









LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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Juridical Analysis of Legal Protection for Issuers in Equity Crowdfunding Activities

Qurratul Uyun

Faculty of Law, Social and Political Sciences, University of Mataram

Email: qurratuluyun70@gmail.com

Djumardin

Faculty of Law, Social and Political Sciences, University of Mataram

Email: drdjumardin@gmail.com

Diangsa Wagian

Faculty of Law, Social and Political Sciences, University of Mataram

Email: dwagian@unram.ac.id

ABSTRACT

The objectives of the research are: To analyze the legal relationships among the parties involved in equity crowdfunding activities and to explain the legal protection for issuers in equity crowdfunding activities. The type of research used is normative legal research. Based on OJK Regulation Number 57/POJK.04/2020 about concerning Securities Offerings through Information Technology-Based Crowdfunding Services, the legal relationship between the issuer and the investor is based on a sale and purchase agreement; between the issuer and the platform operator, it is based on a service agreement; and between the investor and the platform operator, it is a power of attorney-based legal relationship. Legal protection for issuers under OJK Regulation Number 57/POJK.04/2020 is preventive in nature, while repressive legal protection requires other legal instruments to protect issuers from various risks such as data protection, intellectual property rights protection, and anti-money laundering measures.

Keywords: Legal Protection, Equity Crowdfunding, Publisher

1. INTRODUCTION

Changes in the business world in the era of the industrial revolution 5.0 are characterized by the development of technologies such as the development of artificial intelligence, robotics, nanotechnology and even unmanned vehicles. Various business

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tools and instruments are growing rapidly with increasingly varied models. Such rapid business development requires human resources who can adapt dynamically to the progress of the business world.

One of the latest innovations in the world of finance and is experiencing development in is *crowdfunding*. *Crowdfunding* is an alternative media innovation for people who want to carry out investment activities. Previously, the activity of obtaining funds and channeling funds (investment) was carried out in the capital market which was exclusive to the upper middle class, but due to the development of information and technology this stock trading activity turned out to attract the attention of the lower middle class, so that an information technology-based stock offering or *equity crowdfunding* was presented. Most crowdfunding in Indonesia is still *donation-based* and *reward-based*. *Donation-based* if the funder will not get any return from the money deposited, while in *reward-based*, the funder will get goods, services or rights related to the goods / services produced by the investee in accordance with the funds that the investor deposited. Seeing this, crowdfunding needs to be developed so that it is not only a potential new funding platform but also a profitable investment instrument.

Equity Crowdfunding was first implemented in the UK with the first platform organizer, Crowdcube. Since then, *Equity Crowdfunding* has rapidly developed in various countries. In 2013, the World Bank stated that there were 672 *Equity Crowdfunding* organizers with an estimated market value worldwide of around US \$96,000,000,000 (Viña & Black, 2018). Revenue data from *equity crowdfunding* in Indonesia as of June 2022 is IDR 507 billion (Annur, 2022).

In *Equity crowdfunding*, financiers or investors who have excess funds can invest their capital into an *equity* participation of issuers and entrepreneurs. This crowdfunding service provides a solution for entrepreneurs who lack capital to obtain additional business capital. Investors will get a portion of the shares offered by the issuer through

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the organizer. directly in the company's operations. The issuer provides reciprocity in the form of dividends to investors through the organizer (Nurmalita, 2020).

One of the parties in this *Equity Crowdfunding* activity is the issuer, namely an Indonesian company or business entity that sells its shares to the public in order to obtain additional costs for the company's operations. In PJOK Number 57/POJK.04/2020, *Equity Crowdfunding* activities are included in financial services activities in the capital market sector and the parties involved are stated to be parties carrying out activities in the capital market sector. Thus, the rules used in addition to referring to POJK Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services but also refer to *Law (UU) Number 8 of 1995 concerning Capital Markets*.

