Equity Crowdfunding: The Secondary Market’s Implementation and Legal Protection for Investors Using Technology-Based Crowdfunding  
(Comparative Study of Indonesia – United States of America)

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Abstract

The secondary market in equity crowdfunding aims to facilitate Investors in trading their Micro, Small, and Medium Enterprises (MSMEs) shares to other Investors as an exit and entrance strategy for interested Investors. Therefore, the traded shares must be liquid, ensuring that the secondary market of equity crowdfunding operates fairly, orderly, and efficiently. However, implementing the secondary market in equity crowdfunding in Indonesia, introduced in 2018 by the Financial Services Authority (OJK), still leaves room for evaluation and improvement. This thesis first examines the organization of the secondary market in Indonesia, which lacks legal certainty for both the Organizer and Users. Secondly, it explores the regulations on the secondary market in equity-based Crowdfunding in the United States, which can be used as a reference to develop legal regulations in Indonesia, including the prohibition of share sales in the first year and the classification of equity-based Crowdfunding for startup companies and medium-sized enterprises. Thirdly, applying American laws in the Indonesian legal framework can provide greater financial stability for issuing companies and reduce the risk of bankruptcy for Investors in equity-based Crowdfunding. The research findings indicate that the management and philosophy of the secondary market in equity crowdfunding cannot be equated with a Stock Exchange. Preventive legal protection for Investors can be provided through...
A. introduction

Business Micro Small and Medium Enterprises (“SMEs”) play an important role in the economy of Indonesia; remember the magnitude of impact that SMEs have in the economy. Per March 2021, the number of MSMEs reached 64.2 million, contributing to the Gross Domestic Product of 61.07 percent or IDR 8,573.89 trillion. For this, MSMEs can absorb 97 percent of the total workforce and collect up to 60.42 percent from total investment in Indonesia.\(^1\) This reflects the magnitude of the influence of MSMEs on the national economy. Based on data released by the Indonesia Digital Creative Industry Society in 2018, the number of technology startups in Indonesia has reached 992 companies. The figure is quite high for a country that is still developing.\(^2\) Hence, protecting investors in the service Equity Crowdfunding (ECF) deserves attention because ECF will become one of the main non-bank platforms where MSMEs and startup companies can get capital in the next ten years.

However, financing problems still haunt SMEs or startup companies who intend to expand their business. MSMEs and startups often encounter problems in obtaining credit from banks and other financial institutions due to the limited resources owned by SMEs not sufficient for collateral. And no easy condition for a startup company to conduct an IPO (Initial Public Offering) or offer general prime share for get capital from the public. Concerning the increased financing for MSMEs and company initiatives to develop their business, it becomes important to provide alternative financing for MSMEs and Startups based on funding from the public.

There is a need will capital for to develop a business accompanied by progress technology. Institution-provider service finance always innovates in developing its services to attract public interest. The innovation encourages the provision of financial services technology-based/digital to provide financial solutions, or those commonly known as financial technology (from now on referred to as fintech) \(^3\).

The UK was the first country to adopt ECF, and Crowdcube was its first ECF platform. Since then, ECF has grown rapidly in other countries, including Indonesia. In 2013, the World Bank reported 672 crowdfunding sites and an estimated world crowdfunding market of US$ 96 billion. However, the US has been slow to adopt ECF due to growing concerns over potential fraud and the need to protect investors. In particular, the formation of ECF regulations encountered obstacles because they had to comply with the Securities Act 1933. However, with the passage of the Jumpstart Business Startup Act (JOBS) Title III in 2012 and the passage of the Securities and Exchange Commission (SEC) Regulations in 2015, US legislators could

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Based on the explanation of the background that has been explained by the author above, the formulation of the problem in writing this Law is how to compare the implementation of secondary markets in information technology-based crowdfunding services in Indonesia and the United States and how the ratio of legal protection for investors involved in secondary market activities in information technology-based crowdfunding services in Indonesia and the United States.

This research uses normative juridical or doctrinal legal research that examines the application of principles or norms in positive Law. Soerjono Soekanto mentioned that normative research includes five things: research on legal principles, legal systematics, level of legal synchronization, and legal history. The use of normative juridical research is due to the main problem in This research is a matter of regulation and legal protection, in this case regarding the comparison of secondary market arrangements and legal protection for investors in offering securities in information technology-based crowdfunding services in the United States which has already built a secondary market ecosystem in the ECF so that it is expected to be able to solve the problems being studied.

