Article 378 of the Criminal Code concerning Fraud. The liability that can be charged with this article is threatened for fraud with a maximum prison sentence of four years. Based on the provisions of Article 372 of the Criminal Code, the crime of embezzlement can be punished with a maximum prison sentence of 5 years and a maximum fine of Rp1,000,000,000.00. However, if there is a loss in this case, it can be included in civil liability according to the provisions of the Civil Code Article 1365 which means: every act that violates the law and causes harm to another person requires the perpetrator to provide compensation, civilly it is possible to ensure that the perpetrator is responsible for the losses that have been caused. Furthermore, accountability through clarification or a public apology is one form of accountability that can be carried out by the party who has committed an act that harms another party. So that it can cause a positive impact or good faith for the injured party.

Daftar Bacaan bibliography

Books and Journals

- Fithriatus Shalihah, S. H., Deslaili Putranti, S. H., Putri, U. T., SH, M., Marwa, M. H. M., SHI, M., & SH, M. K. (2022). *Equity Crowdfunding di Indonesia*. UAD PRESS.
- Hayati, Zahra, Khofifah Nabila, and Fauziah Lubis. "Peran Advokat Dalam Memberikan Bantuan Hukum Berdasarkan Undang-Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum." *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 2 (2023): 356-363.
- Karim, Nina Karina, Elin Erlina Sasanti, Indria Puspitasari Lenap, and Nungki Kartika Sari. "Transparansi dan akuntabilitas pengelolaan dana zakat berbasis website pada lembaga pengelola zakat di Indonesia." *Jurnal Riset Akuntansi Aksioma* 18, no. 2 (2019): 13-28.

- Kurniawan, Adi, and Ety Rahayu. "Penyertaan Modal Perseroan Terbatas Sebagai Alternatif Strategi Penggalangan Dana Organisasi Kemanusiaan Dengan Legalitas Yayasan." *UNES Law Review* 6, no. 4 (2024): 11034-11044.
- Ningtias, Ayu Dian, Dhevi Nayasari Sastradinata, and Enik Isnaini. "Enforcement of the Crime of Money Laundering in Digital Financial Transactions." *Jurnal Independent* 11, no. 2 (2023): 575-585.
- Nugroho, Fajar Seto, and Putri Ainiyatur Rizkiyah. "E-Consumer Privacy Policy on the Online Marketplace System." *Jurnal Independent* 12, no. 1 (2024): 88-97.
- Dinata, I. Wayan Wardiman, and I. Nyoman Bagiastra. "Cara Mengajukan Gugatan dan Perubahan Gugatan Dalam Praktek Peradilan Hukum Acara Perdata." *Kertha Negara* 5, no. 04 (2017).
- Peter Mahmud Marzuki, Penelitian Hukum, Kencana Prenada Media Group, Jakarta, 2023.
- Rotami, Anggun, and Saripudin Tanjung. "Tinjauan Yuridis Legalitas Donation Based Crowdfunding sebagai Instrumen Penggalangan Dana bagi Lembaga Bantuan Hukum (Crowdfunding Based Legal Aid) di Indonesia." *Perfecto: Jurnal Ilmu Hukum* 2, no. 1 (2024): 25-38.
- Sari, Kartika, Firdaus Firdaus, and Setia Putra. "Pertanggungjawaban Perdata Terhadap Pemberi Dana Donasi Masyarakat Secara Online." *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 2, no. 7 (2023): 1951-1964.
- Shodiq, Ja'far, and Susi Winanda. "Legal Provisions for Settlement of Plagiarism of Digital Fiction Works." *Jurnal Independent* 12, no. 2 (2024): 210-221.

Legislation

KUH Perdata

Undang-Undang Nomor 9 Tahun 1961 tentang Pengumpulan Uang atau Barang

Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi
Elektronik

Peraturan Pemerintah Nomor 29 Tahun 1980 tentang Pelaksanaan Pengumpulan
Sumbangan

Peraturan Menteri Sosial No 8 Tahun 2021 tentang Penyelenggaraan
Pengumpulan Uang atau Barang

Peraturan Otoritas Jasa Keuangan Republik Indonesia

Nomor 10 /Pojk.05/2022 Tentang Layanan Pendanaan Bersama Berbasis
Teknologi Informasi