Based on the above background, it can be seen that there is a conflict of norms between the rules issued by OJK POJK No. 57/POJK.04/2020 contradicts Law Number 8 of 1995 concerning Capital Markets related to the concept of the issuing company in this *Equity Crowdfunding* activity, besides that usually those who conduct funding through this fund-raising activity are newly developing companies in the stage of needing company operational funds and have the risk of experiencing business failure due to non-fulfillment of funds entering the company and also theft of intellectual property rights. In addition, the risk of loss does not only come from the issuing company but the organizer as the party managing the equity crowdfunding activity system such as the organizer's poor standard operating procedures and infrastructure factors such as failures in electronic systems that cause losses to issuers and investors. This is the reason why the need for legal protection for issuing companies in *Equity Crowdfunding* because losses are not only experienced by investors but publishers also have risks from the organizers and also to provide certainty for business actors who want to develop their business and provide a sense of security in doing business

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Therefore the authors are interested in conducting research with the title “Juridical Analysis of Legal Protection for Issuers in *Equity Crowdfunding* Activities”.

2. RESEARCH METHODS

The type of research used is normative legal research with a *statutory approach* and *conceptual approach*. The statutory approach by discussing regulations on legal issues, namely PJOK Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services, while the conceptual approach is an approach to views and doctrines that develop in legal science which in this paper uses legal certainty theory and progressive legal theory. The data used in this research uses primary and secondary materials consisting of related laws, relevant books, journals, information media via the internet and other sources. The analysis used in this research uses a qualitative analysis method, namely by interpreting the legal materials that have been processed.

3. DISCUSSION

Legal Relationship of Parties in Equity

Equity crowdfunding is one type of crowdfunding. Equity crowdfunding is the purchase of a number of shares by the public/investors in a *private company* (small company) with the aim of getting future profits (*individuals invest money in purchasing offerings of private company securities with the expectation of receiving monetary rewards in the future*) (Shneor et al., 2020).

The legal basis for equity crowdfunding in Indonesia was first regulated in the Financial Services Authority Regulation Number 37/POJK.04/2018 concerning *Crowdfunding* Services through Information Technology-Based Share Offerings (*Equity Crowdfunding*), which in this regulation emphasizes this *crowdfunding* activity with the

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term *equity crowdfunding* so as to provide clear legal force. The emergence of the equity crowdfunding phenomenon is due to several reasons, among others:

- a. The development of information technology allows entrepreneurs to access alternative business financing.
- b. Micro, Small and Medium Enterprises (MSMEs) have difficulty accessing financing through banks or cannot enter the capital market.
- c. People (investors) want to earn more than just keeping their money in the bank.

On December 11, 2020 OJK issued Financial Services Authority Regulation Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services. It is stated in the consideration of POJK Number 57/POJK.04/2020 that the purpose of issuing the POJK is to expand the scope of securities offerings in *Crowdfunding* Services, so that POJK Number 37/POJK.04/2018 (*Equity Crowdfunding*) must be replaced. These changes have an impact on the change in terms as well, which previously Equity Crowd funding (ECF) became Securities Crowdfunding (SCF) (Shalihah et al., 2022).

The regulatory changes issued by OJK aim to expand the scope and subject of crowdfunding. ECF in POJK Number 37/POJK.04/2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings (Equity Crowdfunding) is defined as crowdfunding services through information technology-based stock offerings. When POJK No. 57/POJK.04/2020 was issued, the term share offering was replaced with securities offering. Securities are securities such as: debt acknowledgment letters, commercial papers, stocks, bonds, evidence of indebtedness, participation units of collective investment contracts, futures contracts on securities, and any derivatives of securities (Article 1 paragraph (2) POJK No. 57/POJK.04/2020). The mention of shares in the definition of the market explains that stock offerings are not eliminated from securities offerings but shares are part of securities offerings that exist in Securities Crowdfunding activities called equity crowdfunding (Shalihah et al., 2022).

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The implementation of crowdfunding has 3 (three) main parties, namely: issuers, organizers, and financiers. The legal relationship between the parties in equity crowdfunding is a legal relationship between three parties (*triangular relationship*).

- a. Businesses that need funds tend to be small-scale companies such as MSMEs or *startups* because they are in accordance with the funds that will be invested in small amounts. They are called issuers because they will submit ideas and requests for funding by issuing shares through an online portal intermediary called a crowdfunding platform to be offered to investors.
- b. *Investors/funders (backers)* will see an investment opportunity and then give their commitment to fund and will then get a return on the investment.
- c. The ECF platform organizer acts as an *intermediary* that brings together investors and issuers.