B. Discussion

Development technology information gives various conveniences for the public. For trade in the industry finance, And push inclusion finance. Institution service finance-based technology (fintech) then appears along with developments in world finance. Fintech aims to make the public more efficient in accessing product finance and improve literacy finance. Draft fintech adapts to development technology. And, combined with field financial expectations, can present the transaction process as more practical, safe, and modern. Products that can be categorized in the field of fintech, among others, the payment process (payments), digital wallet, investment (equity crowdfunding), Peer to Peer Lending, Financing (Crowdfunding, microloans, credit facilities), Insurance (risk management), Cross-process (bid data analysis, predictive modeling), infrastructure (infrastructure).

If previously transaction finance was done in advance, then now develop to transaction digital, Which utilizes network Internet. In transaction digital, Good customer and provider service will do transactions through a number application And devices That support the fintech application. If associated with need for funding, provider service applied financing _fintech_ can make it easy To obtain the funding brokered by institution financing. Matter This transform mechanism is conventional, Which is usually done by seeker fund by submitting financing form loan to the implemented bank stare advance with various requirements. So, from that development, _fintech_ has changed sector finance methods.

By Bank Indonesia (“BI”), arrangement maintenance _fintech_ First times poured in Bank Indonesia Regulation Number 19/12/PBI/2017 year 2017 about Administration Technology Financial (“PBI 19/2017”). In PBI 19/2017, Technology Financial or _fintech_ on the meaning of “use technology in system earning finance _ products, services, technology, or model business new Which impact on stability monetary, stability system finance, and efficiency, 

fluence, security, And reliability system payment ."7 Services fintech Which simplify the transaction process finance to be more modern, practical, and even safer various . BI categorize several products financial in fintech, that is “ system payment, supporters market, management investment And management risk, loan, financing, And provision capital, as well as service financial other ."8

Next, development technology financial also _ supported OJK with issued Regulation Authority Service Finance Number 13/POJK.02/2018 about Innovation Finance Digital (“ IKD ”) in Sector Service Finance with several changes (“ POJK 13/2018 ”). Similar to PBI 19/2017, Room scope IKD in POJK 13/2018 varies, i.e., settlement transaction, collection capital, management investment , collection And distribution fund, insurance , supporters market , supporters digital finance , and / or activity service finance.9 Services are called digital Because use means And device technology based on a line or network.

As for the many product financial services offered, institution financing or fundraising is one of them. The elucidation of Article 3 POJK 13/2018 explains that one fundraising institution that includes innovation digital is a service down fund (Crowdfunding). According to Brabham, Crowdfunding is a mechanism to collect funds from a certain group of individuals or organizations through a digital platform. Ideas from Crowdfunding originate from "collaborative finance” with "crowdsourcing." 10 As an illustration, the concept of Crowdfunding is simple: How several individuals, through contributions each, can raise large amounts of capital to finance a project without the involvement of conventional financial institutions such as banks. Generally, activities are done online in the crowdfunding platform, where a fundraising fund is presented For the projects seeker fund, and Then the disabled fund chooses which projects to finance. 11 As a result, the resulting disruption of Crowdfunding reduces the role of institution finance because funds are channeled directly from disabled funds to fundraising funds through certain platforms. 12 Therefore, Crowdfunding is part of financial innovation, Which is possible by the progress of fintech.13

Crowdfunding even has diverse types, Which can categorized as asfollows: 11
1. Equity-based Crowdfunding, Which means service down fund-based capital or investment For ownership share;
2. Lending-based Crowdfunding, Which means service down fund-based loan or credit;
3. Reward-based Crowdfunding, Which means service awards; And

If associated with choice financing for MSMEs, The four types of Crowdfunding are alternative funding solutions for MSMEs and equity crowdfunding.

Equity crowdfunding allows investors to invest in issuers not listed on the stock exchange to later receive compensation in the form of dividends of the shares issued. In other words, an

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7 Indonesia, Board Governor Bank Indonesia, Regulation Member Board Governor about Room Test Try Limited (Regulatory sandbox) Technology financial , PADG Number 19/14/ Padg /2017 Year 2017, Ps. 1 paragraph 1.
8 Ibid ., Ps. 2.
9 Ibid ., Ps. 3.
entity can gather funds to sell the stock.\textsuperscript{14} Because of That, \textit{equity crowdfunding} is an alternative for businessman MSMEs who try to obtain an injection fund with published shares, so that there is no need to submit a loan to a bank or \textit{venture capital} with risk flower Which tailor risk rejected because it does not own collateral Which Enough.\textsuperscript{15}

