



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

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Article Information	Abstract
Keywords: <i>Equity Crowdfunding, Secondary Market, Micro, Small and Medium Enterprises</i>	Abstract <i>The secondary market in equity crowdfunding aims to facilitate trading of Micro, Small, and Medium Enterprises (MSMEs) shares among investors, providing both exit and entrance strategies. For effective operation, these shares must be liquid, and the secondary market must operate fairly, orderly, and efficiently. Despite the introduction of the secondary market in Indonesia by the Financial Services Authority (OJK) in 2018, there remains significant room for evaluation and improvement. This thesis first examines the current organization of the secondary market in Indonesia, noting the lack of legal certainty for both organizers and users. It then explores regulatory frameworks for secondary markets in equity-based crowdfunding in the United States, which may inform the development of legal regulations in Indonesia, including the prohibition of share sales within the first year and the classification of equity-based crowdfunding for startups and medium-sized enterprises. Furthermore, applying American legal principles to the Indonesian context could enhance financial stability for issuing companies and reduce investor bankruptcy risks. The research highlights that the management and operational philosophy of the secondary market in equity crowdfunding should not be equated with that of traditional stock exchanges. Preventive legal protection for investors could be strengthened through OJK-issued guidelines on auto-reject limits, standardized trading mechanisms,</i>
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trading hours, transaction fees, transparency in daily transaction summaries, and fair share price determination. Additionally, implementing criminal and administrative sanctions could provide further repressive legal protection.

A. introduction

Micro, Small, and Medium Enterprises (MSMEs) play a pivotal role in Indonesia's economy, underscoring their significant impact. As of March 2021, there were 64.2 million MSMEs, contributing 61.07 percent to the Gross Domestic Product, equivalent to IDR 8,573.89 trillion. These enterprises absorb 97 percent of the total workforce and account for up to 60.42 percent of total investment in Indonesia.¹ This data reflects the substantial influence of MSMEs on the national economy. Additionally, according to the Indonesia Digital Creative Industry Society in 2018, the number of technology startups in Indonesia had reached 992, which is a notable figure for a developing country.² Providing protection for investors in Equity Crowdfunding (ECF) is crucial, as ECF is anticipated to become a key non-bank platform for MSMEs and startups to secure capital over the next decade.

Nevertheless, financing challenges persist for SMEs and startups seeking business expansion. These entities often face difficulties in obtaining credit from banks and other financial institutions due to their limited resources, which are insufficient for collateral. Furthermore, startup companies encounter obstacles in conducting Initial Public Offerings (IPOs) or offering shares to the public for capital acquisition. Therefore, it is essential to provide alternative financing options for MSMEs and startups based on public funding.

The need for capital to advance business development, coupled with technological progress, necessitates continual innovation in financial service institutions. Such innovation, particularly in the realm of financial technology (fintech), aims to attract public interest by offering technology-based financial solutions.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 finally formally establish the ECF in the US.⁴

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

¹ Ministry Coordinator Field Economy Republic Indonesia, "Broadcast Pers Hm.4.6/103/Set.M.Ekon.3/05/2021", <https://ekon.go.id/publikasi/detail/2969/umkm-jadi-pilar-important-in-the-Indonesian-economy>, accessed May 24, 2023.

² Databox, "How much Amount Startup in Indonesia?", accessed 24 May 2023, <http://databoks.katadata.co.id/datapublish/2019/10/14berapa-jumlah-startup-di-indonesia>

³ Douglas arner, Janos Barberis, And Ross Buckley, "The Evolution of Fintech: A new Post-Crisis Paradigm?", *University of Hong Kong Faculty of Law Research Paper*, No. 47, (2015), p. 6.

⁴ Stephani Lee Black, *US Equity f : A Review of Current Legislation and A Conceptual Model of the Implications for Equity Funding*, *The Journal of Entrepreneurship*, 27 (1), p. 85

United States.

This research employs normative juridical or doctrinal legal methods to examine the application of principles or norms within positive law. According to Soerjono Soekanto, normative research encompasses the study of legal principles, legal systematics, the degree of legal synchronization, and legal history. The choice of normative juridical research is driven by the central issue of this study, which pertains to regulation and legal protection, specifically comparing secondary market arrangements and investor protections in technology-based crowdfunding services. By analyzing the established secondary market ecosystem in equity crowdfunding in the United States, the research aims to address and potentially resolve the identified issues.

