



Conflict of Interest Transactions on Equity Crowdfunding Based Funding Activities in Indonesia

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Article Info

Received: 16th September 2022

Accepted: 10th December 2022

Published: 20th December 2022

Keywords:

Capital Market, Equity Crowdfunding, Conflict of Interest.

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DOI:

10.24843/JMHU.2022.v11.i04.p02.

Abstract

This research aims to understand the difference between transactions in equity crowdfunding and transactions in the capital market and to determine the urgency of managing the risk of conflict of interest in equity crowdfunding transactions. The method used in this research is normative legal research with a statute approach that is relevant to the object of research and an analytical approach. The result of the research conducted a conclusion that in fact equity crowdfunding is part of the capital market, but there are differences in substance that cause both of them to face different mechanisms and risks of implementing financing activities. POJK No. 57/POJK.04/2020 has not fully accommodated the legal needs related to the risk of conflict of interest in the equity crowdfunding sector as Law Number 8 of 1995 regarding the Capital Market has regulated the conflict of interest in the capital market sector.

I. Introduction

The rapid growth of information and electronic transactions these days also have an impact on various sectors, one of which is in terms of financial services. A service provider in the financial sector that has adapted information technology features is also called financial technology (fintech). Through the use of the internet and smartphones that are able to access various services and facilities, fintech has the opportunity to develop in the digital era.¹ Nowadays, it has become a necessity for modern society to expect convenience, speed and efficiency in conducting transactions, then various fintech products have emerged including payment products, investments, financing and buying and selling shares. In order to realize significant economic growth, it is necessary to have a solution in solving the problem of financing for business actors who need capital. Irawati explained, that in dealing with the problems as mentioned above,

¹ Pranoto Pranoto, Munawar Kholil, and Kukuh Tejomurti, "Fintech Lending: Challenge And Opportunities Of The Indonesia's Loan Unbanked To Develop The Inclusive Financial Industry," *Hang Tuah Law Journal* 3, no. 2 (2019): 105–19.

financing is needed whose source of funds comes from financial institutions.² One of the fintech products that is currently getting attention in the community is an information technology-based stock offering called equity crowdfunding.

In Indonesia, equity crowdfunding is currently being accommodated with the latest legal basis, namely the Financial Services Authority Regulation Number 57/POJK.04/2020 (POJK No. 57/POJK.04/2020) regarding Crowdfunding Services through Information Technology-based Share Offerings, which provide an understanding of equity crowdfunding or what in this regulation is referred to as crowdfunding services in Article 1 point 1 is the provision of securities offering services carried out by issuers to sell securities directly to investors through an open electronic system network.³ Despite the convenience and efficiency offered by the crowdfunding service, it turns out that this service still has risks that are not covered by the law, namely the risk of conflicts of interest that occur between business actors, operators and investors. Previously, in Law Number 8 of 1995 on the Capital Market, it was regulated regarding conflict of interest transactions.

In connection with the background of the problems that have been described, then it is necessary to study in more depth on legal research with the title **“Conflict of Interest Transactions on Equity Crowdfunding-Based Funding Activities in Indonesia”**, with research focus on 2 (two) problem formulations to be studied, namely *the first* is how is the difference between transactions in equity crowdfunding and transactions in the capital market? and *the second* is what is the urgency of managing the risk of conflict of interest in equity crowdfunding transaction activities? Departing from the formulation of the problems to be studied, the writing of this legal journal aims to understand the difference between transactions in equity crowdfunding and transactions in the capital market and to determine the urgency of managing the risk of conflict of interest in equity crowdfunding transactions.

Several previous studies have discussed issues related to Equity Crowdfunding which shall then be used as a comparison with this study to show the elements of differences in the discussion that shall be described, including the following:

- a. Article Journal with title “Inovasi Keuangan di Bidang *Equity Crowdfunding* dalam Pengembangan Pasar Modal” by author Cynthia Kurniawan Ong (2020).⁴ This study analyzes a problem related to Equity Crowdfunding summarized in capital market activities, analyzes the similarities between Equity Crowdfunding and Initial Public Offering in the capital market and analyzes OJK regulations and plans for Equity Crowdfunding Development in Indonesia;
- b. Article Journal with title “Perlindungan Hukum Pengguna (Pemodal) dalam Layanan Urutan Dana Melalui Penawaran Saham Berbasis Teknologi Informasi

² Irawati Irawati, “Tinjauan Yuridis Pemanfaatan Equity Crowdfunding Bagi Pengembangan Usaha Kecil Dan Menengah Di Indonesia,” *Diponegoro Private Law Review* 4, no. 2 (2019): 1-14.