The relationship patterns between the three subjects are interconnected and can be described as follows:

a. Legal Relationship between Publisher and Organizer

The agreement between the publisher and the organizer is the provision of cooperation in terms of implementation, the implementation agreement is a special form of cooperation agreement that focuses on the implementation of an activity or project. The issuer to the organizer to offer shares owned by the issuer to the wider community through the information system owned by the organizer. The position of the issuer in the concept of equity crowdfunding is not allowed to offer its shares to the public without going through the organizer. After a purchase agreement from investors, the money received by the organizer will be forwarded to the issuer and then the shares will be distributed by the organizer to investors.

The scope of the organizer's power over the issuer is to analyze the issuer who wants to offer securities (shares). In equity crowdfunding, the organizer's duties towards the issuer (the company issuing the shares) include reviewing, providing a

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platform, and ensuring regulatory compliance. Issuers can only offer shares through one organizer at a time. The maximum limit of fund raising through Crowdfunding Services by each Issuer within a 12-month period is a maximum of IDR 10,000,000,000.00 (Article 33 of PJOK Number 57/POJK.04/2020 of 2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services).

b. Legal Relationship between Issuer and Investor

The pattern of the relationship between the Issuer and the Investor in the ECF is like a sale and purchase agreement as referred to in Article 1457 of the Civil Code, namely a sale and purchase agreement by which one party binds himself to deliver an object and the other party to pay the promised price. The issuer first determines the amount of funds to be raised in the share offering and the purpose of using the funds. The issuer may set a minimum amount of funds that must be obtained in the share offering (Article 34 paragraph (1) POJK No. 57/POJK.04/2020), for example, certain businesses that must require certain capital.

Legally, the sale and purchase agreement is regulated by Articles 1457-1540 of the Civil Code. Article 1458 of the Civil Code expressly states that a sale and purchase agreement is considered to have taken place between the seller and the buyer if they have agreed and agreed on the condition of the object and the price of the goods. In a sale and purchase agreement, usually the seller and buyer bind themselves in an official document in the form of a sale and purchase agreement letter signed by both parties. This document can be used as evidence of a transaction or agreement between the two parties.

c. Legal Relationship between Investor and Organizer

Organizers and investors in equity crowdfunding have a legal relationship born from a cooperation agreement in terms of granting power of attorney in Crowdfunding Services. The agreement for the implementation of Crowdfunding

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Services between the Organizer and the Investor is set forth in the form of a standard agreement (Article 64 POJK No. 57/POJK.04/2020 concerning Securities Offering Through Information Technology-Based Crowdfunding Services). Granting power of attorney is one of the nominee agreements contained in Book III Chapter XVI Articles 1792 to 1819 of the Civil Code. Based on Article 1792 of the Civil Code, a power of attorney agreement is an agreement by which a person gives power to another person, who accepts it, to carry out an affair on his behalf.

Agreement between the organizer and the investor, this relationship occurs when the investor agrees to the terms and conditions on the equity crowdfunding organizer platform as outlined in the form of a standard agreement (Article 64 POJK No. 57/POJK.04 /2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services). This means that in this case the obligation is born from an agreement that gives rise to contractual responsibility so that Article 1811 of the Civil Code applies, in which several investors can give their power of attorney to carry out the same thing to one proxy, namely the organizer, where each of the proxies is fully responsible for the proxy regarding all consequences of the granting of the power of attorney.

Legal protection for issuers in equity crowdfunding

Article 8 of the OJK Law regarding regulatory duties states that one form of regulatory duty is to establish laws and regulations in the financial services sector. Article 8 of the OJK Law regarding regulatory duties states that one form of regulatory duty is to establish laws and regulations in the financial services sector.

Legal protection to the parties in *equity crowdfunding* is a control of the parties from the risks that can arise from equity crowdfunding activities. Legal protection is divided into two parts, namely:

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- a. Preventive protection, namely control, has the aim of taking preventive steps against various norm violations. This preventive law enforcement can be done by providing understanding and awareness for the community, as well as the parties involved.
- b. Repressive protection has the aim of taking action against violations of norms, in order to create a deterrent effect for the perpetrators. Repressive law enforcement is carried out, if there has been a violation of the law because in this financial service activity has its own risks to the parties.

