

## Strengthening Financial Technology Regulations through Securities Crowdfunding Service as Alternative Means to Indonesian MSEs Financing

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### ABSTRACT

Micro, Small and Medium Enterprises (MSMEs) hold a crucial role and contribution in supporting the national economy. However, access to sources of MSMEs financing for business development is often constrained by several factors, one of which is the result of an assessment that is deemed to have less bankability. A number of innovations were carried out to overcome this problem. One of which is the use of fintech through the development of Securities Crowdfunding services as an alternative financing for MSEs in Indonesia. This research uses a normative juridical method with a statutory and conceptual approach. The results of this study indicate that POJK No.57/POJK.04/2020 and its amendments have filled the legal void in the capital market in accommodating the provision of Securities Crowdfunding services. However, the regulation still contains loopholes, particularly in relation to the potential risk for investors in investing activities due to the information asymmetry between investors and issuers. Therefore, it is necessary to make a push in overcoming this problem with a new mechanism by using a confidentiality agreement which is bridged by the service provider to ensure the protection of interests of the parties.

**Keywords:** MSEs, securities, crowdfunding, prospectus, model

### INTISARI

Usaha Mikro Kecil Menengah (UMKM) memiliki peran dan kontribusi yang besar dalam mendukung perekonomian nasional. Namun, akses untuk mendapatkan sumber pembiayaan bagi UMKM dalam rangka melakukan pengembangan usaha kerap terkendala oleh beberapa faktor, salah satunya adalah hasil penilaian yang dipandang kurang *bankable*. Untuk mengatasi hal tersebut, sejumlah inovasi dilakukan. Salah satunya pemanfaatan *fintech* melalui pengembangan layanan *Securities Crowdfunding* sebagai alternatif pembiayaan bagi UMK di Indonesia. Adapun penelitian ini menggunakan metode yuridis normatif dengan pendekatan peraturan perundang-undangan dan konseptual. Hasil dari penelitian ini menunjukkan bahwa POJK No.57/POJK.04/2020 beserta perubahannya telah mengisi kekosongan hukum di bidang pasar

modal dalam mengakomodir penyelenggaraan layanan *Securities Crowdfunding*. Namun, pengaturan tersebut masih mengandung celah, khususnya terkait dengan potensi risiko bagi pemodal dalam berinvestasi dikarenakan adanya asimetri informasi antara pemodal dengan penerbit. Oleh karena itu, diperlukan adanya suatu upaya dalam mengatasi hal ini dengan menggunakan mekanisme baru melalui Perjanjian Kerahasiaan yang dijembatani oleh pihak penyelenggara layanan untuk menjamin kepentingan para pihak.

**Kata kunci:** UMK, *securities crowdfunding*, model prospektus

## INTRODUCTION

The presence of Micro, Small and Medium Enterprises (MSMEs) is an embodiment of Indonesia's economic democracy in accordance with the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia ("1945 Constitution"). Before being revoked by the 2002 Amendments to the 1945 Constitution, there was an explanation of Article 33 of the 1945 Constitution which gave meaning to the concept of economic democracy, namely the prosperity of the community, not the prosperity of individuals. This is based on the ideals of Indonesia's economic democracy that should be aimed at achieving social justice for all Indonesian people, thus the need for special favors for the unfortunate through receiving special attention and treatment towards empowerment.<sup>1</sup> In other words, Article 33 of the 1945 Constitution applies the notion of togetherness and the principle of kinship which is also used as the basis for the formation of Indonesian economic laws and policies.<sup>2</sup> Therefore, MSMEs as one of the pillars of the national economy must receive the opportunity, support, and protection to implement the basic principles of economic democracy for people's economic business groups. MSMEs in the business world are expected to have the capability of endurance and competitiveness, which among several characteristics include flexibility, high productivity, and management through the principles and modern economic principles.

In general, the discussion regarding MSMEs is regulated in Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (UU UMKM). Based on Article 1 point 1 of the MSME Law, micro-enterprises are productive businesses owned by individuals and/or individual business entities that meet the criteria for micro-enterprises, while based on Article 1 point 2 of the MSME Law, small businesses are productive economic businesses that stand alone, which are carried out by an individual or business entity that is not a subsidiary or not a branch of a company that is owned, controlled, or becomes part, either directly or indirectly, of a medium or large business that meets the criteria for a small business. Meanwhile, based on Article 1 point 3 of the MSME Law, medium-sized businesses are productive economic businesses that stand alone, which are carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or become part of either directly or indirectly with the business. Small or Large Business by total net worth or annual sales results.

<sup>1</sup> Elli Ruslina, 'Makna Pasal 33 Undang-Undang Dasar 1945 dalam Pembangunan Hukum Ekonomi Indonesia', (2012) 9(1) JK <<https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/124/123>> accessed 24 April 2022.