³ Peraturan Otoritas Jasa Keuangan Nomor 57/POJK.04/2020 tentang Layanan urun Dana Melalui Penawaran Saham berbasis Teknologi Informasi.

⁴ Cynthia Kurniawan Ong, “Inovasi Keuangan Di Bidang Crowdfunding Ekuitas Dalam Pengembangan Pasar Modal,” *Airlangga Journal of Innovation Management* 1, no. 2 (2020): 237-49.

(*Equity Crowdfunding*)” by author Suriyadi, Ika Novitasari dan Asrullah (2022).⁵ This study discusses the issue of the protection of user funds (investors) provided by crowdfunding services through information technology-based stock offerings in the event of a loss.

Compared to the two issues in both article journal mentioned above, it can be seen that there are differences in the discussion that shall be carried out in the writing of this journal. This journal shall focus on discussing the differences between transactions in equity crowdfunding and transactions in the capital market and to determine the urgency of managing the risk of conflict of interest in equity crowdfunding transactions.

2. Metode Penelitian

Based on its nature, the research method in this study uses normative legal research methods with a focus on the statute approach that is relevant to the object of research and also carries out an analytical approach in analyzing legal documents and materials with the aim of finding explanations.⁶ In addition, this study also uses a literature study conducted using references from primary legal materials and secondary legal materials. Primary legal materials consist of Law Number 8 of 1995 on Capital Markets, Law Number 40 of 2007 on Limited Liability Companies and Legislation, namely Financial Services Authority Regulation (POJK) Number 57/POJK.04/2020 on Crowdfunding Services Funds Through Information Technology-based Stock Offering. Meanwhile, secondary legal materials consist of books and legal journals from previous research, articles, information obtained from the media and the internet, and other reference sources related to the object of study in writing this journal.

3. Result and Discussion

3.1. Differences in Transactions in the Capital Market and Transactions in Equity Crowdfunding

In the transaction activities in the capital market with equity crowdfunding-based funding activities, there are several basic differences that can significantly affect the technical implementation, so that each requires legal regulations that can comprehensively accommodate legal protection for the risks that occur in both. The following shall explain the differences between transactions in the capital market and transactions in equity crowdfunding-based funding activities.

Equity Crowdfunding is a form of fundraising that aims to raise funds in order to meet the needs of business entities or companies so that they can run their business more optimally through the sale of a portion of the company's shares to investors with intermediary providers in the form of an electronic system network open to investors.

The Government of the Republic of Indonesia for the first time regulates equity crowdfunding through the Financial Services Authority Regulation Number

⁵ Ika Novitasari, “Perlindungan Hukum Pengguna (Pemodal) Dalam Layanan Urutan Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (Equity Crowdfunding),” *Jurnal Hukum Unsulbar* 5, no. 1 (2022): 43-59.

⁶ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, 2020. p. 42.

37/POJK.04/2018 on Crowdfunding Services through Information Technology-Based Stock Offerings (Equity Crowdfunding), hereinafter referred to as POJK No. 37/POJK.04/2018, which has now been replaced with POJK No. 57/POJK.04/2020 as the legal basis for its implementation, as indicated by the closing provisions in Chapter XIII Article 91 which stipulates that at POJK No. 57/POJK.04/2020 comes into force then POJK No. 37/POJK.04/2018 is revoked and declared invalid.