B. Discussion

The development of information technology has significantly facilitated public access to financial services and has promoted financial inclusion. The emergence of financial technology (fintech) aligns with global advancements in the finance sector. Fintech aims to enhance public efficiency in accessing financial products and improve financial literacy. This sector adapts to technological progress and integrates financial expectations to offer more practical, secure, and modern transaction processes. Fintech encompasses various products, including payment processes, digital wallets, investment platforms (such as equity crowdfunding), peer-to-peer lending, financing options (like crowdfunding, microloans, and credit facilities), insurance (risk management), data analysis (big data), and infrastructure.⁵

Previously, financial transactions were conducted in-person, but now, digital transactions utilizing internet networks have become prevalent. In digital transactions, both customers and service providers use applications and devices that support fintech solutions.⁶ For funding needs, fintech services can simplify the process of obtaining capital by connecting users with financing institutions, transforming the traditional method of applying for loans through banks with extensive requirements.

Bank Indonesia (**BI**) initially regulated fintech under Regulation Number 19/12/PBI/2017 concerning Financial Technology (**PBI 19/2017**). This regulation defines fintech as the use of technology in financial systems, products, services, or business models that impacts monetary stability, financial system stability, and the efficiency, security, and reliability of payment systems.⁷ BI categorizes fintech products into several areas: payment systems, market support, investment management, risk management, lending, financing, and other financial services.⁸

Subsequently, the Financial Services Authority (**OJK**) supported the development of financial technology by issuing Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation (**IKD**) in the Financial Services Sector (**POJK 13/2018**). Similar to PBI 19/2017, this regulation covers a broad range of activities, including transaction settlement, capital raising, investment management, fund collection and distribution, insurance, market support, digital financial support, and other financial services.⁹ The term "digital" refers to the use of technology and network-based devices.

⁵ Melin Gerarita Sitompul, "Urgency Legality of Financial Technology (Fintech): Peer To Peer (P2P) Lending in Indonesia", *Journal Juridical Unaja*, Vol 1 No 2, (December 2018), h. 70.

⁶ Tom Lin, "Infinite Financial Intermediation", *Wake Forest Law Review*, Vol. 50, (2015), p. 643.

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.

Among the various financial products offered, fundraising institutions play a key role. Article 3 of POJK 13/2018 defines crowdfunding as a digital innovation in fundraising services. As Brabham explains, crowdfunding involves collecting funds from a group of individuals or organizations via a digital platform. The concept of crowdfunding stems from "collaborative finance" and "crowdsourcing."¹⁰ Essentially, it allows individuals to collectively raise significant amounts of capital for a project without relying on traditional financial institutions such as banks.¹¹ Typically, these activities occur online through crowdfunding platforms, where fund seekers present their projects and potential backers choose which projects to support. Consequently, crowdfunding disrupts traditional financial institutions by enabling direct fund transfers from backers to fundraisers through specific platforms.¹² This innovation is a product of advancements in fintech.¹³

Crowdfunding can be categorized into several types:¹¹

1. Equity-based Crowdfunding: Provides capital or investment in exchange for ownership shares.
2. Lending-based Crowdfunding: Involves offering loans or credit.
3. Reward-based Crowdfunding: Offers rewards or incentives to contributors.
4. Donation-based Crowdfunding: Involves collecting donations.

For Micro, Small, and Medium Enterprises (MSMEs), these four types of crowdfunding offer alternative funding solutions, particularly equity-based crowdfunding.

Equity crowdfunding enables investors to invest in companies not listed on the stock exchange and receive compensation in the form of dividends from the issued shares. Essentially, this allows an entity to raise funds by selling shares.¹⁴ For Micro, Small, and Medium Enterprises (MSMEs), equity crowdfunding serves as an alternative method for securing capital. This approach avoids the need for bank loans or venture capital, which might involve high interest rates or rejection due to insufficient collateral.¹⁵

In Indonesia, equity crowdfunding was initially regulated by Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Fundraising through Share-Based Information Technology Services (Equity Crowdfunding) and its subsequent amendments (POJK 37/2018). According to **POJK 37/2018**, equity crowdfunding is defined as a "share offering service conducted by an issuer to sell shares directly to investors through an electronic network system with an open characteristic."¹⁶ This implies that business actors seeking capital must secure funding from investors. In return, investors acquire shares in the business and are entitled to receive dividends or profits.

