



## LEGAL PROTECTION FOR INVESTORS IN CROWDFUNDING SERVICES THROUGH INFORMATION TECHNOLOGY OFFERS (EQUITY CROWDFUNDING)

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### Article Info

Received : 01/07/2020

Approved: 20/07/2020

### Keywords :

Equity Crowdfunding;

Investors;

Legal Protection.

### Abstract

The readiness of the community in the era of information technology has opened up opportunities in online businesses such as equity crowdfunding, equity crowdfunding as an alternative capital is increasingly in demand, especially by novice businesses. The Financial Services Authority issues regulations regarding the Equity Crowdfunding transaction model by issuing the Financial Services Authority Regulation Number 37 / POJK.04 / 2018. This provides questions for the regulation of Equity Crowdfunding in Indonesian Capital Market Law. The writer in this study would like to examine and analyze the Equity Crowdfunding activities and legal protection for investors, because legal protection is a form of legal certainty. The research method used is a normative juridical types, the problem approach uses the legislation approach and the conceptual approach. The results show that equity crowd funding is a form of new innovation in funding sources. The service mechanism has many similarities with public offering activities in the capital market, only the implementation is simpler. Equity Crowdfunding legal protection for investors who have been registered in the provisions of Chapter 54 paragraph (2) POJK Number 37 / POJK.04 / 2018, providing the latest information is only placed on the organizer's website or website.

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## I. INTRODUCTION

Along with the development of the period are many new things that have shifted. This new thing can be a new habit or even appear a new way. This is done by human beings in order to adapt in order to survive along with the development of even the changing times. One of the instruments that shifts and develops with the changing times is investment activities. Investment is not new in human civilization, because since many years ago people have made various forms of investment. It's only in ancient time people made investments in the form of investments made directly such as: investment in the purchase of livestock, purchase of agricultural land, or investment in making plantations and etc.

With the times and advances in science and technology, investment styles and manner also began to experience developments, from material investments and made directly to investments in capital or new forms of investment such as securities, such as stocks, bonds and others. The world began to become crowded when European colony at the time of looking for the colony is done by European countries. The news about the discovery of the new world and the birth of various new

sciences made investment begin to develop rapidly. The desire to become entrepreneurs in the new discovery land has made various parties in Europe competing to invest in the land. In investing certainly can not be separated from risk, because in every investment there is a risk that depends on the type of investment and the knowledge of the parties involved in the investment.

Overcoming this, in the midst of an increasingly rapid investment development, it began to be known as the capital market, which is place to unite capital owners with business that lack of capital. Along with the times, the invested capital is done by looking at how the business is progressing and whether the business is successful or not, then a new investor invests his capital in the business.

The history of the formation of capital markets in Indonesia began in the days of the VOC which continued into modern Indonesia. After gaining independence in 1945, Indonesia began to carry out development in various fields. The post-Old Order Indonesian government has concentrated on more systematic development since the last 1960s. The reality faced by the government at that time was that funding needs were very large, so that the Indonesian government try to raise funds for the development of funds in various ways, especially through loans from donor countries, such as European countries that were members of the *Inter-Government Group on Indonesia* (IGGI), Than (*Consultative Group on Indonesia or CGI*), Japan, and the United States. But for the Government of foreign loans is not a strategic way for development, the potential of Indonesian people must be optimized for use. For this reason, a capital market is formed which is intended as a vehicle to meet development financing needs. The strategic and important function of the capital market makes the government very interested in the development and progress of the capital market. Because of the potential for massive fundraising, it can be utilized to increase the volume of development activities.<sup>1</sup>

The capital market brings together the supplier of funds with the user of fund for the purpose of meddle-term investment and long-term. Both parties buy and sell capital in the form of efect. The supplier of funds hand over a number of funds and the recipient of the fund (a public company) submits proof of ownership in the form of efect. According to the Indonesian Big Dictionary (KBBI), the understanding of the capital market is all activities that meet supply and demand or constitute activities that trade in securities. Law Number 8 of 1995 concerning the Capital Market (next is called as UUPM) provides the meaning explained in chapter1 Number 13 where the capital market is an activity concerned with Public Offering and Trading of Public Company Securities relating to the issuance of the securities, as well as institutions and professions related to effects.<sup>2</sup>

Put simply, the capital market can be defined as a market that trades a variety of financial instruments (securities) long-term, both in the form of debt and equity issued by private companies. In general, the reason for the formation of the capital market is because it is able to carry out economic

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<sup>1</sup> M. Irsan Nasarudin, Indra Surya dan Ivan Yustiavandana, *et all*, "*Aspek Hukum Pasar Modal Indonesia*", Kencana, Jakarta, 2014, h. 1.

<sup>2</sup> *Ibid*,h. 10.

and financial functions. In carrying out its economic functions, the capital market provides facilities to move funds from *lenders* (fund owners) to *borrowers* (fund recipients) by investing excess funds owned by *lenders* (funders) by hoping to get a reward from the investment of the funds. Meanwhile, in terms of the interests of the borrower, the availability of funds from outside parties enables the company to develop business activities without having to wait.

