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The Effectiveness of Resolving Donation-Based Crowdfunding Disputes on the Kitabisa.com Platform Through Alternative Dispute Resolution

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ABSTRACT

In the modern era, financial services have increasingly integrated with technological advancements, one example being donation-based crowdfunding that operates through online financial platforms. Kitabisa.com is an online platform that facilitates donation transactions between campaigners and donors but does not assume responsibility for the actions or information provided by campaigners, donors, or other users. This creates significant potential for disputes among these parties. This study examines two key issues related to the standard contracts used in donation-based crowdfunding: the unilateral dispute resolution provisions created by the platform and the effectiveness of resolving disputes through alternative dispute resolution (ADR). Using a case study approach focused on Kitabisa.com's standard contracts, the research employs descriptive-qualitative analysis of collected data and literature. The findings reveal that while some contracts include ADR clauses, others do not, and the effectiveness of ADR in resolving disputes is limited, with few cases being publicly reported.

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INTRODUCTION

The rapid and creative growth of information and communication technology in the financial sector (fintech) has driven the emergence of numerous financial service institutions and products that rely on online systems. One such innovation is crowdfunding, a mass-based fundraising scheme (**Rijal Arifin & Wisudanto, 2017**), often referred to as "urun dana" in Indonesian. This process involves pooling funds from a large group of individuals, where

even small individual contributions collectively amount to substantial sums, demonstrating crowdfunding's key advantage. In the digital age, crowdfunding is primarily conducted online, with platforms acting as intermediaries between fundraisers and contributors, utilizing websites and specialized applications. The expansive reach of the internet further amplifies the mass element of crowdfunding, making it unrestricted by geographical boundaries.

Crowdfunding is classified into four types based on the returns offered to contributors (**Law, 2015**). donation-based (without returns), debt-based (interest returns), equity-based (investment in securities), and reward-based (benefits). In Indonesia, donation-based crowdfunding is the most prevalent form, with various traditional and online donation collection methods in practice, such as street campaigns, door-to-door collections, donation boxes, and online platforms (**Oparacha, 2017**). This study focuses on online donation-based crowdfunding via websites and applications, a relatively new practice requiring specific legal protections. Existing regulations, such as Law No. 9 of 1961 on Fund and Goods Collection (UU PUB), do not adequately address this system. While UU PUB regulates licensing and sanctions for violations, it does not cover the specifics of digital platforms, contracts, or dispute resolution mechanisms.

Donation-based online crowdfunding typically involves three main parties: donors, recipients, and the platform as the digital intermediary. The relationships among these parties are often governed by standard contracts provided by the platform. However, these contracts, along with current regulations, lack the alignment necessary to address modern developments, creating legal gaps that may lead to fraud and disputes. UU PUB also does not regulate dispute resolution, leaving such mechanisms to the discretion of the platform, which often includes dispute resolution clauses in their standard contracts. Users must agree to these terms to access platform services, limiting their options if they disagree.

Previous studies have explored the effectiveness of alternative dispute resolution (ADR) in resolving crowdfunding disputes. For instance, Rahmawati and (2022) found that dispute resolution in Indonesian crowdfunding platforms is typically handled through internal platform mediation but is hindered by the absence of specific regulations and detailed operational standards. **Diana Hartono (2020)**, identified challenges in ADR for digital transactions, such as user trust and the need for adaptive legal frameworks and technological support. Comparative studies, such as **Susanto Wijaya's (2019)** highlight the more developed legal frameworks in countries like the United States and the UK, which effectively utilize ADR to prevent litigation escalation. International research, including **Smith and Johnson (2020)** demonstrates that ADR, particularly online mediation, is effective in resolving crowdfunding disputes, though challenges remain regarding legal and cultural differences in cross-border cases.

Despite these efforts, Indonesia requires a stronger legal framework and standardized mechanisms to enhance ADR effectiveness. This study aims to fill this gap by evaluating ADR's effectiveness in donation-based crowdfunding, specifically focusing on two key issues: the unilateral dispute resolution provisions in standard contracts created by platforms and the overall effectiveness of ADR in resolving disputes. Using Kitabisa.com as a case study, this research seeks to provide empirical insights into the dispute resolution mechanisms employed in donation-based crowdfunding.