In contrast, issuers in the capital market are companies that raise funds by selling securities, while buyers (investors) provide the funding with the expectation of receiving returns. Thus,

¹⁰Daren C. Brabham, "Crowdsourcing US a model for Problem Solving: An Introduction and Cases." *Convergence: The International Journal of Research into New Media Technologies*, Vol. 14, No. 1, (2008), p. 76.

¹¹Ying Zhao, Phil Harris, wing lamb, "Crowdfunding Industry: history, development, Policies, and Potential Issues", *Journals of Public Affairs*, Vol. 19, No. 1, (2019), p. 2.

¹²Heath terry, Debra Schwartz, And Tina sun, *the Future of Finance Part 3: the Socialization of Finance*, (New york: Goldman Sachs, 2015), p. 3.

¹³Ethan Mollick, "The Dynamics of Crowdfunding: An Exploratory study", *Journals of Business Ventures*, Vol. 29, No. 1, (2014), p. 2.

¹⁴Ivo Jenic, Timothy Lyman, And Alessandro nava, "Crowdfunding And Financial inclusions", *GCAP Working Papers*, (2017), p. 17.

¹⁵Hemer Joachim, "A Snapshot on Crowdfunding", *Working Papers "Firms and Regions" No. R2/2011*, (Karlsruhe: Fraunhofer Institute for Systems and Innovation Research ISI, 2011), p.2.

¹⁶Indonesia, Authority Service Finance, *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.

equity crowdfunding is part of financial services within the capital market sector.

With the regulation and recognition of *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 *equity crowdfunding*, actors and MSMEs can receive funding from the public Alone.

With the regulation and recognition of equity crowdfunding services by the OJK, this innovation has significantly impacted the capital markets sector, particularly for business actors who require financing to grow their operations. Previously, obtaining financing through conventional means was often challenging due to numerous conditions, bureaucratic complexities, and limited options. Equity crowdfunding now allows business actors and MSMEs to receive funding directly from the public.

Unlike traditional stock offerings, equity crowdfunding does not involve Initial Public Offerings (IPOs) on the Indonesia Stock Exchange (IDX). Instead, share offerings are conducted by organizing companies that have received authorization from the OJK. Notable equity crowdfunding platforms in Indonesia include Santara, BizShare, Crowddana, Landx, Fundex, Shafiq, and Danasaham. These platforms serve as alternative funding sources for MSMEs.

The UK was the first to adopt equity crowdfunding (ECF), with Crowdcube being its inaugural ECF platform. Since then, ECF has expanded rapidly to other countries, including Indonesia. In 2013, the World Bank reported 672 crowdfunding platforms and estimated the global crowdfunding market at US\$96 billion. However, the US was slow to adopt ECF due to concerns about potential fraud and the need to protect investors. The development of ECF regulations faced hurdles because they had to comply with the Securities Act of 1933. Nevertheless, with the passage of the Jumpstart Our Business Startups (JOBS) Act Title III in 2012 and the Securities and Exchange Commission (SEC) regulations in 2015, US legislators were able to formally establish ECF in the US.¹⁷

Prior to the JOBS Act, ECF in the US was inadequately facilitated for investment in startup companies and MSMEs. This was due to restrictions imposed by the pre-JOBS Act framework, which excluded individual placements under the Securities Act and state securities laws, known as blue sky laws, that regulate the offering and sale of securities and protect investors from fraud. While successful startups like Google, Apple, and Facebook have provided substantial returns, many startups fail during their early stages, leading to significant investor losses. Studies indicate that 75 to 90 percent of startups are likely to fail. In response to the high risk, the US government developed regulations under the JOBS Act Title III to protect both accredited and non-accredited investors participating in equity crowdfunding.¹⁸

For non-accredited investors, regulations limit the number of shares they can purchase to mitigate potential losses and protect their financial interests. The federal securities law defines 'accredited investor' (AI) under Regulation 501 of Regulation D, specifying acceptable types, including individuals, banks, insurance companies, registered investment firms, business development companies, and small business investment companies. These measures are part of the US framework to safeguard investors in equity crowdfunding activities.

In 2020, Indonesia's Financial Services Authority (OJK) introduced a significant update to equity crowdfunding regulations with Regulation Number **57/POJK.04/2020** on Equity

¹⁷Stephani Lee Black, US Equity f : A Review of Current Legislation and A Conceptual Model of the Implications for Equity Funding, The Journal of Entrepreneurship , 27 (1), p. 85.