In Indonesia, \textit{equity crowdfunding} was First time arranged in RegulationFinancial Services Authority Number 37/POJK.04/2018 of 2018 concerning Services Drop Fund Through Offer Share-based Technology Information (\textit{Equity crowdfunding}) with several changes (“ \textbf{POJK 37/2018} ”). In POJK 37/2018, \textit{equity crowdfunding} is defined as “service delivery offer share Which done by Publisher For sell share in a manner direct to financier through network system electronic Which characteristic open.”\textsuperscript{16} This means that in \textit{equity crowdfunding}, business actors currently need financing from capital providers or investors regularly. After providing funding, the investor will become a holder of shares in the business and entitled to receive profits or dividends.\textsuperscript{17} Meanwhile, Issuers in the capital market are companies that acquire funding by selling securities in the capital market. In comparison, Buyers (investors) are the wishing party giving funding to the company, with the lead coming back for profit because that's \textit{equity crowdfunding}, including in-service finance in the field of Market Capital.

With the regulation and recognition of \textit{equity crowdfunding services} by the OJK, this innovation in the Capital Markets sector, especially for business actors who need financing. To develop his efforts, however, he previously hampered Getting financing, conventional consequences, many conditions, bureaucratic complexity, and minimal choice. Through \textit{equity crowdfunding}, actors and MSMEs can receive funding from the public Alone.

As for what distinguishes \textit{equity crowdfunding} from stock offerings generally in Market Capital, No, he did \textit{Initial Public Offering} /Public Offering (“ \textbf{IPO} ”) on the Indonesia Stock Exchange (“ \textbf{IDX} ”), but rather, the share offering is carried out by the organizing company in its services who have obtained permission from OJK. Several companies with equity crowdfunding exist in Indonesia, including Santara, BizShare, Crowddana, Landx, Fundex, Shafiq, and Danasaham. The institution's institution has its objective, Which is The same as an alternative collection fund For MSMEs.

The UK was the first country to adopt ECF, and Crowdcube was its first ECF platform. Since then, ECF has grown rapidly in other countries, including Indonesia. In 2013, the World Bank reported 672 crowdfunding sites and an estimated world crowdfunding market of US$ 96 billion. However, the US has been slow to adopt ECF due to growing concerns over potential fraud and the need to protect investors. In particular, the formation of ECF regulations encountered obstacles because they had to comply with the Securities Act 1933. However, with the passage of the Jumpstart Business Startup Act (JOBS) Title III in 2012 and the Securities and Exchange Commission (SEC) Regulations in 2015, US legislators could finally formally establish the ECF in the US.\textsuperscript{18}

Before the JOBS Act, the ECF in the US was not well facilitated to facilitate investment in startup companies and small to medium enterprises (MSMEs) because this offer was not


\textsuperscript{16}Indonesia, Authority Service Finance, \textit{Regulation Authority Service Finance about Service Crowdfunding Through _ Offer Share based Technology Information (Equity Crowdfunding), POJK No 37/POJK.04/2018, Ps. 1 paragraph 1.}


following the pre-JOBS Act where the exclusion of individual placement in the Securities Act or the applicable State Securities or the blue sky law which regulates the offering and sale of securities and protects investors from fraud. While successful startups, such as Google, Apple, and Facebook, have the potential to provide high returns to investors, many startups fail during their formative years, and many investors lose their capital. Various studies have shown that 75 percent to 90 percent of startup companies have the potential to fail. Due to the relatively high risk, the US government developed regulations to protect investors who invest in ECF according to the JOBS Act Title III for accredited investors (AI) and those who are not accredited 19.

However, for investors who are not accredited, the number of shares purchased is limited so that if a loss occurs, it will not have too much impact on the investor. The federal securities law defines the term ‘accredited investor (AI)’ in Regulation 501 of Regulation D. It details the acceptable types of AI, namely, individuals, banks, insurance companies, registered investment firms, business development firms, or corporations. Small business investment. That is one way for the US to protect its investors, and there are several other parameters used by the US so that ECF service activities can protect investors.