The Capital Market as an activity as well as an alternative fundraising institution for entrepreneurs is a very dynamic business sector. This means that the Capital Market does not only involve various parties, ranging from the Financial Services Authority (OJK) as a supervisory and supervisory council, but also other supporting institutions such as the Custodian, Securities Administration Agency, Insurer, Securities Rating Agency and Trustee. Coupled with capital market supporting professions such as Accountants, Legal Consultants, Notaries, Appraisers and Investment Advisors, making this Capital Market are not only dynamic, but also a very complex business activity.<sup>3</sup>

Because of the involvement of various parties in its implementation in order to comply with OJK regulations, fundraising activities through the Capital Market are actually an alternative to capital financing that is not simple either in terms of costs or procedures. However, when compared to the long-term benefits of conventional capital financing sources such as bank loans, companies can take into account efficiency rather than public offerings to reduce bank loan interest costs that are quite high. In addition, public offerings provide opportunities for companies that were originally limited / closed companies to become public companies. This can also be used to increase company reliability.

The rapid of this *fintech* phenomenon is influenced by the growth of internet users which is getting higher from year to year. Moreover, the *fintech startup platform* itself suits the needs of today's society. One of the *platforms* most people love is *Crowdfunding*. *Crowdfunding* is a small *online* fund-raising scheme but comes from a large community that has raised significant funds.<sup>4</sup>

One type of *Crowdfunding* that is very attractive to the public is *Equity-based Crowdfunding*. This type is very effectively used to help prospective new entrepreneurs in pioneering projects or businesses. Which prospective entrepreneurs have difficulty finding donors or investors to provide initial capital for their business, so that the *Equity Crowdfunding* type is very helpful and develops quickly among the community, Therefore, as the highest regulation in managing finance, the Financial Services Authority (OJK) issued very detailed and explicit regulations regarding procedures and technicalities in the *Equity Crowdfunding* transaction model by issuing the Republic of Indonesia

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<sup>3</sup>Cindy Indudewi Hutomo, “Layanan Urus Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (*Equity Crowdfunding*)”, *Perspektif*, Vol 24, No 2, 2019, h. 65.

<sup>4</sup>Tetuko Lugas Edhita Praja, “Analisis Perbandingan Model Bisnis Platform *Crowdfunding* Di Indonesia Dengan Menggunakan Platform Design Toolkit”. *Skripsi*, (Surabaya: Institut Teknologi Sepuluh, 2017, h. 2.

Financial Services Authority Regulation No.37 / POJK.04 / 2018 Concerning crowdfunding Services through Equity Crowdfunding (next is called as POJK No. 37 / POJK.04 / 2018).

*Crowdfunding* is a form of cooperation to collecting money in support of businesses initiated by people or organizations (Muthiah Az-Zahra Rasyid, Ro'fah Setyowati, Islamikyanti, 2017). That there are four types of *crowdfunding*, one of which is *equity crowdfunding*. Pursuant to chapter 1 number 1 POJK No.37 / POJK.04 / 2018, which reads "Crowdfunding Services Through Information Technology Based Shares (Equity Crowdfunding), next is called as Funding Services, is a stock offering service conducted by issuers to sell shares directly to investors through an open electronic system network ". So seeing the rapid growth of startups in Indonesia, *equity crowdfunding* is very suitable to be used by *startups* to obtain capital in the Capital Market.

Among the types of *crowdfunding*, *equity crowdfunding* has in common with IPO in principle, namely the offering of shares to the public. It's just that the stock offering through *crowdfunding* is aimed at small to medium companies, with fundraising not exceeding Rp. 6,000,000,000.00 (six billion rupiah). As an alternative to fundraising with stock returns, internet-based *equity crowdfunding* provides benefits that can outperform the initial public offering of company shares (*IPO*). In general, the concept of *equity-based crowdfunding* is the same as shares where investors will deposit their money to businesses that need capital and then investors will get returns in the form of shares as proof of ownership. Therefore through this paper, research on legal protection for investors in equity based *crowdfunding* will be conducted in terms of existing regulations in Indonesia, namely Law Number 21 of 2011 concerning the Financial Services Authority (next is called as Law No. 21 of 2011), as well as how is the urgency of the government to issue separate regulations on equity-based crowdfunding. The process is done through a *crowdfunding* company service broker.

That is explained in Article 45 paragraph (3) and chapter 54 paragraph (2) POJK No. 37 / POJK.04 / 2018 there is a legal vacuum. Wherein in chapter 45 paragraph (3) POJK No. 37 / POJK.04 / 2018 do not regulate matters that must be contained in the minimum contents of the agreement between the Provider and the Investor. The incomplete provisions stipulated in chapter 45 paragraph (3) may result in a weak investor position as a user and do not provide legal certainty, also in article 54 paragraph (2) Number 37 / POJK.04 / 2018 do not regulate the provision of the latest information in a manner directly through telephone contact or e-mail to registered investors, the existence of this uncertainty has the potential to cause losses that can be experienced by investors in *Equity Crowdfunding* which in this case is a user. Weak user positions must get legal protection.

So from the background explanation above regarding financial innovations in the field of *Equity Crowdfunding* in the development of Capital Market Law, it can be drawn the formulation of

the problems that will be discussed in this paper, namely regarding *equity* crowdfunding instruments in capital market activities as well as legal protection forms for investors in *Equity Crowdfunding*.

Formulation of the problem:

1. What is the regulatory of Equity Crowdfunding in Indonesian Capital Market Law ?
2. What is the Legal Protection for investors in Equity Crowdfunding activities ?

## II. RESEARCH METHODS

The type of research used to discuss this problem is juridical normative, i.e. research based on laws and regulations relating to the capital market and all forms of activities in the capital market, Equity Crowdfunding transactions, and all forms of authority of the Financial Services Authority (OJK) to provide legal protection for investors in Equity Crowdfunding transactions.