<sup>2</sup> Mukhtar Abdul Kader, 'Peran UKM dan Koperasi dalam Mewujudkan Ekonomi Kerakyatan Indonesia', (2018) 8(1) JSBM <<http://repository.unigal.ac.id:8080/handle/123456789/675>> accessed 24 April 2022.

Furthermore, after the issuance of Law Number 11 of 2020 concerning Job Creation, more specific regulations regarding MSMEs are regulated in Government Regulation Number 7 of 2021 concerning Ease, Protection and Empowerment of Cooperatives and Micro, Small and Medium Enterprises (PP 7/2021). However, this research will only focus on Small Micro Enterprises (SME).

It has been recognized that the development of MSEs will provide great potential to enhance economic development and social welfare. Based on the latest data from the Ministry of Cooperatives and Small and Medium Enterprises, the number of Indonesian MSEs currently amounts to 64.19 million with a contribution to the Gross Domestic Product of 61.96% or the equivalent of 8,573.89 trillion rupiahs.<sup>3</sup> In addition, the contribution of MSMEs to the Indonesian economy is also able to absorb 97% of the total workforce and can collect as much as 60.42% of the total investment in Indonesia.<sup>4</sup> Even though some of these data have shown their potential contribution to the national economy, in reality the development of MSEs still faces various forms of obstacles and problems. One of the problems faced by SMEs is the problem of financing which is the main factor in the development of a business unit. Capital can be referred to as the basis for MSEs in meeting the needs of working capital and investment capital in business development.<sup>5</sup> However, the ability of MSEs to obtain loan capital from banks or other financial institutions is often difficult to achieve.

Financing the business is one of the issues faced by MSEs, which is a major factor in the development of a business unit. For example, the level of accessibility for MSEs to sources of financing from banking institutions can be categorized as low.<sup>6</sup> From the point of view of banking institutions, every debtor who wishes to apply for credit financing must meet the 5C principles or the 'five Cs of credit', which consists of character, capacity, collateral, and the condition of economic. Unfortunately, MSEs are frequently categorized as unfit debtors as they lack collateral and have low ability to repay loans. On the other hand, MSEs also have negative views on banking institutions which in general include: (1) rigid and heavy requirements for obtaining credit/financing from the bank's policies; (2) complicated process of obtaining credit; (3) lengthy time; and (4) that banks tend to require additional guarantees, in addition to guarantees for the business feasibility of customers.<sup>7</sup> For this reason, the absorption of credit distribution and use for MSEs financing needs is still low. It can be concluded from the two points of view above that there has been a gap between MSEs and banking institutions, both from the supply and demand side, which causes credit for MSEs to be very limited. As a result of the limitations of MSEs in obtaining sources of capital, this will certainly affect the productivity of MSEs themselves in carrying out and developing their businesses.

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<sup>3</sup> Kementerian Keuangan, "Pemerintah Terus Perkuat UKM Melalui Berbagai Bentuk Bantuan", (Kemenkeu, 27 September 2021) <<https://www.kemenkeu.go.id/publikasi/berita/pemerintah-terus-perkuat-UKM-melalui-berbagai-bentuk-bantuan/#:~:text=Berdasarkan%20data%20Kementerian%20Koperasi%20dan,Rp8.573%2C89%20triliun>> accessed 24 April 2022

<sup>4</sup> *Ibid*

<sup>5</sup> Etty Mulyati, *Kredit Perbankan Aspek Hukum dan Pengembangan Usaha Mikro Kecil dalam Pembangunan Perekonomian Indonesia*, Bandung: PT Refika Aditama, 2016, hlm. 195.

<sup>6</sup> Budiarto R, *Pengembangan UMKM: Antara Konseptual Dan Pengalaman Praktis*, Gajah Mada University Press (2016) 31.

<sup>7</sup> *Ibid*.

In fact, so far there have been quite a number of policies, programs or assistance from various parties, especially from the government, in connection with access to finance for MSEs. Some of these policy models include:<sup>8</sup>

1. Saving Led Microfinance, namely a funding model originating from the savings of group members or cooperatives. Examples are cooperative units, LPDB and P3KUM from the Ministry of Cooperatives and Small and Medium Enterprises, as well as Revolving Funds from local governments.
2. Credit Led Microfinance, namely a financial service model based on the aim of the community to join a group in order to obtain credit. Examples are Village Credit Agencies, Rural Credit Fund Institutions, and Village Economic Institutions.
3. Microbanking, namely banking schemes specifically intended to run microfinance. An example is People's Business Credit.
4. Linkage Model, namely financial services that integrate self-help groups.

Although many credit schemes and financing support programs have been implemented, in reality they have not provided significant results for the financing of the majority of MSEs.