In the public's view, the risk of equity crowdfunding only comes from the issuer, but in addition to investors, the issuer who sells shares through the ECF platform is also exposed to a number of risks because the issuer is also on the one hand a consumer party of the equity crowdfunding organizer. First, general risks such as a reduction in the portion of share ownership, the disclosure of a number of company secrets, the possibility of reduced company control, the potential loss of the company due to acquisition and so on. Another risk that is important to mitigate is the risk of compliance with the submission of a number of mandatory *monetary/non-monetary* reports to the supervisory authority as well as to the platform and financiers. Operational risk, *capacity* and management risk are also important issues considering that many of the targeted MSME players are new businesses or startups.

In conducting preventive protection for the issuer, POJK 57/PJOK.04/2020 requires the organizer to conduct a review of the issuer, including the legality of the issuer marked by proof of legal entity validation, company structure, aspects of capital increase, issuer restrictions, and licensing related to the issuer's business activities that will be funded through EFC share offerings, as well as documents or information in other forms by the issuer at the time of the share offering through EFC. Applying user protection principles including transparency, fair treatment, reliability, data confidentiality and security, and user dispute resolution in a simple, fast and low cost manner when conducting internal and external dispute resolution. Organizers and Users

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are required to mitigate risks. However, there is no further explanation regarding the application of risk mitigation in order to provide preventive legal protection in this equity crowdfunding. Here are some risks for issuers that need protection:

a. Data protection

In practice, the organizer creates a container that connects prospective users with the organizer itself through an online-based platform. The aim is to establish easy communication between other parties and the provider or site manager in carrying out crowdfunding service activities because ECF is a platform-based business by utilizing technological sophistication. On the available platform, the organizer will also upload or publish documents and information in any form related to the company on the organizer's website in order to convey information to prospective users for the realization of transparency.

For these data, protection is needed to protect their identity from those who plan to commit unlawful acts, and as a form of avoidance of crimes that will endanger the safety and security of the data owner from irresponsible parties. Given that equity crowdfunding activities are carried out on an online site that is vulnerable to sabotage and data claiming by other parties, the protection needed must be strong and enshrined in a legislation. Protection of data and privacy is regulated in POJK No. 57/POJK.04/2020 in Article 72 to. The provisions of Article 72 of this regulation regulate the basic concepts that are used as principles in protecting users, both issuers and financiers, as an obligation of the organizer which includes transparency, fair treatment, reliability, confidentiality and data security as well as resolving user disputes simply, quickly, and at a cost that can be reached by the party concerned. As for repressive legal protection in terms of protecting the data of the parties using Law Number 27 of 2022 concerning Personal Data Protection (UU PDP) which applies to all entities that manage personal data, both public and private, including in the digital space.

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b. Protection of Intellectual Property Rights

From the publisher's side, there are weakness factors in equity crowdfunding that can cause losses. Issuers as entrepreneurs who have business ideas and trade secrets must provide complete information that can be read by the public on the organizer's website. This is risky because it will trigger theft of business ideas and Intellectual Property Rights (IPR) owned by publishers by entrepreneurs with larger capital or even by investors. The organizer cannot guarantee that there will be no leakage of the publisher's business ideas or information.

The risk of business idea annexation that has not been accommodated in the crowdfunding service regulation is an action that is contrary to the principles of consumer protection, namely the principles of justice, security, and consumer safety and legal certainty. POJK No. 57/POJK.04/2020, which regulates securities offerings through information technology-based crowdfunding services, implicitly protects Intellectual Property Rights (IPR) by regulating the obligations of organizers and issuers to ensure that the securities offerings carried out do not violate the IPR of other parties. The Crowdfunding Service Organizer (LUD) is required to conduct a thorough examination of the issuer and the securities offered, including ensuring that the issuer has rights to a valid brand, patent or copyright related to the project underlying the securities offering. Issuers are required to provide true and complete information regarding the project and securities offered, including any relevant copyrights or other intellectual property rights.