In the year 2020, OJK pushed wind fresh for climate investment in service equity crowdfunding in Indonesia with emit Regulation Authority Service Finance Number 57/POJK.04/2020 about Offer Effect Through Service Information Technology-Based Crowdfunding as amended by the Authority Regulation Service Finance Number 16/POJK.04/2021 (“POJK 57/2020”) Which unplug POJK37/2018. In short, POJK 57/2020 intends to facilitate the needs of MSMEs by utilizing service equity crowdfunding as one of the funding sources in Market Capital, with expansion through a possible trading share in market secondary service equity crowdfunding.

As a result, the trend of investing through equity crowdfunding platforms increased by 319.56%. The comparison of financiers on platforms equitycrowdfunding in 2020 is as many as 22,341 investors, which has skyrocketed to 93,733 financiers in 2021. Chairman Board OJK Wimboh Santoso says the enhancement amount financier compared straight with enhancement amount PublisherWhich registers the business For obtaining funding through service equity crowdfunding. 20

Since the rule about equity crowdfunding Was published in June 2022, 10 (ten) crowdfunding institutions operate in Indonesia, And 40 (four-twenty) others are licensed in OJK. In Indonesia, the first company to hold a stock offering and manage the secondary market in equity crowdfunding services is Santara, a PT Santara Daya Inspiratama product. PT Santara Daya Inspiratama has also obtained a permit and is supervised by OJK based on a letter Decision Number: KEP-59/D.04/2019.

Fintech-based financing institution Santara launched an application a forum for people who want to invest and advance the sector of MSMEs. PT. Santara Daya Inspiratama with Santara.co.id web page. This platform has obtained a license to operate as an Operator from the Financial Services Authority (“OJK”) since September 6, 2019. Since starting operations, Santara has raised investment funds of more than IDR 8,000,000,000. The funds have been distributed to 12 Micro, Small, and Medium Enterprises (“MSMEs”) engaged in the culinary,

19 Ibid., p. 85
property, livestock and fisheries sectors. Santara offers projected profit sharing for investors in the range of 15%-25% per year, which will be obtained from the issuing company's dividends.

In organizing equity-based Crowdfunding, besides holding fundraising campaigns, there are other activities, namely holding secondary markets. At first glance, the implementation of equity-based Crowdfunding looks the same as the implementation of capital markets because both offer shares to the public. Both also have a primary market and a secondary market. However, in the capital market, a limited liability company that was originally closed became a public company. In addition, the Initial Public Offering of Shares in the capital market is regulated in Law No. 8 of 1995 concerning Capital Markets ("UUPM"), while offering shares through equity-based Crowdfunding is not a public offering as referred to in the UUPM.

Equity-based Crowdfunding in Indonesia is regulated in the Financial Services Authority Regulation (“POJK”) Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Stock Offerings (Equity Crowdfunding). However, the regulation does not mention holding a secondary market in equity-based Crowdfunding. In the POJK, holding secondary markets is not an obligation for Operators. In addition, if the Administrator wants to hold a secondary market, the mechanism will be left to the Organizer without any special requirements. As an implication of this regulation, Santara, as the Organizer, has provided a share buying and selling process that can be carried out between investors through the secondary market opened twice a year. However, there is a weakness: the price of shares offered on the secondary market is the same as the initial purchase price. Therefore, the term capital gain is unknown in the Santara secondary market, and investors will only receive profit sharing from their investment.

However, as long as the secondary market is running, many investors are informed that they suffered losses due to low stock pricedraged in the market. Secondary Santara is difficult in demand, so a bargain with a pricelow resulted in a price share decrease. Because of That, share transactions in the Santara secondary market are illiquid because it is difficult for investors To trade shares in the secondary Santara.

As a pioneer in the industry, it is only natural that the secondary market Santara is inseparable from shortcomings, in contrast to the IDX that has been initiated since long history market secondary in equity. Crowdfunding is an innovation associated with various risks of loss, minimal regulatory arrangements, and technical guidelines. As a service of a startup company, it takes a long process to create a mature system.

The absence of regulation on secondary market implementation in equity-based Crowdfunding in Indonesia will cause several problems that may arise. First, the secondary market links investors' preferences for liquidity with those of capital users who wish to use that capital in the long term. An investor can only cash in on his investment if he can find other