Limited business capital for MSEs is due to delays in access for MSEs to obtain financing from banking institutions or other financial institutions. Amid the challenges of MSEs in obtaining capital, the emergence of financial technology (fintech) in the digital era presents itself as an alternative financing mechanism and a solution to the difficulties faced by MSEs. Fintech is a form of technology-based financial service innovation in the financial system. This form of innovation offered by fintech clearly provides convenience in utilizing various digital financial services including payments, loans, investments, and many more. One positive aspect of fintech services is the expansion of reach to the business with less bankability through easier and practical transactions. Thus, it is indisputable that the existence of fintech today is important as it has the potential to serve society on a very large scale.<sup>9</sup>

Securities Crowdfunding is one type of fintech service offered that is recently gaining popularity in Indonesia. However, the regulations governing Securities Crowdfunding in Indonesia are relatively ineffective in protecting parties involved. This is due to the gaps between the regulation and its enforcement, especially with regard to information asymmetry between issuers and investors as well as security issues on the platform for organizing Securities Crowdfunding. Therefore, the role of law is urgently needed to encourage progress of Securities Crowdfunding establishment as an alternative financing for MSEs in Indonesia. With robust rules, it is anticipated that there would be a sense of confidence in the connection between investors, issuers, and platform providers in a transaction because the present risks would have been minimized. Based on this, several problems are formulated which will be examined in this

<sup>8</sup> Yayasan Pustaka Obor dan Lembaga Ilmu Pengetahuan Indonesia, *Fundamen Konsep Pembangunan Inklusif Berdaya Saing*, Yayasan Pustaka Obor Indonesia (2020), p. 325-326.

<sup>9</sup> Mochammad Fajar, Cintia Larasati, 'Peran Financial Technology (Fintech) dalam Perkembangan UMKM di Indonesia: Peluang dan Tantangan. Humanis (Humanities, Management and Science Proceedings)' (2021) 1(2) HUMANIS  
<<http://openjournal.unpam.ac.id/index.php/SNH/article/view/11834>> accessed 26 April 2022.

article, namely: First, what is the role of Securities Crowdfunding legal arrangements in meeting the financing needs of MSEs in Indonesia. Second, how is the concept of an ideal Securities Crowdfunding arrangement in providing guarantees of legal protection for stakeholders.

## METHODS

This research paper is conducted by way of normative juridical method with a statutory approach to provide explanation of the provisions, as well as a conceptual approach. A conceptual approach is applied to analyze the legal principles and rules based on the topics discussed, which is relevant for a comparative analysis and the development of thinking in this analysis. The object of normative legal research itself consists of legal materials that are qualitative in nature, namely in the form of primary and secondary sources of law. The primary sources are based on the laws and regulations relevant to the research, such as POJK Number 57/POJK.04/2020 concerning Securities Offering Through Information Technology-Based Crowdfunding Service in order to accommodate the implementation of Securities Crowdfunding in Indonesia and its amended regulations through POJK Number 16/POJK.04/2021. The secondary sources of law are based on the results of the study of legal literature and literature studies related to this research topic.

## RESULTS AND DISCUSSION

### 1. The Role of Securities Crowdfunding Regulations in Meeting the Financing Needs of SMEs in Indonesia

According to data from the Central Bureau of Statistics (Badan Pusat Statistik), Indonesia's Information and Communication Technology Development Index (IP-TIK) in 2020 was 5.59 on a scale of 0-10, which is an improvement from the achievement in 2019.<sup>10</sup> Additionally, 53.73% of the Indonesian population is able to access the internet in 2020.<sup>11</sup> The rise in IP-TIK and internet usage is a reflection of the nation's development of information disclosure and the Indonesian people's embrace of technical advancements, which lead to the creation of a digital society. Global technological advancements have aided the emergence of the digital economy as a new source of economic growth. As a result, technology is regarded as having a significant impact on economic growth and increasing competitiveness. The financial services industry is also a sector responsive to these developments.

Securities Crowdfunding is an alternative source of financing for MSEs companies, which is a technology utilization in the financial services industry. Generally, Securities Crowdfunding is categorized as one of four types of crowdfunding services, which is the equity based. Meanwhile, the remaining 3 (three) types are donation based, reward based, and debt based.<sup>12</sup> As the word suggests, the crowdfunding service, also known as '*urun dana*', was developed as a

<sup>10</sup> Badan Pusat Statistik. Indeks Pembangunan Teknologi Informasi dan Komunikasi (IP-TIK) 2020 (Report, No. 63/08/Th.XXIV, 2021).

<sup>11</sup> Badan Pusat Statistik. Statistik Telekomunikasi Indonesia 2020, Badan Pusat Statistik (2021) 4.