¹⁸ Ibid., p. 85

Offerings through Information Technology-Based Crowdfunding, later amended by Regulation Number 16/POJK.04/2021 (POJK 57/2020), which superseded POJK 37/2018. This regulation aims to enhance MSME financing by utilizing equity crowdfunding as a funding source and includes provisions for secondary market trading of shares.

The adoption of equity crowdfunding platforms in Indonesia saw a substantial increase, with investments rising by 319.56%. The number of investors on equity crowdfunding platforms grew from 22,341 in 2020 to 93,733 in 2021. According to *OJK* Chairman Wimboh Santoso, this growth reflects a direct correlation with the increasing number of issuers seeking funding through equity crowdfunding services.¹⁹

Since the regulation was enacted in June 2022, ten crowdfunding institutions have been operating in Indonesia, with forty others licensed by *OJK*. The first company to conduct a stock offering and manage the secondary market in equity crowdfunding services in Indonesia is PT Santara Daya Inspiratama, which has been licensed and is supervised by *OJK* under Decision Letter Number: KEP-59/D.04/2019.

Fintech-based financing institution Santara has launched a platform to facilitate investments and support the growth of Micro, Small, and Medium Enterprises (MSMEs). Operating through the Santara.co.id website, PT. Santara Daya Inspiratama has been licensed by the Financial Services Authority (*OJK*) since September 6, 2019. Since its inception, Santara has successfully raised over IDR 8 billion, which has been allocated to 12 MSMEs across various sectors including culinary, property, livestock, and fisheries.²⁰ The platform offers investors projected annual profit-sharing rates between 15% and 25%, derived from the dividends of the issuing companies.²¹

In equity-based crowdfunding, activities extend beyond fundraising campaigns to include secondary markets. While equity crowdfunding and traditional capital markets both involve offering shares and feature primary and secondary markets, there are key differences. In capital markets, a private company becomes public through an Initial Public Offering (IPO), regulated by Law No. 8 of 1995 concerning Capital Markets (UUPM). In contrast, equity-based crowdfunding does not constitute a public offering as defined by the UUPM.²²

In Indonesia, equity-based crowdfunding is regulated under Financial Services Authority Regulation (POJK) Number 37/POJK.04/2018. This regulation outlines crowdfunding services through information technology-based stock offerings but does not mandate the establishment of a secondary market for equity crowdfunding. The regulation leaves the decision to implement a secondary market to the discretion of the crowdfunding platform operators, without specific requirements.

Santara, as an operator, has introduced a secondary market where share transactions occur twice a year.²³ However, a notable limitation is that shares on the secondary market are priced at their initial purchase value, meaning there is no capital gain realized. Consequently, investors

¹⁹ adventia Elisabeth, "OJK: trend Investment Past Securities Crowdfunding Go on 319, 56%", <https://economy.okezone.com/read/2022/01/06/320/2528522/ojk-tren-investasi-pass-securities-crowdfunding-up-319-56>, accessed May 25, 2023.

²⁰ 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-berizin-pertama-begini-illustration-investasi-di-santara?page=all>, accessed on May 25, 2023

²¹ *Ibid.*

²² Cindy Indudewi Hutomo, Service Crowdfunding Through _ Offer Share based Technology Information (Equity Crowdfunding), Journal Perspective, Vol.24, No.2, May 2019, Surabaya, p.71

²³ Nur Qolbi, 2019, "So Equity Crowdfunding is permitted First, this is it Description Investment in Santara", [investasi.kontan.co.id, https://investasi.kontan.co.id/news/jadi-equity-crowdfunding-berizin-pertama-begini-illustration-investasi-di-santara?page=all](https://investasi.kontan.co.id/news/jadi-equity-crowdfunding-berizin-pertama-begini-illustration-investasi-di-santara?page=all), accessed on May 25, 2023

on Santara's platform receive profit-sharing from their investments but do not benefit from potential increases in share value.²⁴

In the Santara secondary market, investors have encountered challenges due to low stock prices and liquidity issues. The limited demand for shares has resulted in reduced share prices and difficulty in trading, making the market illiquid. Compared to established markets like the IDX, which benefit from a long history and developed systems, Santara's secondary market is relatively new and faces several shortcomings.²⁵ These include minimal regulatory frameworks and technical guidelines, which exacerbate the difficulties investors face.