This research for the first approach is the statute approach or the statutory approach. Statute approach is a legal research that puts the statutory approach as one of the approaches. The statutory approach is done by reviewing all the laws and regulations that relate to the issues at hand.<sup>5</sup> In this writing what is needed is a statutory regulation.

The second approach is a conceptual approach carried out by looking for theories and doctrines that already exist to be used as a reference in order to understand a viewpoints and doctrines in building a legal argument in solving the issues being faced.<sup>6</sup> This approach will link existing concepts with the legal issues of Equity Crowdfunding transaction activities.

## III. RESULTS AND DISCUSSION

### 3.1. Arrangement Of Equity Crowdfunding In Indonesian Capital Market Law

#### 3.1.1. Definition and History of Equity Crowdfunding

Understanding *Equity Crowdfunding* this matter is regulated in the Financial Services Authority Regulation Number 37 / POJK.04 / 2018 Regarding Funding Services through Equity Crowdfunding where the definition of *Equity Crowdfunding* itself is regulated in chapter 1 Number 1, Urun Services Funds through *Equity Crowdfunding*, hereinafter referred to as the fundrising Service, is a stock offering service carried out by the issuer to sell shares directly to investors through an open electronic system network.

The other explanation given for the definition of Equity Crowdfunding is as follows:

“Equity crowdfunding is a combination of crowd-funding and crowdlending. Backers spend money in equity crowdfunding campaigns to support a founder, who is working to develop a sustainable product or service, and expect a monetary return after the investment contract expires or the start-up company is bought by a venture capitalist. In the majority of the equity crowdfunding

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<sup>5</sup> Peter Mahmud Marzuki. (2005). *Penelitian Hukum*. Jakarta: Kencana, h. 93-94.

<sup>6</sup>*Ibid.*, h. 95

campaigns, however, backers do not pre-purchase the product or service to be developed. In the USA, equity crowdfunding was restricted for a long time to accredited investors and did not take place in any significant manner”.<sup>7</sup>

From the explanation above it can be seen that one form of crowdfunding is Equity *crowdfunding* which is a mechanism for funds to be collected from several people, these activities can be carried out for various purposes, both to support a business or for other activities.

“Crowdfunding generally means “an act of disclosing and advertising one’s own project or venture through the internet by a person who needs funds for such a project or venture in order to raise many small amounts of money from a large and unspecified number of the general crowd”.<sup>8</sup>

“Precisely saying, it can also mean “an act of ‘many a little makes a mickle’ to raise a small amount of money from the general public for a certain project of a startup enterprise, micro business, artists or social activists who have difficulty borrowing money from financial institutions”.<sup>9</sup>

Completing the previous definition that can be said briefly that a *crowdfunding* is a form of action that starts from a small thing to something big where it is realized by an effort to raise a number of funds from the general public for a particular project from parties who have difficulty in getting funds.

Crowdfunding, also sometimes referred to as alternative or distributed financing, is not a new phenomenon. Charities have long relied on donor drives that aggregate small donations to fund their causes.<sup>10</sup>

The *crowdfunding* concept was first coined in the United States in 2003 with the launch of a site called Artistshare. On the site, musicians try to raise funds from their fans to produce a work. This initiated the emergence of other *crowdfunding* sites such as Kickstarter which was involved in funding creative industries in 2009 and Gofundme which managed funding of various events and businesses in 2010. *Crowdfunding* itself is already quite well known internationally and is estimated to have managed to raise \$ 16.2 billion dollars in 2014.<sup>11</sup>

“Under purchase type crowdfunding, a platform provides a matching space for fund-raisers and (potential) contributors. When a contributor finds that a specific project of a fund-raiser is an attractive one, they enter into a purchase agreement. Under the purchase agreement, the contributor

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<sup>7</sup> Lars Hornuf dan Matthias Neuenkirch, “*Pricing Shares In Equity Crowdfunding*”, Springer, Vol 48, 2016, h. 797.

<sup>8</sup> Min Seop Yun, “*A Legal Study on the Crowdfunding as Means of Obtaining Capital*,” Korean Journal of Business Law, Vol. 26 No.2, Korean Business Law Association, 2012, h.188.

<sup>9</sup> Seong, Hye Hwal, “*A Study on the Regulatory Framework for the Equity Crowdfunding*”, Korean Journal of Securities Law, Vol. 14, No.2, Korea Securities Law Association, 2013, h. 393.

<sup>10</sup> Joseph Pulitzer’s, “*The Statue of Liberty and America’s Crowdfunding Pioneer*”, campaign to fund the pedestal of the Statue of Liberty in 1885, described in BBC News Magazine, April 25, 2013.

<sup>11</sup> *Op. Cit.*, Dhoni Siamasyah Fadillah Akbar, h. 45.

is obliged to contribute a specific amount of money and the fund-raiser is obliged to deliver specific goods or services to the fund-raiser when the project becomes successful”.<sup>12</sup>

The pattern of *crowdfunding* from the explanation above can be seen that there is a platform space which provides a forum for collecting funds and the participation of contributors. In the event that a contributor agrees to participate in the container offered, it may shift at the stage of the purchase agreement. Under the purchase agreement, the contributor is obliged to contribute a certain amount of money and the fundraiser is obliged to deliver certain goods or services to the fundraiser when the agreed project has been successful.

“Understanding the large-scale patterns in crowdfunding is important for several reasons. First, we know almost nothing about crowdfunding in the aggregate. The general academic impression is that crowdfunding is a relatively niche area of financing”.<sup>13</sup>

That there are several things that need to be considered in understanding a crowdfunding pattern, the first aspect is that *crowdfunding* is a relative field in financing, this means crowdfunding is a financing instrument that can develop and innovate over time.