<sup>12</sup> Otoritas Jasa Keuangan, '*Equity Crowdfunding* Jadi Alternatif Permodalan' (sikapiuangmu) <<https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/20569>> accessed 26 April 2022.

financing mechanism for projects or businesses by involving the community at large. The Securities Crowdfunding itself derived from Equity Crowdfunding, which had previously only made offerings in the form of shares, and has now expanded to include offerings of other securities, such as bonds and sukuk.

Securities Crowdfunding is defined as the provision of securities offering services carried out by issuers to sell securities directly to investors through an open electronic system network.<sup>13</sup> From this understanding, there are 3 (three) main parties identified, namely:

1. Issuers, namely business entities in the form of legal entities or other business entities that issue or offer securities through service providers.
2. Investors, namely the party who purchases the issuer's securities through a service provider.
3. Securities Crowdfunding service providers, namely legal entities in the form of limited liability companies or cooperatives that provide, manage and operate Securities Crowdfunding services.

Securities Crowdfunding in the financial services sector is a form of innovation launched to increase the absorption of investment funds from the public. The absorption of public investment funds has a high potential as a source of finance for capital strengthening, particularly for MSEs, who are frequently hampered by financing issues.

Though cliché, the issue of the financing accessibility for MSEs is critical to sustaining and improving business continuity. This is reflected in the practice of MSEs who are often considered lacking in bankability, or 'unbankable' (not feasible according to banks), even though they may in fact be considered rather feasible.<sup>14</sup> Therefore, in this case, the Financial Services Authority (OJK) in accordance with its duties and authorities in the capital market sector issues POJK Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services (POJK No.57/POJK. 04/2020) to accommodate the implementation of Securities Crowdfunding in Indonesia and its amendments through POJK Number 16/POJK.04/2021 concerning Amendments to Financial Services Authority Regulation Number 57/POJK.04/2020 concerning Securities Offering Through Information Technology-Based Crowdfunding Services (POJK No.16/POJK.04/2021). Prior to the issuance of the POJK, OJK had only regulated technology-based crowdfunding services which only covered stocks. Similarly, Law Number 8 of 1995 concerning the Capital Market (Capital Market Law) had only regulated general legal provisions or rules. Thus, POJK No.57/POJK.04/2020 has played its part in filling the legal void in the capital market sector.

However, the purpose of issuing these regulations is not simply to fill a legal void. The objective of OJK as a self-regulatory organization to issue the POJK on Securities Crowdfunding is to provide a legal basis for the OJK to optimally carry out supervision of Securities Crowdfunding

<sup>13</sup> Pasal 1 angka 1 POJK Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi.

<sup>14</sup> Rachmawan Budiarto (dkk.). (2015). *Pengembangan UMKM: Antara Konseptual dan Pengalaman Praktis*, Yogyakarta: Gadjah Mada University Press. p. 32.

in Indonesia. This is because after all, the optimization of a technology in the financial services sector cannot be separated from various risks that can occur. For the operator, the main risk is the failure of service operations which of course may impact the transaction activities, or even result in losses for issuers and investors. To overcome this, POJK No.57/POJK.04/2020 has regulated several provisions to minimize these risks, including obtaining a business license from the OJK and being registered as an Electronic System Operator (PSE) at the Ministry of Communication and Information<sup>15</sup> to ensure that the operator's electronic system adheres to the established standard.<sup>16</sup> Apart from licensing, providers are also required to have skilled human resources with a background in information technology and have competence in reviewing issuers.<sup>17</sup> This is logical since it is important in preventing technical implementation errors such as system damage and data leaks.

With the presence of the POJK, Securities Crowdfunding service now is protected under a legal umbrella in Indonesia. Up till mid 2022, OJK reports that there were 10 licensed Securities Crowdfunding operators more than the previous year.<sup>18</sup> Some of these providers include PT Crowddana Teknologi Indonesia, PT Investasi Digital Nusantara, PT Dana Saham Bersama, and many more. This indicates a rise in the hope that the parties, both investors and issuers, would receive a guarantee of security, predictability, and legal protection while using Securities Crowdfunding services. Moreover, with adequate regulations, it will certainly increase trust amongst the wider community to join in investing through the Securities Crowdfunding mechanism. In other words, legal regulation in this case plays a role in accommodating the dynamics in society and acts as a constructive anticipation in responding to adaptation, innovation, and collaboration from the use of digital information technology as an effort to encourage economic growth in Indonesia. Therefore, regulations must utilize digital technology to support the expansion of MSEs in Indonesia to become stronger and more competitive.