The lack of detailed regulations for secondary markets in equity-based crowdfunding in Indonesia leads to several significant problems. First, the market's liquidity issues stem from the disconnect between investors seeking liquidity and capital users who prefer long-term investments. Without clear regulations, investors struggle to sell their shares, resulting in a lack of legal certainty and protection for their interests.²⁶ Second, the uncertainty caused by inadequate regulatory arrangements may deter potential investors, making it harder for startup companies to raise capital and reducing the overall effectiveness of equity-based crowdfunding in Indonesia. Third, equity traded in these platforms often involves startups or MSMEs, which are inherently riskier and face higher liquidity risks. Therefore, establishing clear regulations is crucial to mitigate these risks and ensure the secondary market's functionality.

On the other hand, the equity-based crowdfunding in the United States is regulated under the Jumpstart Our Business Startups Act (JOBS Act), specifically Title III. Enacted on April 5, 2012, this regulation represents a significant advancement for MSME funding in the US by legalizing the sale of company stock through crowdfunding platforms. The JOBS Act includes provisions allowing funders to resell their shares on a secondary market after one year of purchase, with sales restricted to fundraisers, accredited investors, and family members of funders. This framework provides a more structured approach to managing secondary markets and investor protection in equity-based crowdfunding.²⁷

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

On the contrary to POJK 37 of 2018 where it provides limited and ambiguous regulation of secondary markets in a single article, POJK 57 of 2020 offers more detailed provisions that guide the operation of secondary markets. Under POJK 57 of 2020, the transfer of rights to shares from securities transactions via the equity crowdfunding secondary market does not require a deed of transfer.²⁸ Shares can be sold on the secondary market as long as such transactions are in compliance with the Issuer's articles of association.²⁹ Article 43 of POJK 57 of 2020 stipulates:

- 1.) The Organizer may establish a system for investors to trade the Issuer's securities that were sold through the Crowdfunding Service it manages.
- 2.) The execution of securities trading, as described in paragraph (1), is mandatory and must

²⁴ *Ibid*

²⁵ Information about Santara investor dissatisfaction can found in various forum *on line* in media social Instagram And YouTube .

²⁶ Deni Sunaryo , 2019, Management Investment And Portfolio , CV. Publisher Qiara Media, Serang , p . 30

²⁷ Olga Okhrimenko , 2018, How Secondary Market in Equity Crowdfunding Works, Justcoded.com, <https://justcoded.com/blog/how-secondary-market-in-equity-crowdfunding-works> accessed on May 25, 2023

²⁸ Article 64 paragraph (3) Regulations Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information .

²⁹ Article 44 of the Regulations Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information

adhere to the following conditions:

- a. It is applicable only to equity securities in the form of shares that have been distributed for at least one year before trading.
 - b. Trading is permitted only between investors who are registered with the Operator.
 - c. A maximum of two securities trades is allowed within a twelve-month period.
 - d. There must be a minimum interval of six months between securities trades.
- 3.) Securities trading, as mentioned in paragraph (2)(c), is prohibited from exceeding ten working days.
 - 4.) The system referenced in paragraph (1) may provide: a. A reasonable price as a reference for buyers and sellers. b. A communication system for users to facilitate transactions.
 - 5.) The Financial Services Authority may establish additional provisions concerning securities trading beyond those specified in paragraph (2)(c) and (d), and paragraph (3).
 - 6.) The Administrator is required to report changes in the Issuer's shareholder data to the Financial Services Authority and disclose them on the Provider's website within two working days after each securities trading session described in paragraph (2)(c).

According to Article 43 of POJK 57 of 2020, the term "may provide" implies that organizers are not obligated to offer a secondary market on their platform. Consequently, investors face significant liquidity risks if the organizers do not facilitate a secondary market. Thus, investors must be aware from the outset that investing through equity crowdfunding entails liquidity risks that issuers or organizers cannot mitigate. Additionally, issuers and organizers are not obligated to ensure regular dividend payments.

Commitments to secondary market listings during an equity crowdfunding campaign can enhance the total amount raised by the issuer, potentially attracting more investors and increasing participation.³⁰ The secondary market also provides a mechanism for investors seeking to expand their ownership stakes in an issuer.