“Second, a large body of theoretical and empirical literature suggests that access to financial systems is important in affecting economic growth and poverty in developing countries crowdfunding allows investors and entrepreneurs to connect directly, allowing investors access to new investment opportunities. However, incumbents oppose financial development that increases competition. Hence, it is unclear that countries with large unbanked populations will have last mover advantages in bypassing the formal financial system making it important to examine if crowdfunding plays a greater role in emerging markets than in developed markets.”.<sup>14</sup>

Secondly, the existence of crowdfunding makes it possible for investors and entrepreneurs to be able to connect directly this means it can create opportunities for business people and investors in carrying out their business activities.

“Third, the law and finance literature has argued that the extent to which a country’s laws protect investor rights, and the extent to which those laws are enforced, fundamentally determines how corporate finance and corporate governance evolves in that country. However, both the financial policies studied in the prior literature and the regulatory regimes have co-evolved over long periods. For example, the Sarbanes-Oxley and the Dodd-Frank Acts were enacted in the US in 2002 and 2010 respectively, as a response to several corporate and accounting scandals in the 2000s and the financial crisis in 2008. Hence, while the prior literature document correlations between legal regimes and forms of financing, it is difficult to convincingly argue that the legal regime causes forms of corporate

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<sup>12</sup> Hatsu Morita, “*Crowdfunding in Japan: Current Regulation and the Future of Business*”, Tohoku University School of Law, Japan, 2016, h. 3.

<sup>13</sup> P. Raghavendra Rau, “Law, Trust and The Development Of Crowdfunding”, Cambridge Judge Business School, University Of Cambridge, 2019, h.2

<sup>14</sup> *Ibid*,h. 3.

finance and governance to evolve. The countries with Common Law systems were not more developed than countries with Civil Law systems in 1913 and that the rate of development between 1913 and 1980 cannot be predicted by the country's legal regime in 1913. Crowdfunding is a new form of financial innovation, That has rapidly increased in popularity in a very short period over which the legal systems have not adapted to these financing types. During the sample period, only a few countries enacted explicit laws to govern crowdfunding. This lack of regulatory change makes it easier to attribute a causal effect to extant legal regimes in determining the volume and types of crowdfunding." (P. Raghavendra Rau, 2019).

The third aspect is regarding the regulation of *crowdfunding* where what law is paying and the foundation in carrying out a crowdfunding in this case a state is demanded to the extent of being able to accommodate related to the implementation of crowdfunding itself, it is expected that there is also a crowdfunding accompanied by legal dynamism that accompanies it.

From the existence of several explanations regarding the definition of *Equity Crowdfunding* above, it can be concluded that the definition of Equity Corwdfunding is an alternative method of business funding that is growing rapidly and is increasingly popular with both developed and developing countries. *Equity Crowdfunding* can also be used as a method of raising funds from the community to finance a project, loans to individuals / businesses or other needs through an internet-based *platform*.

The concept of *crowdfunding* is actually a derivative of the concept of *crowdsourcing*. According to Jeff Howe, crowdsourcing is an activity or action carried out by an institution that takes one of the jobs that should be done by the employees of the company itself, to be distributed openly and freely so that it can be done by many people / the crowd announced through the internet network (Paul Whitla, 2009).

"To the best of my knowledge, there is no accepted framework for modeling crowdfunding. It is unclear, however, that economic motivations form the sole motivators for individuals to participate on reward or donation-based platforms. I, therefore, develop a conceptual framework that models crowdfunding as a function of both economic and social factors. The three major economic factors I use are barriers to entry, financial profitability of industry incumbents, and financial potential. Barriers to entry are largely enforced by regulation, and I measure barriers to entry on both indirect (such as the type of legal regime and the quality of legal enforcement), and direct dimensions (such as the ease of starting a business). Financial profitability of incumbents is largely measured by market rents earned by banks and other traditional financial intermediaries. I measure financial potential on two dimensions – the current financial depth of the market (based on existing markets, investor protection) and the potential financial depth of the market (including factors such as user sophistication or the ease of access to the Internet). If crowdfunding substitutes for existing types of



financing, I expect a positive relation between current financial depth and platform volume. If crowdfunding offers new financing opportunities, I expect a positive relation between potential financial depth and crowdfunding volume. Finally, I measure social characteristics at the country level using a host of value related survey measures (such as trust or adventure seeking)".<sup>15</sup>

In fact, based on Raghavendra's opinion, none of the definitions of the framework can be accepted for the crowdfunding financing model. The existence of *crowdfunding* is as a function of economic and social factors. From the opinion expressed by Raghavendra if *crowdfunding* replaces the existing types of financing, it is expected that there will be a harmonization in the form of a positive relationship between the current form of finance and the volume of the platform. That way the presence of *crowdfunding* will be able to measure social characteristics at the country level using a number of survey measures related to the effectiveness of crowdfunding itself.

From the explanation of de crowdfunding *as crowdsourcing* development that results in donations or investments, the people involved as funders in crowdfunding are not solely oriented towards earning interest for their personal interests, but their main goal is to and realize a positive goal for the other party.

### 3.1.2. The Characteristic of Equity Crowdfunding

Basically *crowdfunding* is packaged in a web platform where the project owner meets with the public who will provide funds. The three main components of *crowdfunding* are:

- a) Initiator is an Investee or side that needs funds;
- b) Crowdfunding Platform Website or also called the Organizer;
- c) Investors or fund owners who channel funds to the Investee.