## **2. A Concept of the Ideal Securities Crowdfunding Arrangements in Providing Legal Protection Guarantees to Stakeholders**

Securities Crowdfunding is one of such funding schemes established with the purpose of increasing capital that is recognized by new enterprises or MSEs done through a digital platform. Throughout its journey, crowdfunding has been categorized into two types, namely loan-based crowdfunding, commonly known as peer-to-peer lending, and equity crowdfunding. There are studies that show that there are differences in the success rates of these two types of financing, one of which is evident through the success rate of issuing loan instruments which is much higher than issuing equity instruments in crowdfunding.<sup>19</sup> However, the performance of

<sup>15</sup> Pasal 15A ayat (1) POJK Nomor 16/POJK.04/2021 tentang Perubahan Atas Peraturan Otoritas Jasa Keuangan Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urut Dana Berbasis Teknologi Informasi.

<sup>16</sup> Pasal 67 POJK Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urut Dana Berbasis Teknologi Informasi.

<sup>17</sup> Pasal 12 ayat (1) POJK Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urut Dana Berbasis Teknologi Informasi.

<sup>18</sup> Cindy Mutia Annur, "10 Penyelenggara Securities Crowdfunding Kantongi Izin OJK, Siapa Saja?", 2022,

<https://databoks.katadata.co.id/datapublish/2022/06/09/10-penyelenggara-securities-crowdfunding-kantongi-izin-ojk-siapa-saja>.

<sup>19</sup> Saputra, M. D. H., & Qurrata, V. A. (2021, June). Securities Crowdfunding: Bagaimana Relevansinya Pada Nilai-Nilai Pancasila?. In *Prosiding Seminar Nasional Ekonomi Pembangunan* (Vol. 1, No. 1, p. 30-31).

securities crowdfunding has a greater influence on the development of a firm. This form of funding can bridge the gap between new enterprises or MSEs in Indonesia that are financially limited but have the potential to access the financial sector.<sup>20</sup>

Fundamentally, the concept of Securities Crowdfunding offers companies' securities to a number of potential investors through ownership of shares, bonds, and sukuk with returns in the form of capital gains and dividends. Unlike other conventional capital financing methods which emphasize investment from a small group of professional investors, this type of investment targets a wider group of investors.<sup>21</sup> In a conceptual analysis, the use of such financing method is rather profitable for both parties - the issuers and investors. In the standpoint of an investor for example, this alternative funding has the opportunity to provide investment opportunities like accredited investors in general. Before this Securities Crowdfunding appeared, only investors with a certain level of net worth as well as income levels and assets that met the criteria were able to participate in startup businesses, while issuers would get benefits in the form of capital assistance as a solution to businesses that lack bankability and limited access to existing financial institutions.

However, as previously explained, the presence of alternative financing through Securities Crowdfunding has a number of risks that limits its development in Indonesia. One basic issue that triggers this risk is related to information asymmetry.<sup>22</sup> Information asymmetry is a condition where investors have less access to information than issuers.<sup>23</sup> Potential investors are expected to obtain the majority of their information on the issuing company from the platform provider, who acts as a liaison between the issuer and the prospective investor. Therefore, in this case, the investor could not conduct due diligence or similar activity to measure the capability and credibility of the company in accordance with the desired standard. Inequality in the information obtained can lead to irregularities in the management of funds collected by many investors.

Another issue with Securities Crowdfunding is the high risk of fraud and failure that surrounds its practice, both possibly caused by the issuer and/or the hosting platform itself. Just in the last few years, a massive number of data storage networks hacking of leading companies and financial institutions has occurred. This has similarly happened with Bank Indonesia, who was the victim of such hacking activities during the end of January 2022.<sup>24</sup> Such an occurrence is not unheard of for a fintech platform as it acts as a bridge between investors and publications. Furthermore, this platform provider uses an online forum that is not physically tangible, so that if one day the platform provider is lost due to hacking, this will complicate the relationship between financiers and issuers. Not only that, the risk of fraud can also be carried out by the

<sup>20</sup> Abrams, E. (2017). Securities Crowdfunding: More than Family, Friends, and Fools? SSRN Electronic Journal, p. 11.

<sup>21</sup> Elvis Picardo. (2015). "Invest Through Equity Crowdfunding: Risk and Rewards". Investopedia. Diakses dari <https://www.investopedia.com/articles/investing/102015/invest-through-equity-crowdfunding-risks-and-rewards.asp#:~:text=Investing%20through%20equity%20crowdfunding%20carries,hacker%20attacks%2C%20and%20mediocre%20investments>

<sup>22</sup> Lin, L. (2017). Managing the risks of equity crowdfunding: lessons from China. *Journal of Corporate Law Studies*, 17(2), p. 10.

<sup>23</sup> Lestari, N. K. L., & Supadmi, N. L. (2017). Pengaruh Pengendalian Internal, Integritas dan Asimetri Informasi pada Kecurangan Akuntansi. *E-Jurnal Akuntansi Universitas Udayana*, 21(1), p. 395.