RESEARCH METHOD

This study falls under the category of empirical descriptive research, employing an empirical approach to describe the key variables of the subject under investigation. To draw conclusions, the research adopts a case study approach, focusing on empirical facts and data. The data utilized in this study were sourced from literature and observations, including standard contracts on the relevant platforms, legislative regulations, and other relevant academic works. In addition to empirical data, the research also involves library research as a data collection technique, which entails gathering information from various sources such as books, documents, articles, and journals related to the issues discussed in this paper. The data analysis was conducted using a descriptive-qualitative method, which involves reading, examining, reviewing, and interpreting the collected and categorized data. This process culminates in drawing conclusions that represent the findings of the research.

RESULTS AND DISCUSSION

Dispute Resolution in Donation-Based Crowdfunding

Dispute resolution forms an integral part of legal protection. According to Philipus M. Hadjon, legal protection can be categorized into two types: preventive and repressive **(Atmaja, 2018)**. Preventive legal protection aims to prevent disputes, often through regulations and laws. On the other hand, repressive legal protection addresses disputes after they arise, typically by imposing sanctions to restore legal order (**Fauziah, 2012**). Dispute resolution mechanisms are divided into two approaches: litigation and non-litigation. Litigation refers to resolving disputes through court proceedings, employing a law-based approach carried out by authorized legal enforcement agencies in accordance with statutory regulations. Litigation is generally considered the last resort or ultimum remedium, used only when amicable or alternative resolution methods fail to yield an agreement **(Ainun Fadillah & Amalia Putri, 2021**).

Non-litigation, however, encompasses dispute resolution outside the court system and includes arbitration and alternative dispute resolution (ADR). Arbitration, as defined by Law No. 30 of 1999, is the resolution of civil disputes outside the general judiciary based on a written arbitration agreement between the disputing parties. Article 3 of the same law states that district courts do not have jurisdiction over disputes bound by arbitration agreements. This provision underscores the principle of freedom of contract, enabling parties to stipulate dispute resolution methods within their agreements. These methods must be prioritized in case of disputes, and courts must reject cases that have not adhered to the agreed mechanisms (**Sastrowiyono, 2019**).

Furthermore, Article 1 of Law No. 30 of 1999 defines ADR as a mechanism for resolving disputes or differences of opinion through procedures agreed upon by the parties, such as consultation, negotiation, mediation, conciliation, or expert judgment. This allows individuals seeking justice to choose a resolution method based on mutual agreement, resorting to court proceedings only as a last option if no agreement is reached. In donation-based crowdfunding disputes, the applicable resolution procedures align with the aforementioned methods. These mechanisms are guided by the contractual relationships among the involved parties—donors, platforms, and beneficiaries. The resolution process begins by examining the contractual agreements that establish the rights and obligations of each party and addressing disputes according to the agreed terms.

From a legal perspective, the relationships among the parties can also be viewed through the lens of consumer and business actor protection. In this context, the platform acts as a

business entity providing a service to connect donors with beneficiaries, while both donors and beneficiaries are regarded as consumers of the platform. Thus, consumer protection regulations may serve as an additional legal basis in resolving such disputes.

Case Study on the Standard Contract of Kitabisa.com

The development of the economic industry demands efficiency in business activities, directly influencing the use of contracts. In almost every transaction involving a large number of people, companies typically employ agreements drafted unilaterally, commonly referred to as standard contracts (**Munthe, 2006**). Under Law No. 8 of 1999 on Consumer Protection (UUPK), standard clauses are defined as any rules, conditions, or terms prepared and determined unilaterally by a business actor, documented in an agreement binding on and mandatory for the consumer (**Badruzzaman, 2006**).

In standard contracts, consumers are at a disadvantage as they lack bargaining power to negotiate the terms. Their choices are limited to either acceptance or rejection. A key aspect of consumer protection in such contracts is the scrutiny of exoneration clauses, which shift obligations and responsibilities from the business actor to the consumer. Article 8 of UUPK provides guidelines to prevent such practices, stating that business actors in standard contracts are prohibited from: (1) Stating the transfer of the business actor's responsibilities; (2) Granting authority to the business actor, directly or indirectly, to perform unilateral actions related to goods purchased on an installment basis; (3) Reducing the benefits of services or diminishing the consumer's assets used as the object of the transaction; (4) Imposing new, additional, or altered rules unilaterally during the consumer's use of the purchased service; and (5) Authorizing the business actor to impose rights such as mortgages, liens, or guarantees on goods purchased by the consumer on installment terms.