Structurally, the process of a crowdfunding activity has the following stages:

- a) the initiator or investee submits an idea, the amount of the fundraising target needed and / or a business plan proposal with details of the plan to use the funds to the crowdfunding platform owner;
- b) submissions are made in person and electronically through a crowdfunding website platform;
- c) the owner of crowdfunding platform conducts an assessment of the initiator / investee, both personal performance assessment, personal financial assessment, corporate financial assessment, including default risk assessment of the project / planning for the use of the proposed funds;
- d) owner of crowdfunding platform in this case attracts administration fees and financial service fees;

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<sup>15</sup> *Op Cit*, P. Raghavendra Rau

- e) if an agreement has been agreed between the crowdfunding platform owner and the investee, the crowdfunding platform owner or organizer displays the initiator / investee investment ideas, plans, or proposals on the crowdfunding platform website;
- f) ideas can be supported by donating, or investment proposals can be in the form of loans (peer to peer lending) or stock purchases (equity funding);
- g) the general public accessing the crowdfunding platform website gets information about donation project offers and / or investment proposals;
- h) when interested, the general public can support by donating if the offer is a donation project, or channeling money for investment purposes;
- i) The collected money is forwarded by the organizer to the initiator / investee.

### 3.1.3. Types of Crowdfunding

In general, crowdfunding is grouped according to its purpose, can be divided into 2 (two) types, namely: *Community Crowdfunding and Investment Crowdfunding or Financial Return Crowdfunding*, in this study the discussion will be limited to the Financial Return Crowdfunding.

*Investment crowdfunding or financial return crowdfunding* aims to raise funds for profit. One of the main elements of *investment crowdfunding* is internet-based therefore *investment crowdfunding* is part of fintech or the implementation of a technology-based financial system. The implementation of financial technology is regulated in Indonesia Bank Regulation Number 19/12 / PBI / 2017 concerning Implementation of Financial Technology (next is called as PBI No. 19/12 / PBI / 2017).

According to general provisions, chapter 1 number 1 PBI No. 19/12 / PBI / 2017, financial technology is the use of technology in the financial system that produces new products, services, technology and / or business models and can have an impact on monetary stability, financial system stability, and / or efficiency, fluency, security, and payment system reliability. However, Indonesia Bank as an independent institution whose task and authority is to regulate and maintain the smoothness of the payment system, is not an institution authorized to oversee investment activities as the purpose of *crowdfunding investment* which is basically part of the internet-based sectoral capital market activities. Therefore, as a regulator, OJK has an important position in terms of the daily development, regulation and supervision of capital market activities (Chapter 3, 4 and 5 of the Capital Market Law). The amount of authority is in the context of realizing the creation of regular, fair and efficient Capital Market activities and better protecting the interests of investors or the public.<sup>16</sup>

OJK as an institution that has functions, duties and authority as regulated in Act Number 21 of 2011 concerning the Financial Services Authority to implement a system of regulation and supervision that is integrated to all activities in the financial services sector, including the Capital

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<sup>16</sup> Ina Rahadiyan, *Hukum Pasar Modal di Indonesia Pengawasan Pasar Modal Pasca Terbentuknya Otoritas Jasa Keuangan*, Yogyakarta, UII Press, 2014, h. 45.

Market sector, is institutions that have the authority to regulate and *oversee investment crowd funding activities*. Provisions related to investment crowdfunding are regulated further in:

- OJK Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services;
- OJK Regulation No. 13 / POJK.02 / 2018 concerning Digital Financial Innovations in the Financial Services Sector;
- OJK Regulation No. 37 / POJK.04 / 2018 concerning Funding Services through Equity Crowdfunding.

*Investment crowdfunding* development is constantly undergoing renewal, but currently in the community as set up by OJK the following types of funding:

- a. *Peer to peer lending* (also known as P2P Lending), an information technology-based money lending and borrowing service, regulated in POJK No. 77 / POJK.01 / 2016.
- b. *Equity crowdfunding*, a fund-raising service through an information technology-based stock offering, regulated in POJK No. 37 / POJK.04 / 2018.

Until February 4, 2019, according to the statement of the Indonesian Joint Funding Fintech Association (AFPI) which is an organization that facilitates Fintech Peer to Peer (P2P) Online Funding business players or Fintech Online Funding in Indonesia which is an official association appointed by the OJK, there are around 99 Fintech P2P organizers Lending that has been registered and licensed at the OJK now. P2P Lending Platform as a financial service provider brings together lenders with loan recipients in the context of entering into loan agreements to borrow in rupiah directly through an electronic system with internet network. In this case the fund applicant submits a fund proposal to the P2P Lending Platform owner or Operator. The Provider when the administrative requirements of the fund applicant are complete the Operator will conduct an assessment of the fund applicant. Although applicants for funds are not required to provide guarantees, the implementation of P2P Lending for a signify amount in Indonesia is still carried out with guarantees. Therefore, P2P Lending is not carried out purely on a platform or purely electronic basis, but also with real assessment that requires face-to-face meetings between the Provider and the applicant for funds, following the implementation of business assessments and / or personal assessments as an obligation to carry out prudent financing principles. According to the provisions of Article 6 paragraph (2) POJK No. 77 / POJK.01 / 2016, the maximum limit of total lending funds through the P2P Lending Platform must not exceed Rp. 2,000,000,000.00 (two billion rupiah).