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21 Nur Qolbi , 2019, So Equity Crowdfunding is licensed First, this is it Description Investment in Santara, kontan.co.id, https://investasi.kontan.co.id/news/jadi-equity-crowdfunding-berizinpertama-begini-illustration-investasi-di-santara?page=all, accessed on May 25, 2023
22 Ibid.
25 Ibid.
26 Information about Santara investor dissatisfaction can found in various forum online in media social Instagram And YouTube.
investors willing to purchase his rights in the partnership. If there are no regulations that detail the mechanism of implementing the secondary market, then there will be no legal certainty that can protect the interests of investors. Second, potential investors aware of unclear arrangements will feel reluctant to invest their funds in *equity-based Crowdfunding*. This can prevent startup companies from having a hard time getting capital for their businesses so that *equity-based Crowdfunding* in Indonesia becomes ineffective. Third, as an equity trading market. The secondary market on equity-based Crowdfunding has a high liquidity risk. This is because the equity traded in *equity-based Crowdfunding* is generally the shares of startup companies or MSMEs. Thus, clear arrangements are necessary to reduce liquidity risk in *equity-based Crowdfunding*.

Unlike in the United States, *equity-based Crowdfunding* is regulated by The Jumpstart Our Business Startups Act (“JOBS Act”). Crowdfunding is specifically regulated in Title III of the JOBS Act. After the formation of the JOBS Act, US legislators can legally establish *equity-based Crowdfunding in the United States*. President Barack Obama first inaugurated the JOBS Act on April 5, 2012. This regulation is a breakthrough for funding for MSMEs in the United States. Before the JOBS Act, selling company stock through *Crowdfunding* was illegal under United States law. The regulation contains an article permitting private company owners to make an open public offering of shares through an online platform. Several requirements must be met in this regulation to implement an *equity-based crowdfunding secondary market*. One of them is that new funders can resell their shares on the secondary market one year after the purchase of shares. In addition, sales may only be made to fundraisers, accredited investors, and family members of funders.

**Secondary Market Arrangements In POJK 57/POJK.04/2020 Concerning Securities Offerings Through Information Technology-Based Crowdfunding Services**

Unlike POJK 37 of 2018, which has not clearly regulated and only regulates the holding of secondary markets in one article, POJK 57 of 2020 provides further provisions that can be used as guidelines for organizers in holding secondary markets. The transfer of rights to shares resulting from securities transactions through the *equity crowdfunding* secondary market can be carried out without a deed of transfer of rights.

Shares of investors can be sold on the secondary market if they do not conflict with the Issuer's articles of association. Furthermore, Article 43 regulates:

1.) The Organizer can provide a system for Investors to trade the Issuer's Securities that have been sold through the Crowdfunding Service it organizes.

2.) Execution of Securities trading, as referred to in paragraph (1), is mandatory and carried out with the following conditions:

   a. only applies to equity Securities in the form of shares that have been distributed at least 1 (one) year before Securities trading;

   b. can only be made between fellow Investors who are registered with the Operator;

   c. within a period of 12 (twelve) months only 2 (two) Securities trades may be made;

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27Deni Sunaryo , 2019, Management Investment And Portfolio , CV. Publisher Qiara Media, Serang , p . 30
30Article 64 paragraph (3) Regulations Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information .
31Article 44 of the Regulations Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information
And

d. the shortest execution period of Securities trading with other Securities trading is 6 (six) months.

3.) Securities trading, as referred to in paragraph (2) letter c, is prohibited for more than 10 (ten) working days.

4.) The system, as referred to in paragraph (1), can provide: a. reasonable price as a reference for sellers and buyers and b. a communication system for Users that can be used as a means of communication between Users to buy or sell Securities.

5.) The Financial Services Authority can stipulate provisions regarding the execution of securities trading other than those referred to in paragraph (2), letter c and letter d, and paragraph (3).

6.) The Administrator must submit changes to the Issuer's shareholder data to the Financial Services Authority and announce it on the Provider's website no later than 2 (two) working days after the end of each Securities trading exercise as referred to in paragraph (2) letter c.

Based on Article 43 of POJK 57 of 2020, the phrase "can provide" means that organizers have no obligation to hold a secondary market on their platform. Investors will have very high liquidity risk if the organizers do not provide a secondary market. Therefore, investors must understand from the start when deciding to fund companies through equity crowdfunding that they will be exposed to liquidity risks that issuers or organizers cannot minimize. Issuers and organizers also do not provide guarantees that the Issuer will distribute dividends regularly.

Listing commitments in the secondary market during an equity crowdfunding campaign can increase the amount that the publisher collects. This can attract more financiers and encourage greater participation in funding. The secondary market can also be a means for investors who want to increase their ownership share in a publisher.