Market Secondary in *Equity Crowdfunding* in America Union

Previously, the author sought to highlight that while the secondary market for private securities is less accommodating compared to the public securities market, there are still notable differences in trading practices. Public companies, which trade shares on stock exchanges, have a substantial volume of shares traded and provide daily price information through websites and financial reports. In contrast, private shares, often referred to as "over-the-counter" shares, are traded less frequently and may have limited disclosure of price information.³¹

Private shares face several restrictions and are less liquid due to their volatile prices and the limited availability of price information. Furthermore, the trading of these shares is subject to investor accreditation requirements, as outlined in the JOBS Act. According to Michelle Littman, a corporate attorney based in New York, the secondary market involves the negotiated sale of private securities that are not publicly traded. These transactions typically occur directly between the seller and the buyer, with broker-dealers facilitating these trades and earning

³⁰Anna Lukkarinen and Armin Schwienbacher , 2020, Secondary Market Listings in Equity Crowdfunding: The Missing Link?, p . 17

³¹Olga Okhrimenko , "How Secondary Market in equity Crowdfunding Works?", www.justcoded.com , accessed on date 30 May 2023

commissions on transactions.³²

Brokers and secondary market participants are interconnected through various intermediary platforms and communities. There is potential for platforms and broker-dealers to develop peer-to-peer secondary markets, where registered investors can resell shares they acquired on these platforms. A comparative analysis of the mechanisms for equity crowdfunding (ECF) services in Indonesia and the United States will illustrate the differences and similarities in their regulatory frameworks and operational practices.

No	Indonesia	America Union
1.	<p>Securities offering made publisher through service down the fund. No is offer general like Which meant in Constitution Capital Market if:³³</p> <p>a. Securities offer is made in a period time maximum of 12 (two mercy) months, And</p> <p>b. Total funds collected through securities offer a maximum IDR 10,000,000,000.00 (ten billion rupiah)</p> <p>c. In circumstances special, Authority Service Finance can determine mark total fundraising besides mark Which meant on paragraph (1) letter c</p>	<p>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.</p> <p>2. In 2015 , Commission Exchange And Securities together with institution Authority regulator Industry Finance ie Financial Industry regulatory Authority (FINRA) And Securities and</p>

³²David 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.

³³ Chapter 3 POJK 57/POJK.04/2020

d. Securities offer done in periodtime maximum 12 (two mercy) month; And	ExchangeCommission (SEC) will continue to watch equity crowdfunding adapt rule Which
e. Total fund Which collected through securities offer maximum IDR 10,000,000,000.00 (ten billion rupiah)	There is. 3. Deep part 4 (a) (6)from UU Securities state that limit capital Which can improved past <i>equity Crowdfunding</i> is notover \$ 1
f. In circumstances special, Authority Service Finance can determine mark total fundraising besides mark Which meant on paragraph (1)letter c.	million per year as well as limit amountfund planting capital from financier Which No accredited in accordanceincome per year, matter This avoid No There is Which bankrupt. ³⁴

Table Comparison Protection Law between the American Union AndIndonesian

Indonesia	America Union
Previously, <i>OJK</i> institution One- the only one who did supervision, regulation, imposition of sanctions And settlement Dispute. On month November 2020, <i>OJK</i> set institution ALUDI, as institution manager, superintendent of administration	Finra and SEC is institution, supervising its activities, impose sanctions, and help solve Dispute.

³⁴David M. Freedman, *Op. Cit* , p . 18.

Service down funds.	
The Organizer (platform) must educate education to the financier on the page.	Fine as well as platforms executor must educate education to t h e financier on page.
Previously Not yet own market Secondary. In the year 2021, Already launched market secondary, Which The system is similar to t h e sell-buy Share Which There is an Exchange Effect Indonesia	Has own market secondary Which ban t you financier For sell back.
Protection law, Which is characteristic repressive only done by <i>OJK</i> institutions, is appropriate with POJK 16/POJK.04/2021 Amendment on POJK 57/POJK.04/2020	Legal protection characteristic repressive done supervised by FINRA by the SEC.

Protection Law to Financier In Activity Market Secondary *Equity Crowdfunding* in Indonesia

1. Preventive Legal Protection

POJK 57 of 2020 mandates that organizers conduct a thorough review of various documents from publishers. This includes legal establishment documents, proof of the publisher's business entity validity, details about the business body or administrative entity, capital aspects, limits of the publisher's operations³⁵, and licensing related to the publisher's business activities financed through securities offerings. Additionally, publishers must provide mandatory information to the organizers.