The latest regulation, in addition to regulating equity crowdfunding, has also expanded the scope of the rules to be more comprehensive, covering security crowdfunding, which is a development of equity crowdfunding, not only offering objects in the form of shares but also securities in the form of equity, debt and sukuk. This shows that in general the legal arrangements that are used as the foundation for the establishment of the equity crowdfunding market are available, but a number of important guidelines such as risk management and governance that are urgently needed by the organizers are still not completed.⁷

The Capital Market has its own laws and regulations which have been regulated in Law Number 8 of 1995 on the Capital Market (Capital Market Law). Article 1 point 13 of the Capital Market Law explains that the capital market is an activity concerned with public offerings and securities trading, public companies relating to securities issued, as well as institutions and professions related to securities. More broadly, the capital market is also related to activities carried out by public companies as stated in Article 1 point 8 of Law Number 40 of 2007 on Limited Liability Companies (Limited Companies Law) which explains that a public company is a company that meets the criteria for the number of shareholders and paid-up capital. which is in accordance with the provisions of the legislation in the capital market. The parties involved in transaction activities in the capital market are issuers, securities companies, stock exchanges, investors and custodian banks. In addition, several professions supporting activities in the capital market are capital market notaries, capital market legal consultants, appraisers, public accountants, as well as institutions such as securities administration bureaus and trustees and custodians.⁸ Meanwhile, the parties involved in the implementation of equity-based crowdfunding activities are 3 parties, namely the issuer, organizer and investor. According to POJK No. 57/POJK.04/2020 Article 1 point 7, what is meant by issuer is an Indonesian business entity in the form of a legal entity or other business entity that issues securities through crowdfunding services. Article 1 point 5 explains that the organizer is an Indonesian legal entity that provides, manages and operates crowdfunding services. Investors are described in Article 1 point 8, namely parties who purchase issuer securities through crowdfunding services. It is not explained regarding the citizenship status of the parties buying the securities, so that it is possible for foreign legal entities and foreign citizens to be able to become investors in this equity crowdfunding activity, with due regard to the provisions of Law Number 25 of 2007 on Investment (Investment Law). Capital) and Presidential

⁷ Bahtiar Bahtiar, Efridani Lubis, and Hapendi Harahap, "Pengaturan Kaidah Manajemen Risiko Atas Penawaran Saham Berbasis Teknologi Informasi (Equity Crowdfunding) Untuk Pengembangan UMKM Di Indonesia," *Jurnal Hukum Jurisdiction* 3, no. 2 (2021): 65–98.

⁸ Mas Rahmah, *Hukum Pasar Modal* (Jakarta: Prenada Media, 2019).

Regulation Number 44 of 2016 on List of Business Fields Closed and Business Fields Open to Investment.⁹

Apart from the differences between the parties, there are also differences in terms of securities offering activities in equity crowdfunding and the capital market. In equity crowdfunding, the implementation process is simpler, starting with the operator obtaining permission from the Financial Services Authority, with a maximum period of 12 months for raising funds and the maximum amount of funds raised through crowdfunding activities by the issuer is Rp. 10,000,000,000.00 without any provision for value. minimum, or other values as determined by the Financial Services Authority. In the capital market sector, the time for each share offering is 60 days. The issuer may only offer shares to one provider, and if the fundraising target is not met, the offer is null and void. The issuer can also cancel the offer while the offer period is still in progress by paying a specified fine.¹⁰ Securities offering activities undergo a longer process and involve more external parties such as clearing houses and institutions that provide securities custody. The process starts with the pre-emission stage, the emission stage and the last is the post-emission stage. The stage before the issuance takes place internally to the company and the process of submitting a registration statement to the Financial Services Authority, the second stage, namely the emission stage, occurs when the issuer offers securities in the primary market and trades securities in the secondary market. The next stage which is the final stage is the post-emission stage, namely the reporting stage.

When viewed from the type of company, in the capital market there are issuers which according to the Capital Market Law are a public limited company so that apart from being subject to the Limited Liability Company Law, they are also subject to the provisions stipulated in the Capital Market Law. Meanwhile, in equity crowdfunding, the issuer is not a public company, so it is only subject to the Limited Liability Company Law.¹¹

Through these differences, it can be seen that there are several differences between equity crowdfunding and the capital market, which causes both of them to face different risks in their implementation. Risk shall always exist in carrying out an investment. In the capital market, the investment risks proposed by Martono and Harjito are as follows:¹²

- a. Purchasing power risk, this risk is related to the possibility of inflation causing the real value of income to be smaller;
- b. Business risk is a risk of decreasing the company's ability to earn profits, which in turn reduces the company's ability to pay interest and dividends;
- c. Interest rate risk, rising interest rates shall usually depress the price of securities, so usually the price of securities shall fall;
- d. Market risk, if the market is excited in general the stock price shall increase, but if the market is bearish then the price tends to fall;

⁹ Fithriatus Shalihah et al., *Equity Crowdfunding Di Indonesia*, Cetakan Pe (Yogyakarta: UAD PRESS, 2022).