Different with P2P Lending, the fund-raising service or equity crowdfunding provider is a newer crowdfunding service both the implementation and issuance of the OJK Regulation on equity crowdfunding (in 2018 compared to the OJK regulation on P2P Lending published in 2016). The equity crowdfunding service mechanism has many similarities with public offerings in the capital

market. It's just that the implementation is simpler both institutionally with its supporting institutions, the orientation of the capital raised, and the subjects receiving capital. The subjects receiving capital, in this case are referred to as publishers.

In accordance with Chapter 1 number 7 POJK No. 37 / POJK.04 / 2018 concerning Urun Dana Services through Equity Crowdfunding, Issuers are Indonesian legal entities in the form of limited liability companies that sell their shares through the Urun Dana Service Provider. Continued in chapter 4 POJK 37 / POJK.04 / 2018, the Issuer is not a Public Company as referred to in Law Number 8 of 1995 concerning the Capital Market, namely the number of Issuer shareholders of not more than 300 (three hundred) parties, and the total capital Issuer paid no more than Rp. 18,000,000,000.00 (eighteen billion rupiah). While the maximum limit value of shares offered by each Issuer through the Equity Crowdfunding Platform must not be more than Rp. 6,000,000,000.00 (six billion rupiah) in a period of 12 (twelve) months. In this case, the owner of the equity crowdfunding platform or the organization of funds through the offering of shares acts as an underwriter. Issuers and Organizers through an agreement can determine the minimum amount of funds that must be obtained in a stock offering through the equity crowdfunding platform, and in contrast to the underwriting agreement in the initial offering, the organizer as the underwriter has no options but performs its functions with full commitment of the minimum amount of funds that must be obtained. This is in accordance with the provisions listed in Article 22 paragraph (1) jo. paragraph (2) and paragraph (3) POJK No. 37 / POJK.04 / 2018 which states that if the minimum amount of funds as agreed upon is not fulfilled, then the share offering through the equity crowdfunding platform will be null and void and the Operator is obliged to return the funds to the financier along with all the benefits arising from the funds no later than 2 (two) working days after the offering of shares is null and void. For the sake of certainty regarding the performance of the Operator, the period of the offering of shares is further determined in Article 23 POJK No. 37 / POJK.04 / 2018, which is a maximum of 30 (thirty) days and in accordance with Article 24 POJK No. 37 / POJK.04 / 2018 during the offering period through the equity crowdfunding platform, Issuers are prohibited from canceling the offering of shares until the end of the offering period.

At the other end, the Investor is the party that purchases the publisher shares through the equity crowdfunding platform. Investors must be legal subjects (both individuals and legal entities) who have the ability to also set criteria are investors who have income of up to Rp. 500,000,000.00 (five hundred million rupiah) per year, can buy equity crowdfunding shares at most 5% of total income per year and for investors who earn more than Rp. 500,000,000.00 (five hundred million rupiahs) per year can buy equity crowdfunding shares at most 10% of total annual income. Legal protection for investors is currently specified in chapter 42 POJK No. 37 / POJK.04 / 2018 that investors can cancel the plan to buy shares through the equity crowdfunding platform site within 48

hours after making a share purchase and before the settlement of the transaction is made through the Operator.

The regulation of Equity Crowdfunding in Capital Market Law is often considered to be the same as an IPO. According to the Black Law Dictionary, the Initial Public Offering (IPO) is a company's first public sale of stock; a first offering of an issuer equity securities to the public through a registration statement. According to chapter 1 Number 15 UUPM, a public offering is a security offering activity carried out by an issuer to sell securities to the public based on procedures set out in capital market regulations. According to the explanation of chapter 70 paragraph (1) of the Capital Market Law, public offering activities are one way to raise public funds. For this reason, the interests of the people who will invest their funds in securities need protection. Therefore, each party who intends to raise funds through a public offering is required to submit a registration statement to the FSA first and a public offering can only be made after the registration statement is effective.<sup>17</sup>

But apparently between the two there are some substantial differences between the *initial public offering* (IPO) with *equity crowdfunding* is as follows:

- a. The term a company that sells its shares through an IPO is called an Issuer, while a company that sells its shares through *equity crowdfunding* is called an Issuer;
- b. Capital costs as a condition that must be met by the Issuer or Issuer, the Issuer has at least 300 (three hundred) shareholders and has paid up capital of at least Rp. 3,000,000,000.00 (three billion rupiah) or a number of shareholders and paid up capital determined by Government Regulation. While the Issuer is not a company with a complex structure, and is not a public company. The issuer has no more than Rp. 10,000,000,000.00 (ten billion rupiah) the calculation of which does not include land and buildings or the amount of paid up capital of not more than Rp. 18,000,000,000 (eighteen billion rupiah), this is in accordance with Article 32 paragraph (1) letter c jo. C hapter 4 letter b POJK No. 37 / POJK.04 / 2018.
- c. Different types of companies and therefore subject to different statutory provisions;
- d. Issuers are public limited liability companies, not only subject to the provisions of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT) but also subject to the Capital Market Law (UUPM). While the Issuer is not a public company, so it is only subject to the Company Law.
- e. The stock offer is different;
- f. Initial Public Offering (IPO) is a public offering as referred to in the Capital Market Law. While the stock offering through *equity crowd funding* is not a public offering as referred to in the Capital Market Law.
- g. Amount of offer of share value and offer period;

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<sup>17</sup> Mas Rahmah, "*Hukum Pasar Modal*", Kencana, Jakarta, 2019, h. 41.