Organizers are required to upload annual reports to their websites, which publishers must submit six months before the end of the fiscal year. These reports must include information on the use of funds raised through equity crowdfunding services until the funds are fully utilized.³⁶ This requirement aligns with the reporting provisions outlined in the Limited Liability Company Act.

³⁵ Article 16 paragraph (1) letter a Regulation Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information

³⁶ Article 50 paragraph (4) Regulations Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information

Besides annual reports, publishers must submit incidental reports for material events or information that may impact the publisher's business continuity. These reports must be provided to organizers and publicly disclosed on the organizers' websites within two working days of the occurrence of such events or information.³⁷ This requirement supports the principle of transparency, as outlined in Article 86 of the Capital Market Law.

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. Article 1 number 25 of Law Number 8 of 1995 concerning Capital Markets states ;

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.

Additionally, POJK 57 of 2020 establishes legal protection for investors by mandating the registration of scriptless shares with a custodian. This registration is linked to the proof of share ownership, which is recorded in the securities account at the custodian bank.³⁸ The securities account utilizes the Single Investor Identification (SID) number, a unique code issued by KSEI (Indonesian Central Securities Depository). The SID is used by investors, customers, and other parties to conduct securities transactions and access services provided by KSEI or authorized third parties, in accordance with relevant regulations.³⁹

The electronic records of securities at the depository and settlement institution serve as legal proof of securities ownership for shares kept in collective custody.⁴⁰ Article 44 of the Capital Markets Law regulates the handling of scriptless shares as follows:

- 1) A custodian responsible for custodial activities must maintain the securities belonging to the account holder and fulfill other contractual obligations with the account holder.
- 2) Deposited securities must be recorded and maintained separately.
- 3) Securities stored or recorded in a custodian's account are not considered part of the custodian's assets. According to Article 45, "A custodian can only release securities or funds recorded in a securities account based on a written order from the account holder or an authorized representative."

Legal protection for investors engaging in transactions on the equity crowdfunding secondary market is also addressed in Article 5, paragraph (1) of Law No. 11 of 2008

³⁷ Article 52 Regulations Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information

³⁸ Article 49 Regulations Authority Service Finance Number 57/POJK.04/2020 concerning Offer Effect Through Service Crowdfunding Based _ Technology Information

³⁹ point 1.23 of the Regulations Custodian Central Indonesian Securities Number VD About Instructions Overbooking Without Payment of Funds at KSEI

⁴⁰ Article 11 of the Regulations Authority Service Finance Number 22 /POJK.04/2019 Concerning Transaction Effect

concerning Information and Electronic Transactions (now referred to as the ITE Law), which stipulates that electronic information, documents, and printouts are considered valid legal evidence. Article 5, paragraph (2) further affirms that such electronic information and documents are valid evidence in accordance with Indonesian procedural law.

To enhance preventive measures, the *OJK* (Financial Services Authority) can issue guidelines to standardize the secondary market mechanisms among service providers, minimizing discrepancies that could disadvantage investors. These regulations can cover aspects such as auto-reject limits, buying and selling mechanisms, trading hours, transaction costs, and methods for determining fair share prices during initial secondary market trading. For instance, the Santara and Crowddana platforms use symmetrical auto-reject limits, with Santara set at 10% and Crowddana at 25%. Conversely, the Bizhare platform employs an asymmetric auto-reject system at the start of trading, with an upper limit of 30% and a lower limit of 5%, which adjusts to 20% symmetrical auto-reject conditions the following day. Such variations in price ranges across platforms can potentially confuse investors.

On the Santara and Bizhare platforms, secondary market trading spans ten full days, while on Crowddana, it is divided into two five-day periods: the first for selling and the second for buying. To ensure fairness and prevent fraud in determining share prices, the *OJK* could also provide guidelines for establishing fair prices in initial secondary market trades. The lack of technical guidelines from the *OJK* increases the risk of market abuse by unscrupulous individuals.⁴¹

Moreover, the *OJK* should regulate the disclosure of secondary market transaction data by mandating that organizers post daily transaction summaries on their websites within two working days. This transparency allows investors to assess market liquidity. At the end of the secondary market trading period, organizers must report transaction data to the *OJK*, which includes addressing investor complaints and disputes, as well as outlining the settlement mechanisms for these issues.