Observations of Kitabisa.com's platform reveal that its standard contract is embedded within its terms and conditions menu, comprising multiple provisions categorized from "A" to "M." The contract refers to donors as "donors," fundraisers as "campaigners," and the service provider as the "platform provider.". The contract clarifies that Kitabisa.com is not a broker, charity organization, financial institution, or creditor. Instead, it functions as a platform facilitating donation transactions between campaigners and donors. Kitabisa disclaims responsibility for the execution or accuracy of information provided by campaigners, donors, or other users, to the extent permitted by Indonesian law. It emphasizes that all campaign content provided by Kitabisa serves as a notification, without guarantees on its truthfulness, accuracy, timeliness, or completeness, and shifts the associated risks to the users.

Visitors and users of the platform can file complaints with the platform provider for alleged violations of the terms and conditions, including but not limited to: (1) Submission of incomplete, incorrect, misleading, or falsified data and information; (2) Uploading prohibited content; (3) Misuse of campaign funds by campaigners; and (4) Campaigners failing to fulfill or only partially fulfilling campaign promises, or delivering outcomes inconsistent with commitments.

Clause “K” of the contract addresses the choice of law and forum, stipulating the application of Indonesian law and the jurisdiction of the Indonesian National Arbitration Board (BANI). Any disputes arising from the interpretation or implementation of the terms and conditions that cannot be resolved amicably, including the validity of the terms themselves, shall be adjudicated and decided by BANI in the designated jurisdiction (**Kitabisa, n.d.**).

Dispute Resolution Procedure at the Indonesian National Arbitration Board (BANI)

Article 3 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution stipulates that District Courts are not authorized to adjudicate disputes between parties bound by an arbitration agreement. As a result, the inclusion of an arbitration clause in an agreement signifies that the parties have agreed to resolve any disputes through the specified arbitration institution. Consequently, the matter falls under the exclusive jurisdiction of arbitration rather than the courts (**Matheus, 2021**). This principle is known as pactum de compromittendo in arbitration, requiring the parties to adhere to the rules of the agreed arbitration body.

In its standard contract, Kitabisa.com designates the Indonesian National Arbitration Board (BANI) as the forum for dispute resolution. Therefore, any disputes arising from crowdfunding activities on Kitabisa.com must be resolved through BANI, following its established procedures. The steps in the dispute resolution process at BANI are as follows:

1. Registration
   The arbitration process begins with the submission of a registration and arbitration request by the applicant to the BANI Secretariat. The request must include: (1) The names and addresses of the parties involved; (2) A description of the facts and legal basis for the arbitration request; (3) Details of the issues in dispute; (4) Claims and/or the amount in dispute. The request must be accompanied by a copy of the relevant agreement containing the arbitration clause or arbitration agreement. Additional supporting documents deemed relevant by the applicant may also be submitted. Following this, BANI examines whether the matter falls within its jurisdiction. If deemed admissible, BANI forwards the arbitration request and accompanying documents to the respondent, who must submit a response within 30 days of receipt.

2. Selection of Arbitrators
   The parties have the right to choose arbitrators listed with BANI or external arbitrators with specialized expertise, if necessary. If the parties fail to appoint arbitrators, the BANI Chairperson will make the selection. The number of arbitrators (single or panel) depends on the complexity of the dispute.

3. Hearings and Proceedings
   The Arbitration Panel must first attempt to facilitate an amicable resolution, either through the parties' own efforts or with the assistance of mediators, conciliators, or third-party intermediaries, including the Arbitration Panel itself, if agreed upon. If no settlement is reached, the arbitration proceeds according to established procedures. The Arbitration Panel determines whether the case can be resolved based solely on submitted documents or requires hearings. If hearings are necessary, the Arbitration Panel schedules an initial session to address procedural matters, document submissions, or further proceedings. Each party must present their position, provide supporting evidence, and substantiate their claims or defenses.

4. Evidence Presentation
   The Arbitration Panel assesses the admissibility and relevance of the evidence. If deemed necessary or upon request, witnesses and experts may be summoned.