<sup>24</sup> KataData. (2022). "Selain Bank Indonesia, ini Deretan Lembaga Diduga Alami Kebocoran Data". Diakses dari <https://katadata.co.id/desyetyowati/digital/61e9172be8d99/selain-bank-indonesia-ini-deretan-lembaga-diduga-alam-kebobocoran-data>.



issuer. In such a scenario, the issuer can take advantage of the information gap by imitating an attempt to trick potential investors. These issues are still a scourge in the practice of Securities Crowdfunding, which might indirectly hinder its development in Indonesia.

The risks above essentially stems from the accessibility of information by investors regarding the issuer's information when placing their funds. This poses a dilemma where MSEs often cannot openly provide information given their status as a new company, hence posing a high risk of trade secret theft. Not to mention, the risk when MSEs disclose information without successfully drawing in investors willing to invest in that business. This of course will be very detrimental to the issuer. As for the issuer's information disclosure, Article 47 of POJK No.57/POJK.04/2020 required issuers to submit a number of documents concerning information from the issuer's business to the platform provider, including:<sup>25</sup>

- A. Company legality,
- B. Information on capital structure before and after the financing,
- C. History of shareholders since founding, Board of Directors and Board of Commissioners and equivalent history for legal entities other than limited liability companies or other business entities,
- D. Information and data on the number and types of securities offered,
- E. The size of capital that will be raised from the securities offering and the purpose through crowdfunding services,
- F. The minimum amount of capital that must be obtained in offering securities through crowdfunding services if the issuer determines it,
- G. Business plan and revenue overview,
- H. Licensing in respect to the issuer's selected business industry and the projects to be supported by the proceeds of the securities offering through crowdfunding services,
- I. The financial statements, listed in descending order, in reference to the financial accounting standards of MSEM entities,
- J. A statement of the corresponding person has the ability to enter into an agreement with the Depository and Settlement Institution for the purpose of registering Securities in collective custody,
- K. Other material information that needs to be submitted if any,
- L. Major risks to issuers,
- M. Information on the illiquidity of the securities offered.

Furthermore, issuers also have the obligation to submit annual reports to the platform providers.<sup>26</sup> The service provider will have the obligation to post on their website at least related to the risks of: (1) Business; (2) Investment; (3) Liquidity; (4) Electronic System Failure; (5)

<sup>25</sup> Pasal 47 ayat (1) POJK Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urut Dana Berbasis Teknologi Informasi.

<sup>26</sup> Pasal 50 ayat (1) POJK Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urut Dana Berbasis Teknologi Informasi.

Scarcity of dividend distribution and/or dilution of share ownership (in the case of share securities); and/or (6) Default on debt securities or sukuk (if the securities are debt or sukuk).<sup>27</sup>

However, such information alone is still insufficient. Investors are still unable to see the condition of the company as a whole to conclude whether or not the company financials are healthy. This is despite the importance of information or knowledge of the condition of the company to investors. But on the one hand, MSEs cannot disclose all their data to the public. Thus, to overcome this issue, a breakthrough in information disclosure can be made by referring to a prospectus model in the capital market. A prospectus, as defined by Sumantoro, is a general description of the company which contains transparent and true information about the company's condition and status in written form containing complete and honest information about the company's condition and prospects, used as a means of offering securities to the public.<sup>28</sup>

Aside from providing a general overview of the company, which includes production, marketing, finance, legal opinion, labor, and others, the prospectus also contains a statement about the appraisal of the capital market supporting institutions such as securities underwriters, selling agents, trustees, agents, payment, guarantor, public accountant, appraisal company, legal consultant, and notary.<sup>29</sup> Essentially, the prospectus contains detailed information through providing a general overview of the company that plans on conducting a public offering to the public conveyed in an honest manner by that company. The prospectus also contains material facts, namely important and relevant information regarding events, occurrences, or facts that may affect the price of securities on the stock exchange and/or the decisions of investors, prospective investors, or other parties with an interest in the information or facts.<sup>30</sup> In more detail, one of the provisions regarding the contents of the prospectus in the capital market can be seen in POJK Number 8/POJK.04/2017 concerning the Form and Contents of a Concise Prospectus in the Context of Public Offering of Equity Securities in which the regulation through Article 6 stipulates that at least the prospectus must include:<sup>31</sup>

- a. information at the front cover of the prospectus;
- b. table of content;
- c. summary of the prospectus;
- d. public offer;
- e. the use of funds obtained through the public offer;
- f. statement of debt;
- g. important financial data overview;
- h. analysis and discussion by management;
- i. risk factor;

<sup>27</sup> Pasal 16 ayat (1) huruf i POJK Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urut Dana Berbasis Teknologi Informasi.

<sup>28</sup> Sentosa Sembiring, *Hukum Pasar Modal*, Bandung: Penerbit Nuansa Aulia, 2019, hlm. 115.

<sup>29</sup> *Ibid.*

<sup>30</sup> Pasal 1 angka 12 POJK Nomor 8/POJK.04/2017 tentang Bentuk dan Isi Prospektus Ringkas Dalam Rangka Penawaran Umum Bersifat Efek Ekuitas.