- h. The offering value of shares is not limited in the IPO, only stipulated that the offering value of shares must be approved by the General Meeting of Shareholders (GMS). Regarding the period of the initial public offering (IPO) to the public carried out within 1-5 working days. Besides POJK No. 25 / POJK.04 / 2017 concerning restrictions on shares issued before a public offering, namely: a party obtaining equity securities from the Issuer at a price and / or conversion value and / or exercise price below the price of the initial Public Offering of shares in a period of 6 (six months) prior to the submission of the Registration Statement to OJK, it is prohibited to transfer part or all of the ownership of the Issuer's equity securities until 8 (eight) months after the Registration Statement becomes effective. This is to guarantee the interests of the Issuer and Securities Company as the Underwriter in carrying out the IPO so that the holding of the IPO is protected from the risk of failure including capital market crimes such as insider trading. Meanwhile, the rules regarding the offering of share value and the period of its offer on equity crowdfunding are determined simply by the limit of the value of shares offered through equity crowdfunding at most Rp. 6,000,000,000.00 (six billion rupiahs) with a maximum offer period of 12 (twelve) months.
- i. The process and involvement of the institutions supporting the Public Offering (IPO) is a process that requires a grace period because it must fulfill both legal, financial and administrative requirements, also involving at least 6 (six) capital market supporting institutions, namely (i) issuers, (ii) legal consultants, (iii) notaries, (iv) accountants, (v) appraisers, (vi) custodians, and the number of these supporting institutions increased at least to 11 (eleven) when the stock offering was listed on the stock exchange. The supporting institutions include (vii) clearing and guarantee institutions, (viii) depository and settlement institutions, (ix) securities administration bodies, (x) insurers, (xi) investment advisors. Meanwhile, the process of implementing equity crowdfunding is simpler, involving directly the Issuer, Financier and Organizer. The simplicity of equity crowdfunding that involves Issuers, Direct Investors and Organizers makes equity crowd funding a practical (efficient) and low cost (effective) source of funding compared to IPOs.
- j. *Disclosure*, the principle of information disclosure must be equally applied to both the IPO and *Equity Crowdfunding*. The difference is that the requirements for the presentation of information, namely in the IPO, the disclosure of information is carried out in a format regulated by law, in this case the provision of Article 71 of the Capital Market Law that public offerings must be accompanied by a prospectus as a basis for knowledge of potential investors to obtain information about legality, financial conditions, potential and risks associated with the company. Meanwhile, the provisions on presenting information for Issuers at the time of a public offering are not specifically specified. However, in general the Organizer will introduce

the Publisher by explaining both the background of the capacity, achievements and the purpose of offering shares through equity crowdfunding to attract investors. Furthermore, the principle of disclosure is applied more simply to the Issuer in the form of an annual report. The annual report is indeed the company's obligation as stipulated in the Company Law that the company is obliged to make financial reports and the directors' accountability reports to shareholders at the end of each financial year period.

Besides the differences between IPO and Equity Crowdfunding, there are also Equity Crowdfunding similarities with Initial Public Offering (IPO), in principle both of them have an equation that is, that both of them are sources of financing by selling company shares (equity), then between Equity Crowdfunding and IPOs together the same as obeying the principle of information disclosure about the financial situation in the form of *financial reports* (financial reports) and reports on the use of funds resulting from the stock offering, while the last similarity is between the IPO and Equity Crowdfunding both of them recording the information of shareholders (Investors / Investors) in the custodian.

### 3.2. Legal Protection For Investors In Equity Crowdfunding Activities

The functions of law are to protect the public and individuals against actions that disturb the public order carried out by other individuals or the government itself (abuse of authority by state officials) and foreign governments (aggression or subversion by foreign governments).<sup>18</sup> This is reinforced by the opinion of Roscoe Pound which states that the law to protect human interests is a demand that is protected and fulfilled by humans in the field of law (Salim HS, 2010). M.H. Tirtaatmidjaja argues that the law is all the rules (norms) that must be prosecuted in the conduct of actions in the association of life with threats in the form of compensation if breaking those rules will endanger oneself or property, for example people will lose their independence, be fined and so on.<sup>19</sup> According to Satjipto Rahardjo, legal protection is to provide protection for human rights harmed by others and that protection is given to the community so that they can enjoy all the rights provided by law.<sup>20</sup>

Philosophically, legal protection boils down to a form of legal certainty provided by the government. Legal certainty by dogmatic juridical schools is seen as positive legal science. The purpose of law is emphasized in terms of legal certainty, which tends to see the law as an

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<sup>18</sup> E. Utrecht dan Moh. Saleh Djindang, 1989, *Pengantar dalam Hukum Indonesia*, Sinar Harapan, Jakarta, h. 15.

<sup>19</sup> C.S.T Kansil, 1989, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, h. 38.

<sup>20</sup> Satjipto Rahardjo, 2000, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, h. 53.

independent. Adherents of this opinion argue that the law is nothing but a collection of rules which is nothing but guaranteeing the realization of legal certainty.<sup>21</sup>

Equity crowdfunding activities are business activities on the internet, where investors as stakeholders must be considered by the Organizer and Publisher who sell their shares through online sites. In relation to legal protection for internet consumers, according to Philipus M. Hadjon, that can be broken down according to the type of legal protection there are 2 forms, namely preventive and repressive legal protection. Preventive protection in terms of inclusion of this disclaimer serves to prevent consumers from being on the weak side and not merely harmed. Repressive legal protection in terms of resolution when a dispute occurs, divided again into two, namely through litigation and non-litigation.<sup>22</sup>

Issuers (shareholders through an IPO) are public limited companies, not only subject to the provisions of the Limited Liability Company Law (UUPT) but also subject to the Capital Market Law (UUPM). While the Issuer (share seller through equity crowdfunding) is not a public company, so it is only subject to the Company Law. In terms of the Company Law, the form and mechanism of legal protection can be given based on the principle of compensation stipulated in chapter 62 of the Company Law or based on the filing of a lawsuit through a direct suit or a deviative lawsuit and the right to sell shares.