5. Final Decision
   Once evidence, testimonies, and hearings are deemed sufficient, the Arbitration Panel concludes the proceedings. The Chairperson of the Arbitration Panel then schedules a session to deliver the final decision. The Arbitration Panel must issue the final decision within 30 days of the conclusion of the proceedings unless an extension is justified. The decision is made based on legal provisions or principles of fairness and equity. The decision must be signed by all arbitrators and include the date and location of issuance. If one or more arbitrators refuse to sign, the reason must be stated in the decision. The signed decision is provided to the parties within 14 days, along with two copies for BANI, one of which is registered with the relevant District Court. The decision is final and binding, requiring immediate implementation by the parties.

If there are three arbitrators and one or two fail to sign the award, the reasons for their non-signature must be explicitly stated in the decision. Within 14 (fourteen) days, the signed decision must be delivered to all parties, along with two (2) copies for BANI, one of which will be registered by BANI with the relevant District Court. The decision is final and binding on the parties, who are obligated to promptly comply with it. Although arbitration awards are final, Article 70 of Law No. 30 of 1999 provides that the parties may submit a written application to annul the award within 30 (thirty) days from the date of the award's delivery and registration with the District Court Clerk, under the following circumstances: (1) A letter or document submitted during the proceedings is subsequently acknowledged as forged or declared to be falsified; (2) Decisive documents, previously concealed by the opposing party, are discovered after the award has been issued; (3) The award was rendered based on fraudulent conduct or deceit perpetrated by one of the parties during the dispute resolution process.

Effectiveness of Resolving Donation-Based Crowdfunding Disputes Through Alternative Dispute Resolution (ADR)

The perception of effectiveness stems from one of the criteria within administrative science, which extends into various aspects of human activities aimed at achieving desired objectives. The term effectiveness derives from the word effective, which refers to producing satisfactory results, influencing outcomes, or utilizing time and methods optimally (**Badudu, 2004**). Broadly, effectiveness signifies achieving success in accomplishing predefined goals. It is closely related to the relationship between expected results and actual outcomes (**Orlando, 2022**).

Different scholars have provided various definitions of effectiveness. Auren Uris defines it as relating to the results achieved (**Gie, 2001**). Moh. Nazir, as cited by Fuad Hasan Febriyanto, describes effectiveness as a measure of how far target quality, quantity, and time have been achieved **(Febriyanto, 2013**). Makmur views effectiveness as the alignment of expectations, implementation, and outcomes. Activities that are ineffective show gaps between expectations, implementation, and results **(Makmur, 2011**).

From these definitions, effectiveness can be understood as achieving objectives through established methods. Measuring effectiveness requires comparing correctness or accuracy against errors made. The lower the error rate, the closer to accuracy the performance or task execution will be. When examining the effectiveness of dispute resolution through ADR in donation-based crowdfunding, two key indicators can be considered:

1. Inclusion of ADR Clauses in Contracts
   The inclusion of ADR clauses in contracts indicates that the parties have effectively opted for a legal framework and forum provided by law. This is tied to the parties' choice in determining dispute resolution methods. According to Rachmadi Usman, as cited by Ros Angesti et al., the choice of ADR depends on several factors, including economic considerations, legal culture, the scope of issues that can be addressed, fostering good relationships between parties, and the process itself (Ros, 2014).
2. Quantitative Success of ADR in Resolving Crowdfunding Disputes
   The success of ADR can be quantitatively measured by assessing whether the ADR decision has been agreed upon by the parties without cancellation or failure during the process, making the decision final. When this occurs, ADR dispute resolution can be deemed to meet the sense of justice for the parties involved. Factors influencing this indicator include: (a) The dispute remains within reasonable boundaries; (b) The commitment of the parties; (d) Continuity of relationships; (d) Balanced bargaining positions; and (e) Private and confidential processes.

Based on the author's observations of several online crowdfunding platforms, some platforms, such as Kitabisa.com and ACT, include alternative dispute resolution clauses in their contracts. However, there are platforms that do not include such clauses. Regarding the success of ADR in resolving crowdfunding disputes, the author's observations have yet to find disputes that have been escalated to court.

CONCLUSION

Donation-based crowdfunding platforms generally include contractual agreements between parties on their websites or applications. These contracts serve as the basis of binding obligations and establish the rights and responsibilities of the parties. Some standard contracts explicitly include a dispute resolution clause utilizing alternative dispute resolution (ADR), while others do not. The effectiveness of resolving disputes through ADR in donation-based crowdfunding cases has rarely surfaced publicly. In many instances, disputes are resolved without escalating to litigation in court.

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