Thus, POJK No. 57/POJK.04/2020 provides protection against IPR through a preventive approach, namely by requiring organizers and issuers to act carefully and ensure that the securities offering carried out does not violate the rights of other parties. In addition, investors are also protected from losses that may arise from infringement of intellectual property rights. As for repressive protection, the issuer

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requires other laws and regulations to be the basis for the protection of intellectual property rights such as:

- 1) Law No. 28 Year 2014 on Copyright
- 2) Law No. 13 Year 2016 on Patents
- 3) Law No. 20 Year 2016 on Trademarks and Geographical Indications
- 4) Law No. 31 Year 2000 on Industrial Design

c. Money laundering protection

The Anti-Money Laundering Law (Anti-Money Laundering Law) does not specifically regulate the protection of businesses. This law aims to prevent and eradicate money laundering, which can have an impact on business actors. Business actors proven to be involved in money laundering may be subject to criminal sanctions (imprisonment and/or fines) and administrative sanctions (fines and/or asset freezing) in accordance with the provisions in the Anti-Money Laundering Law. Business actors have the responsibility to apply the principles of "*Know Your Customer*" (KYC) and "*Know Your Business*" (KYB) to prevent money laundering. In POJK Number 57 / PJOK-04 / 2020 explains the principle of knowing the customer, namely Article 82 that the Provider is obliged to implement an anti-money laundering and prevention of terrorism financing program in the financial services sector against Users in accordance with the provisions of laws and regulations. Joni Emirzon's opinion further explains that Efforts to eliminate or hide money so that it looks as money (Emirzon, 2002):

1) Placement

Namely, efforts to place money derived from criminal acts into the financial system or efforts to place digital money back into the financial system, especially the banking system both in the country and in other countries, as well as globally or internationally. Investors inject proceeds of crime into the system through

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investments in companies that raise funds through equity crowdfunding. Registering as individual investors (often using false data or *nominees*).

2) Layering

It is an attempt to transfer assets derived from criminal acts that have been successfully placed in financial service providers, especially banks, as a result of placement efforts to other financial service providers. In this activity there is a process of moving funds from several accounts or certain locations as a result of placement to other places through a series of complex transactions designed to disguise and eliminate traces of the source of these funds. The invested funds are "returned" in the form of dividends from the issuer, or an *exit* to an affiliate.

3) Using Assets (*Integration*)

Namely, efforts to use assets derived from criminal acts that have successfully entered the financial system, either for direct enjoyment. The proceeds of crime now look "clean" because they come out of the system as the result of a legitimate investment. The money is then placed in bank accounts or used to purchase legal assets. When audited, the origin of the money is seen as "legal investment proceeds".

So it can be concluded that, a person who has committed an act and fulfills the elements of the crime above either as an active perpetrator of laundering the proceeds of crime with the intention of disguising his wealth can be subject to Law Number 10 concerning Prevention and Eradication of Money Laundering Crimes

4. CONCLUSION

Legal relationship refers to the relationship between legal subjects that give rise to certain legal consequences. In the context of equity crowdfunding, this legal relationship occurs between three parties, namely the issuer, financier, and organizer. The legal relationship between financiers and issuers can be considered as a form of

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buying and selling relationship that has long existed in society, where there are elements of price and goods. Meanwhile, the legal relationship between the organizer and the issuer arises from a cooperation agreement in terms of implementation, where the organizer is given the authority to organize the system and process in equity crowdfunding activities. The relationship between the organizer and the investor also arises due to the power of attorney agreement, which allows the organizer to represent the investor in administrative and technical matters in the equity crowdfunding ecosystem.

Legal protection for the parties in equity crowdfunding serves as a form of control over the risks that may occur during the process. In its implementation, both investors and share issuers who sell shares through the ECF platform are inseparable from the possibility of facing risks. In Indonesia, there are two types of legal protection, namely preventive and repressive. The regulation issued by OJK, POJK Number 57/PJOK.04/2020, only covers preventive protection in general to all parties, especially the issuer. However, for repressive protection in equity crowdfunding, more specific additional laws and regulations are needed, which can regulate sanctions for violating parties and provide a clear dispute resolution mechanism for the parties involved.

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