¹⁰ Na'im Fajarul Husna, "Urgensi Penerapan Regulatory Sandbox Oleh Otoritas Jasa Keuangan Sebagai Upaya Perlindungan Hukum Bagi Pemodal Equity Crowdfunding" (UNS (Sebelas Maret University), 2020).

¹¹ Ong, "Inovasi Keuangan Di Bidang Crowdfunding Ekuitas Dalam Pengembangan Pasar Modal." p. 8.

¹² D Agus Harjito and S U Martono, *Manajemen Keuangan Edisi Kedua* (Yogyakarta: Ekonisia, 2014).

- e. Liquidity risk, this risk is related to the ability of a securities to be traded immediately without experiencing significant losses.

Meanwhile, the risks faced by the parties in the implementation of equity crowdfunding reflect the failures experienced by the organizers in several countries as stated in Lin's research, that a number of failures experienced by the organizers such as the ECF organizers committed fraudulent actions that harmed investors with a total value of which was very large as a result of the absence of legal regulations that overshadowed it at the time, including the high agency problem and information asymmetry which led to the issue of potential conflicts of interest. In addition, in the capital market, related to the principle of openness which is a must to be applied in the implementation of either the capital market or equity crowdfunding, there is also the potential for violations of transactions that contain conflicts or conflicts of interest that can harm one party, because there are elements of collusion and violation of the principle of information disclosure.¹³

3.2. The Urgency of Managing Conflict of Interest Risks in Equity Crowdfunding Transaction Activities

In research conducted by the European Commission found several risks that can arise in the implementation of the equity crowdfunding system including:¹⁴

- a. Investors can experience lost profits or even not get the expected returns;
- b. Conflicts or conflicts of interest between business actors, equity crowdfunding system operators and investors;
- c. Data security, and so on.

Focusing on the risk of conflicts or conflicts of interest that occur between parties in the implementation of the equity crowdfunding system, in this regard, the Capital Market Law regulates conflicts of interest, namely Article 82 paragraph (2) and then elaborated on the Decree of the Chairman of Bapepam No. Kep- 412/BL/2009, Regulation No. IX.E.1. on Affiliated Transactions and Conflicts of Interest in Certain Transactions, hereinafter referred to as Regulation No. IX.E.1. According to M. Irsan Nasarudin and Indra Surya as quoted by S. Anisah, that the above rules are generally aimed at:¹⁵

- a. Protect the interests of independent shareholders who are generally minority shareholders from acts that exceed the authority of the directors, commissioners, and major shareholders in conducting transactions that contain certain conflicts of interest;
- b. Mengurangi kemungkinan penyalahgunaan kekuasaan oleh direksi, komisaris, atau pemegang saham utama untuk melakukan transaksi yang mengandung kepentingan tertentu;
- c. Reduce the possibility of abuse of power by directors, commissioners, or major shareholders to carry out transactions that contain certain interests.

¹³ Anthon Nainggolan, "Prinsip Keterbukaan Informasi (Disclosure) Dalam Kegiatan Pasar Modal Menurut UU RI No. 8 Tahun 1995 Tentang Pasar Modal: Suatu Tinjauan Yuridis," *To-Ra* 2, no. 1 (2016): 267-78.

¹⁴ The World Bank, "Crowdfundings Potential for the Developing World" (Washington, DC, 2013), <https://openknowledge.worldbank.org/handle/10986/17626>. p. 45.

¹⁵ Nainggolan, "Prinsip Keterbukaan Informasi (Disclosure) Dalam Kegiatan Pasar Modal Menurut UU RI No. 8 Tahun 1995 Tentang Pasar Modal: Suatu Tinjauan Yuridis."