Market Secondary in Equity Crowdfunding in America Union

Previously, the author wanted to convey that although their market secondary condition Still accommodated compared to securities public. The company, big, Still traded shares with the public with a fairly high amount on the stock exchange and price information was published daily through the site web and Letters news. While the public shares are small, or what they call Over shares, the Counters Also traded more, A little, own financier, Whichready and a definite value. However, private shares may be subject to restrictions. Law is seldom traded Because prices are volatile, and information about stock prices is not widely informed. There are limitations to investor accreditation; both currently sell or buy, and this is following the Act JOBS. Michelle Littman,, a corporate attorney in New York, United States., the secondary market is the negotiated sale of private securities from a publisher, Which is No traded in a public manner. Several transactions are carried out directly from the seller to the buyer. For example, a second split party represented by a broker-dealer will earn a commission on purchases or sales. Securities dealer, Buyers, and secondary market are connected through

32Anna Lukkarinen and Armin Schwienbacher , 2020, Secondary Market Listings in Equity Crowdfunding: The Missing Link?, p . 17

brokers intermediary, respectively and other communities.\textsuperscript{34}

There is a possibility several platforms And broker-dealers will use market secondary peer-to-peer built Which possibly registered investors to resell the shares they bought in platforms. Table Comparison Mechanism Service ECF in Indonesia And America Union.

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<td>Securities offering made publisher through service down the fund. No is offer general like Which meant in Constitution Capital Market if:\textsuperscript{35}</td>
<td>Title III about Crowdfunding from JOBS Act makes an exception for registration requirements of the Securities Act of 1933 To allow startups And businesses that are currently growing To sell securities or effect to every financier, not only investors accredited but Also financier No accredited through platforms crowdfunding in a manner on line.</td>
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\textsuperscript{34}David M. Freedman, “Equity Crowdfunding For Investors (Guide To Risk, Return, Regulation, Funding Portals, Due Diligence, And Deal Term”, (New Jersey, US: John Wiley & Sons, Inc, hoboken, 2015), p. 244.

\textsuperscript{35}Chapter 3 POJK 57/POJK.04/2020
mercy) month; And
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through securities offer
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Table Comparison Protection Law between the American Union And Indonesian

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<td>supervision, regulation, imposition of sanctions And settlement</td>
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<td>ALUDI, as institution manager, superintendent of administration</td>
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<th>Service down funds.</th>
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<td>Previously Not yet own market Secondary. In the year 2021, Already launched market secondary, Which The system is similar to the sell-buy Share Which There is an Exchange Effect Indonesia Protection law, Which is characteristic repressive only done by OJK institutions, is appropriate with POJK 16/POJK.04/2021 Amendment on POJK 57/POJK.04/2020</td>
<td>Has own market secondary Which ban t you financier For sell back. Legal protection characteristic repressive done supervised by FINRA by the SEC.</td>
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**Protection Law to Financier In Activity Market Secondary Equity Crowdfunding in Indonesia**

1. Protection Law kindly preventive

   POJK 57 of 2020 provides provision to Organizer For do study to several document publishers, including deed establishment body law or document that proves validity establishment body business, organ or administrator body Law or body effort, aspect law capital, limits publisher, related licensing _ with activity business publisher to be funded with proceeds _ offer effects, and document and mandatory information _ be delivered by the publisher to Organizer. 37 Organizer website load report years that had given publisher to submitted Administrator _ before six-month yearbook publisher ended. Provision reports are annually arranged in the Limited Liability Company Act. Besides, annual reports must load information regarding the realization of the use of funds resulting from offering equity securities through crowdfunding services until the funds have been used up. 38

   In addition to submitting annual reports, publishers are required to submit incidental reports

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37 Article 16 paragraph (1) letter a Regulation Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information  
38 Article 50 paragraph (4) Regulations Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information
if there are material events or information that may affect the continuity of the publisher's business and must be submitted to the organizers to be announced to the public through the organizers' website no later than two working days after important information or events occur. This is related to the principle of openness, which in the Capital Market Law is regulated in article 86, which reads:

Issuers whose Registration Statements have become effective or Public Companies are required to submit periodic reports to Bapepam and announce reports to Bapepam and announce to the public about material events that may affect the price of Securities no later than the end of the 2nd (second) working day after the event occurs.

The principle of openness demands that information from the company reach every interested party, especially investors and prospective investors, evenly and simultaneously. In Article 1 number 25 of Law Number 8 of 1995 concerning Capital Markets, it is stated that:

The principle of transparency is a general guideline that requires issuers, public companies, and other parties subject to this Law to inform the public promptly of all material information regarding their business or the effect that can affect the investor's decision regarding the said securities, and the price and the said securities.