2. Repressive Legal Protection

Equity crowdfunding operates similarly to a mini-IPO, involving public fund-raising through the sale of initial shares on a smaller scale. Despite the smaller capitalization of the issuer's market, violations and crimes in equity crowdfunding should not be overlooked, as they can damage reputations and erode investor confidence.

Crimes associated with equity crowdfunding are analogous to those in traditional secondary markets, such as stock exchanges. While there were no reported violations or crimes during the initial period of the Santara platform's secondary market, POJK 57 of 2020 reveals potential gaps. This regulation only outlines administrative sanctions for secondary market providers, leaving issuers potentially able to gain an unfair advantage by collaborating with other parties for more dominant information control.

POJK 57 of 2020 does not prescribe administrative sanctions for issuers who might misuse this power. According to the Capital Market Law, administrative sanctions may be applied for violations of this Law or its implementing regulations by any party holding permits, approvals, or registrations from *Bapepam* (Capital Market Supervisory Agency). Therefore, capital market regulators must play a crucial role in maintaining market integrity by detecting and investigating abuses in equity crowdfunding.

⁴¹ Aisha Come on Winandry, "What That Market Secondary ?" <https://blog.crowddana.id/apa-itu-pasarsekunder/> accessed on June 1, 2023.

C. Conclusion

Based on the research and discussion presented, the following conclusions regarding the regulation of equity crowdfunding under Indonesian law can be drawn:

1. Under Indonesian capital market law, including Law No. 8 of 1995 concerning the Capital Market and its derivative regulations such as Financial Services Authority Regulation Number 22 /POJK.04/2019 concerning Securities Transactions and Regulation Number 57 /POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services, the equity crowdfunding secondary market operates differently from traditional stock exchange markets. Despite using an order book and continuous auction process similar to regular market transactions, equity crowdfunding providers do not function as stock exchanges. Investor orders are processed directly through the system without broker-dealer intermediaries. This market lacks stock exchange members and does not facilitate transactions on an exchange floor. Additionally, equity crowdfunding secondary markets do not accommodate short sales, margin transactions, or trading of rights (HMETD). Transactions occur on a peer-to-peer basis, with the Operator managing the trading system and transferring securities lists to the Custodian two days post-trading period.
2. Investors in the equity crowdfunding secondary market benefit from both preventive and repressive legal protections under Indonesian law. Preventive measures include the principle of transparency, as mandated by the Capital Market Law. Organizers must review issuer documents before shares can be offered and register scripless shares with the Custodian. To enhance preventive measures, the *OJK* can issue guidelines standardizing aspects such as auto-reject limits, buying and selling mechanisms, trading hours, transaction fees, and the determination of fair share prices. Despite these safeguards, the equity crowdfunding secondary market remains susceptible to capital market crimes that can harm investors and erode public confidence. Repressive legal protections include criminal and administrative sanctions to address violations and maintain market integrity.

Suggestion

1. To the Financial Services Authority (*OJK*): The *OJK* should enhance its technical regulations concerning the limitations of parties involved in secondary market equity crowdfunding. Specifically, the *OJK* can establish guidelines for implementing a secondary market that facilitates a unified trading mechanism among crowdfunding service providers under its supervision. This approach would strengthen the equity crowdfunding secondary market and help mitigate the risks of capital market violations and criminal activities. The *OJK* might mandate that organizers publish a trading summary on their websites within two business days following the conclusion of daily trading activities. Furthermore, the *OJK* could delegate oversight responsibilities to the Indonesian Stock Exchange to offer guidance and support to SMEs planning to list on the accelerated board of the Exchange. Optimizing existing regulations could contribute to greater financial inclusion in Indonesia.
2. To PT Santara Daya Inspiratama: The adoption of an order book system via a continuous auction market is recommended to enhance trading efficiency for buyers and sellers. Santara should consider disclosing daily trading summaries on its website to provide investors with comprehensive information. Additionally, Santara can implement a system to detect unusual investor activities in stocks to enable timely preventive measures. Strengthening oversight of the equity crowdfunding secondary market is crucial to reducing the incidence of market violations and financial crimes.
3. To the Investor Community: Investors must acquire a thorough understanding of the mechanisms involved in buying and selling within the secondary market, as well as the

associated risks of participating in equity crowdfunding activities. It is essential for investors to exercise due diligence when purchasing securities from issuers and to ensure that their investments are sound by conducting comprehensive analyses.

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