<sup>31</sup> Pasal 1 angka 12 POJK Nomor 8/POJK.04/2017 tentang Bentuk dan Isi Prospektus Ringkas Dalam Rangka Penawaran Umum Bersifat Efek Ekuitas.

- j. important events after the date of the public accountant's report;
- k. information on the Issuer, business activity, trends, and business prospects;
- l. taxation;
- m. underwriting of securities (if any);
- n. capital market supporting institutions and professions as well as other parties;
- o. information about the trustee and the guarantor (if any);
- p. procedures for ordering debt securities;
- q. distribution of the prospectus and purchase order forms for debt securities;
- r. legal opinion;
- s. financial statements; and
- t. appraiser report and expert report (if any).

The prospectus used in Securities Crowdfunding itself is generally a Short Prospectus, which is a prospectus that contains a summary of the initial prospectus where the information submitted is clear and communicative that contains important things related to company information in general. This, of course, will make it easier for investors to make considerations before participating in an investment. Short Prospectus in accordance to Article 40 POJK Number 8/POJK.04/2017 concerning the Form and Contents of a Concise Prospectus in the Context of Public Offering of Equity Securities at least must include:<sup>32</sup>

- a. information about equity offerings;
- b. information about the use of funds obtained from the results of the Public Offering;
- c. information about the overview of important financial data;
- d. information about management discussion analysis;
- e. information about risk factors;
- f. information about important events after the Public Accountant's report date;
- g. brief information about the Issuer and its Subsidiaries;
- h. information on procedures for ordering equity Securities; and
- i. information regarding the dissemination of the Prospectus and the purchase order form for equity Securities.

Referring to the provisions in the Capital Market Law, a company that is going to make an initial public offering (IPO) is required to first issue a prospectus regarding the company.<sup>33</sup> One of these provisions can be seen through the Article 71 of the Capital Market Law which states that “No Party may sell Securities in a Public Offering, unless the buyer or subscriber states in the Securities subscription form that the buyer or subscriber has received or has had the opportunity to read the Prospectus with respect to the relevant Securities before or at the time the order is made.”<sup>34</sup> The preparation and use of prospectus itself generally involve professionals such as for

<sup>32</sup> Article 40 of POJK Number 8/POJK.04/2017 concerning the Form and Contents of a Concise Prospectus in the Context of Public Offering of Equity Securities.

<sup>33</sup> Article 40 of POJK Number 8/POJK.04/2017 concerning the Form and Contents of a Concise Prospectus in the Context of Public Offering of Equity Securities.

<sup>34</sup> Article 71 of Law Number 8 of 1995 concerning Capital Market.

example accountants and legal consultants. This is also a consequence and manifestation of the Financial Services Authority Regulation Number 3/POJK.04/2021 concerning the Implementation of Activities in the Capital Market Sector which through Article 61 stipulates that in practice, activities in the capital market sector are assisted by 4 capital market supporting professions namely:<sup>35</sup>

- a. Accountant
- b. Law Consultant
- c. Evaluator
- d. Notary
- e. Other professions determined by the Financial Services Authority

In practice, in the stage of preparing a prospectus, the professional is tasked with ensuring that the material facts conveyed are in accordance with the real conditions. For example, the accountant will ensure that the financial statements in the prospectus comply with accounting principles and values and the legal consultant will ensure that the legal aspects in the prospectus comply with existing regulations. Meanwhile, at the use or appraisal stage, professionals will help clients or investors to assess whether a company has a good track record and performance or not before deciding to invest.

When in fact the prospectus becomes an obligation for companies that will conduct a public offering on the capital market, the prospectus itself is not an obligation for Securities Crowdfunding. However, the prospectus regulation itself can be used as a reference in carrying out Securities Crowdfunding to realize wider access to information for the parties. Thus, the problem of information asymmetry will be resolved. This is of course a manifestation of the basic legal values which according to Gustav Radbruch in his book entitled "*einführung in die rechtswissenschaften*" consists of 3 (three) basic values, namely: (1) Justice (*Gerechtigkeit*); (2) Expediency (*Zweckmassigkeit*); and (3) Legal Certainty (*Rechtssicherheit*).<sup>36</sup> The use of the prospectus model in overcoming the problem of information asymmetry and facilitating evaluators and professionals is a manifestation of the basic legal value of expediency, whose main purpose is to regulate and facilitate relations between people and make life easier.

In short, unlike the risk information presented on the Securities Crowdfunding website, the prospectus offers a more comprehensive view of the business as it includes detailed information about the company's condition, including a brief explanation of the company's background and the company's financial statements. Thus, the regulations governing the current practice of Securities Crowdfunding should be adaptable to the technological developments and ensure legal protection for all stakeholders involved. One way to do this is to use a contractual method when establishing first ties between investors and issuers. In this example, the platform provider can

<sup>35</sup> Article 61 of POJK Number 3/POJK.04/2021 concerning the Implementation of Activities in the Capital Market Sector.