In addition, the form of legal protection for investors in POJK 57 of 2020 requires the registration of shares by a custodian if the issued shares are scriptless. This is related to the proof of share ownership contained in the securities account at the custodian bank. This securities note refers to the Single Investor Identification (SID) number. SID is a single and special code issued by KSEI that is used by customers, investors, and other parties based on applicable regulations to carry out activities related to securities transactions and use other services either provided by KSEI or by other parties based on KSEI's approval or applicable regulation.

Securities records at the depository and settlement institution in electronic form for securities kept in collective custody at the Depository and Settlement Institution are proof of legal records of securities ownership. Provisions regarding scriptless shares deposited are regulated in Article 44 of the Capital Markets Law as follows:

1) A Custodian who organizes custodial activities is responsible for keeping Securities belonging to the account holder and fulfilling other obligations according to the contract between the Custodian and the said account holder.
2) Deposited securities must be recorded and recorded separately.
3) Securities stored or recorded in a Securities Custodian account are not part of the Custodian's assets. Article 45 states, "A Custodian can only issue Securities or funds

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39 Article 52 Regulations Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information
40 Article 49 Regulations Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information
41 point 1.23 of the Regulations Custodian Central Indonesian Securities Number VD About Instructions Overbooking Without Payment of Funds at KSEI
42 Article 11 of the Regulations Authority Service Finance Number 22 /POJK.04/2019 Concerning Transaction Effect
recorded in a Securities account on a written order from the account holder or a Party authorized to act on its behalf”.

Legal protection for investors who carry out transactions on the equity crowdfunding secondary market is also regulated in Article 5 paragraph (1) of Law no. 11 of 2008 concerning Information and Electronic Transactions (now referred to as the ITE Law) that electronic information and electronic documents and printouts are valid legal evidence. Article 5, paragraph (2) of the ITE Law also emphasizes that electronic information, documents, and printouts are an extension of valid evidence following the procedural Law in force in Indonesia.

To support prevention in a preventive manner, OJK can provide guidelines for organizing secondary markets so that there are no differences in secondary market mechanisms between service providers that could be detrimental to investors. These technical regulations can standardize auto reject limits, selling or buying mechanisms, trading hours, transaction costs, and determining the fair price of shares in initial trading on the secondary market. The Santara and Crowddana platforms use symmetrical auto reject; the Santara platform is 10%, and Crowddana is 25%. The Bizhare platform uses asymmetric auto-reject at the start of trading with an upper auto-reject of 30% and lower auto-reject of 5%. The day after the trade runs, the auto-reject conditions become symmetrical by 20%. 43 This will confuse potential investors due to differences in price ranges on each platform.

Trading on the secondary market on the Santara and Bizhare platforms is carried out for ten full days, while on the Crowddana platform, it is divided into five working days. The first is used for investors wishing to sell, who can set prices and make transactions. Investors who wish to buy are given the opportunity in the next five working days to set prices and make transactions. Furthermore, OJK can provide guidelines for determining the fair price of shares in the initial 44 equity crowdfunding secondary market trading to prevent fraud that can be detrimental to investors. The absence of technical guidelines provided by the OJK makes the secondary market prone to abuse by irresponsible persons.

OJK can also regulate the disclosure of secondary market transaction data by requiring organizers to post a summary of daily transactions uploaded to the Organizer's website no later than two working days each day. Investors can use this in measuring market liquidity levels. In addition, at the end of the secondary market trading period, there is an obligation to report secondary market transaction data to the OJK as a supervisor, which also includes the handling of complaints from investors and disputes that arise in the implementation of the secondary market, including the settlement mechanism.

2. Repressive Legal Protection

Equity crowdfunding has a concept like a mini IPO because of its similarity in raising funds from the public through the sale of initial shares but on a smaller scale. The small capitalization of the Issuer's market does not mean that violations and crimes in the implementation of the equity crowdfunding secondary market can be tolerated so that it can bring a bad reputation resulting in the loss of investor confidence to invest.

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Equity crowdfunding is a type of activity in the capital market, so the crimes in equity crowdfunding are not much different from secondary market activities in the stock exchange. Even though there were no violations and crimes in the first period of the Santara platform secondary market in the capital market sector, there are potential legal issues that have not been accommodated by POJK 57 of 2020. This regulation only regulates administrative sanctions for implementing secondary markets for crowdfunding service providers, even though issuers can cooperate with other parties to create a more dominant position compared to other investors in terms of ownership of information.