However, legal protection for investors in Equity Crowdfunding activities has been regulated in POJK No. 37 / POJK.04 / 2018 Concerning Funding Services through Equity Crowdfunding, is governed by the education and protection of users of fund-raising services. Such education and protection, among others:

1. Legal protection for investors is currently determined in chapter 42 POJK No. 37 / POJK.04 / 2018, that investors may cancel the plan to buy shares through the *equity crowdfunding platform* within 48 hours after making a share purchase and before the settlement of the transaction is made through the Operator.
2. Operator Applying 5 basic principles as explained in chapter 53 POJK No. 37 / POJK.04 / 2018:
  - a. Fair treatment;
  - b. Transparency;
  - c. Data security and confidentiality;
  - d. Reliability;
  - e. Dispute resolution quickly, affordable and simple.

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<sup>21</sup> Serlika Aprita, 2019, *Perlindungan Hukum bagi Pemegang Saham Minoritas, Kreditor dan Karyawan atas Akuisisi Perusahaan*, CV. Pustaka Abadi, Jember, h. 38.

<sup>22</sup>Philipus M. Hadjon, 2007, *Bagi Rakyat Perlindungan Hukum Indonesia*, Percetakan M2 Print, Edisi Khusus, Surabaya, h. 3



3. Based on chapter 54 paragraph (1) POJK No. 37 / POJK.04 / 2018, Providers are required to provide and / or submit up-to-date information on Funding Services that is accurate, honest, clear, and not misleading. Article 54 paragraph (2) POJK No. 37 / POJK.04 / 2018, the information referred to in paragraph (1) is placed on the Provider's website.
4. Based on chapter 55 POJK No. 37 / POJK.04 / 2018, notifying the user of acceptance, delay or rejection.
5. Based on chapter 56 POJK No. 37 / POJK.04 / 2018, using phrases, terms, or sentences that are easy to read and understand.
6. Based on chapter 57 POJK No. 37 / POJK.04 / 2018, supporting efforts to increase literacy and financial inclusion
7. Based on chapter 58 POJK No. 37 / POJK.04 / 2018, must include the name and logo along with a statement that OJK has supervised and registered in each service offer
8. Based on chapter 59 POJK No. 37 / POJK.04 / 2018, when using standard agreements, are prepared in accordance with applicable regulations.
9. Based on chapter 60 POJK No. 37 / POJK.04 / 2018, is responsible for user losses due to errors caused by the organizer.
10. Based on chapter 61 POJK No. 37 / POJK.04 / 2018, is obliged to post on the website the standard operating procedures.
11. Based on chapter 62 POJK No. 37 / POJK.04 / 2018, Organizer is prohibited from providing user data or information to third parties.
12. Based on chapter 63 POJK No. 37 / POJK.04 / 2018, the Operator is obliged to report every user complaint received to the Financial Services Authority.

Then the legal protection as a form of legal certainty provided by the government to the community in equity crowdfunding activities has been regulated by several chapter in POJK No. 37 / POJK.04 / 2018. However, the lack of a more complete regulation in Article 54 paragraph (2) POJK No. 37 / POJK.04 / 2018 that is, the Provider in providing up-to-date information on the Fund Urgency Service only regulates the provision of up-to-date information about the funds collection service placed on the Operator's website or website. However, the registered Investor is not regulated in more detail regarding providing the latest information directly via telephone contact or email.

#### IV. CONCLUSION

Equity crowdfunding is a form of new innovation funding sources outperforming the initial public offering of shares (IPO), basically because it is practical and simple, so it does not require large costs and without the involvement of a number of professions and supporting institutions such as professions and institutions capital market supporting institutions. Regarding crowdfunding equity is

specifically regulated in POJK No. 37 / POJK.04 / 2018 Concerning Funding Services through Equity Crowdfunding, where equity crowd funding is the result of innovation as well as breakthroughs in the development of capital markets that adapt to current patterns of market and economic development. Equity crowdfunding is increasingly in demand as an alternative source of financing that is practical, simple and fast.

Legal protection of Equity Crowdfunding for registered Investors in providing up-to-date information on the Fund's collection service does not regulate the provision of up-to-date information on the Funding service to Investors that have been registered directly via telephone contact or email, only in the provisions of chapter 54 paragraph ( 2) POJK No. 37 / POJK.04 / 2018, the provision of up-to-date information on fund collection services is only placed on the organizer's website or website.

The law is an instrument that provides objectives in the form of certainty, fairness and expediency, always developing following the community. In fact, it is not strange if the law grows behind the activities that arise and grow in society. The more widespread practice of fund raising services through equity offering (equity crowd funding), it is necessary to have more up-to-date legal instruments that dynamically follow the development of human life. Capital Market Law (UUPM) regulates public companies and public companies that offer securities that are both equity and debt to the public. While the Issuer companies in equity crowdfunding activities are neither public companies nor public companies, so the Capital Market Law as an umbrella law overseeing information technology-based stock offering activities to the general public is inaccurate and inadequate. For this reason, it is recommended that the Government and the Parliament immediately create a new Capital Market Law, which is not only adjusted to the OJK Law but also which houses the offering of securities in accordance with its development in the community.

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