Conflict of interest transactions in the capital market sector, for example related to debt repayment agreements, lending to related parties, asset sales to affiliated parties, cancellation of sale and purchase agreements and debt guarantees.¹⁶

It can be seen that the regulation regulates conflicts of interest in the context of the capital market industry. In the regulations related to the implementation of the latest equity crowdfunding, namely POJK No. 57/POJK.04/2020 which is a replacement regulation for the previous regulation, namely POJK No. 37/POJK.04/2018 on Crowdfunding Services Through Information Technology-Based Stock Offerings (Equity Crowdfunding), which in the preamble considering the letter b stated that the replacement is to expand the scope of securities offerings in crowdfunding services, stipulating provisions which basically include things as follows:

1. Organizer Criteria;
2. Provisions regarding Crowdfunding Services;
3. Terms for publishers;
4. Obligations for investors who buy securities through Crowdfunding Services.

The regulation still does not cover the risk of conflict of interest between the parties involved in equity crowdfunding activities. Chapter VI POJK No. 57/POJK.04/2020 contains regulations on risk mitigation which are expected to be able to accommodate in the context of mitigating risks between the parties. Article 66 requires operators and users to mitigate risks. The explanation of Article 66, explains that what is meant by "risk mitigation" is mitigating all risks in Crowdfunding Services which include business risk, investment loss risk, liquidity shortage risk, dividend distribution scarcity risk and share ownership dilution risk. However, it did not explain further in more detail the risks for the parties in the event of a conflict of interest, most of them are still related to risks from the investors or investors side.

Equity crowdfunding has the potential to be considered the riskiest financing activity, where the risk is caused by:¹⁷

- a. Uncertainty in terms of commercialization and implementation of business ideas and profitability for startups;
- b. High agency costs, information asymmetry related to equity crowdfunding and conflict of interest caused by the organizer's compensation rules (platform);
- c. Lack of tangible and substantial assets and an operational track record;
- d. Lack of secondary market for pricing and liquidation.

An example of a case in a study presented by the European Commission Financial Services User Group (FSUG) where the equity crowdfunding provider platform charges a service fee from the fundraiser in this case is the issuer of shares to provide services such as consulting for the preparation of agreements, holding face-to-face meetings between the parties, conduct due diligence, and others. All rules relating to compensation as mentioned above have the potential to cause a conflict of interest

¹⁶ Ibid.

¹⁷ Oxera, "Crowdfunding from an Investor Perspective," *Final Report, Prepared for the European Commission Financial Services User Group*, 2015, <http://www.oxera.com/Latest-Thinking/Publications/Reports/2016/Crowdfunding-from-an-investor-perspective.aspx>. p. 25, diakses tanggal 15 Juli 2022.

because in this operation the investor does not pay for the services provided by the operator as charged to the issuer of shares. That this could happen in the interests of the organizers to provide more projects in order to maximize profits, and not in the interests of investors.¹⁸

Correlate with what Kirby and Worner stated that the high risks of equity crowdfunding include, among others, conflicts of interest arising from the compensation rules of the platform used. With the revenue model as described above, the organizers are unable to control the access of share issuers to the equity crowdfunding market. Therefore, it is important to regulate the risk of conflict of interest and its resolution in the equity crowdfunding sector, because the organizers as intermediaries in the equity crowdfunding transaction activities shall be able to carry out their functions if there are adequate legal rules.¹⁹

4. Conclusion

In essence, equity crowdfunding is part of the capital market, but there are also differences in substance between equity crowdfunding and the capital market, which causes both of them to face different risks of implementing financing activities. POJK No. 57/POJK.04/2020 as the legal basis for the implementation of equity crowdfunding has not fully accommodated the legal needs in this case related to the risk of conflict of interest in the equity crowdfunding sector as the Capital Market Law has regulated related to conflicts of interest in the capital market sector. Given the strategic role of fintech in the current era, especially in this case in the form of equity crowdfunding-based crowdfunding services, the scope of which has now been further expanded with all the risks and conflicts that could potentially occur in its implementation and to meet legal needs in society, it is very important to reform the the legal umbrella becomes more comprehensive.

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¹⁸ Ibid. p. 67.

¹⁹ Lin, L., *Loc. Cit.*

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