In POJK 57 of 2020, no administrative sanctions can be imposed on publishers if they misuse this matter. The Capital Market Law states that administrative sanctions may be imposed for violations of this Law or its implementing regulations by any Party obtaining permits, approval, or registration from Bapepam. 45Capital market regulators and supervisors are responsible for maintaining market integrity through detection and investigation to suppress abuse of equity crowdfunding.

C. Conclusion

Conclusion Based on the results of the research and discussion described in the previous chapter, the conclusions regarding the writing of this Law are as follows:

1. According to Indonesian capital market law, in this case, Law No. 8 of 1995 concerning the Capital Market and its derivative regulations, including the Financial Services Authority Regulation Number 22 /POJK.04/2019 concerning Securities Transactions and the Republic of Indonesia Financial Services Authority Regulation Number 57 /POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services Although equity crowdfunding secondary market transactions use an order book through a continuous auction market bidding process like regular market transactions on the Indonesia Stock Exchange, the structure of the equity crowdfunding secondary market is not the same as the secondary market on the Stock Exchange. Indonesia. Equity crowdfunding providers do not act as stock exchanges, so investor orders to buy or sell are delivered directly to the system without going through a Broker-Dealer. This also affects the institutions involved in securities transactions. In the equity crowdfunding secondary market, there are no stock exchange members. Securities transactions are not conducted through the stock exchange floor (only Broker Dealers have the right to place buy and sell orders on instructions from investors). Another difference is that in the secondary market, equity crowdfunding only accommodates the buying and selling shares without short sales and margin transactions. The equity crowdfunding secondary market is also unable to trade HMETD or rights. Secondary market transactions are carried out peer-to-peer, and the Operator acts as the party providing the buying and selling system and submitting the list of securities transfers to the Custodian two days after the secondary market period ends.

2. There are preventive and repressive legal protections for investors involved in equity crowdfunding secondary market activities in Indonesia, which can be found through Law No. 8 of 1995 concerning Capital Markets, Law No. 11 of 2008 concerning Information and Electronic Transactions, and 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. Preventive protection includes the principle of openness which is one of the spirits of the capital market. In addition, there is also an obligation for the Organizer to review several documents of the Issuer before being able to make a share offering. The Administrator is also required to register shares with the

45 Article 102 of the Law Number 8 of 1995 concerning Capital Market
Custodian if the shares are issued as scripless shares. To support preventive measures, OJK can provide guidelines for secondary market implementation by standardizing auto-reject, buying and selling mechanisms, trading hours, transaction fees, disclosure of secondary market transaction data summaries, and determining the fair price of shares in initial trading on the secondary market. The equity crowdfunding secondary market cannot escape capital market crime, which can harm investors and undermine public confidence in equity crowdfunding, so repressive legal protection provides criminal and administrative sanctions.

Suggestion

1. To the Financial Services Authority, OJK needs to provide further technical provisions governing the parties' limitations in the secondary market equity crowdfunding. OJK can provide provisions for implementing a secondary market that provides a common trading mechanism between crowdfunding service providers that have supervision from the OJK so that the equity crowdfunding secondary market becomes strong to minimize the occurrence of capital market violations and crimes that may occur. OJK may stipulate that the Organizer is required to post a trading summary every day on its website no later than two working days after the daily trading ends. In addition, OJK can provide a delegation to the Indonesian Stock Exchange for guidance and directions for SMEs that have further plans to floor on the accelerated board of the Indonesian Stock Exchange. The existing arrangements can be optimized to increase financial inclusion in Indonesia.

2. To PT Santara Daya Inspiratama: Implementing a secondary market using an order book through a continuous auction market is very appropriate to provide trade efficiency to sellers or buyers. Santara may disclose a summary of daily trading data on its website to provide additional information to Investors. Santara can provide a system that detects unusual investor activity in a stock so that preventive measures can be carried out effectively. Strengthening supervision of the equity crowdfunding secondary market is expected to minimize capital market violations and crimes that may occur.

3. To the Investor Community: Investors need to understand the mechanism of buying and selling in the secondary market and the risks likely to occur when investing in equity crowdfunding activities. Investors must be careful in buying securities offered by issuers and ensure that the securities invested are worth buying by conducting their analysis.

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Information about Santara investor dissatisfaction can found in various forum on line in media social Instagram And YouTube.


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