<sup>36</sup> Mario Julyano dan Aditya Yuli Sulistyawan. (2019). Understanding of the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning. *Jurnal Crepido*. 1(1). p. 14.

maximize its role by bridging communication between the two parties. Through a contractual approach, the platform provider can set conditions for prospective issuers to provide information containing the current condition of the company so that it can be accessed by prospective investors as consideration for starting an investment. This may positively influence investor confidence and diminish the fear of scams from unscrupulous issuers. By creating a safe environment for the parties involved, this can boost the use of Securities Crowdfunding as a potential financing alternative for MSEs in Indonesia.

POJK No.57/POJK.04/2020 actually has already regulated the Crowdfunding Service Agreement, in which according to Article 61, the agreement can bind the platform provider and the issuer, the platform provider and the issuer as the investor's proxy (if the securities are in bonds or sukuk), and the platform provider and the investor. However, there is currently no contractual framework in place to connect issuers and investors. Therefore, establishing a new mechanism as a supplement to the existing crowdfunding service agreement method can result in a breakthrough. The mechanism operates in such a manner that platform providers assist investors and issuers in entering into a Non-Disclosure Agreement, also known as a Confidentiality Agreement.

A Confidentiality Agreement is a contract between parties that gives the authority to provide confidential information for specific purposes, both for employment agreements and for business purposes.<sup>37</sup> Therefore, an alternative to ensuring information transparency whilst also maintaining confidentiality is to grant permission to the platform provider to provide detailed information about their company with a prospectus model to investors, provided that the parties have previously bound themselves in a Confidentiality Agreement. Thus, even if the prospective investors chose not to buy the securities, they are still bound to maintain the confidential company information that was provided. In addition, the presence of direct communication opportunities between issuers and investors can provide opportunities related to better access to information for investors before deciding to invest. Through this mechanism, both parties will benefit because investors can estimate investment risk with complete information and issuers have a better opportunity to find capital with the trust obtained from investors without worrying about their company information being exposed to the public.

The high level of risk involved for investing often causes people to feel reluctant to even glance or consider taking action. Instead of receiving financial assistance to support the business, it may pose as a double-edged sword. Thus, in order to establish an environment ideal for investment, of course, it cannot only rely on just one party. Especially to the issuer, as the party that requires capital, they must at least be able to meet three main principles in issuing securities in a Securities Crowdfunding.<sup>38</sup> First, it must be profitable. This principle emphasizes that issuers must understand that businesses that can be registered for funding assistance are businesses that

<sup>37</sup> Asry Rismawaty. (2019). Non-Disclosure Agreement Sebagai Perlindungan Hak Kekayaan Intelektual Dalam Perjanjian Kerjasama. *Aktualita*. 2(1). p. 341-342.

<sup>38</sup> Saputra, M. D. H., & Qurrata, V. A. (2021, June)., *Op.Cit.*, p. 34.

are already running, have customers and are profitable, hence such businesses pose less risk of loss due to a company that is not running. The second is accountability. This principle emphasizes that the issuers' company must be a clear and transparent business. Not just related to business operations, but also the division of work tasks, a clear organizational structure, guaranteed business legality, credibility of the issuer as a party that participates in running the business, transparent financial reports, and has a promising track record. Thirdly, the principle of sustainability. This principle emphasizes that issuers should be able to choose businesses that have long-term development projections and have clear prospects for sustainability. This of course will affect the trust and security of the investors themselves. Hence, it is intended that by using these three principles, investors will be less concerned about making an investment.<sup>39</sup>

In addition, for the purpose of creating a safe environment for investing using this crowdfunding method, OJK has designed a risk mitigation plan to avoid unexpected losses, namely through the Disgorgement Fund mechanism or the Investor Loss Compensation Fund. This mechanism was provided in POJK Number 65/POJK.04/2020 concerning Refund of Illegal Profits and Compensation Fund for Investors' Losses in the Capital Market Sector. Through this mechanism, OJK shall play the role of facilitating the process of collecting funds from the infringing party to be returned to the victims of fraud. Moreover, OJK is also authorized to issue written orders for account blocking to the relevant financial service institutions to ensure that parties committing violations cannot use the profits that were obtained illegally.<sup>40</sup> Furthermore, the funds that have been collected from the Refund of Illegal Profits from the infringing party will be used as compensation for losses to victims and/or the development of the capital market industry. This disgorgement fund structure is considered to be a strong start for building and increasing investor confidence in investing in securities crowdfunding.

Based on the description that has been described, a common thread can be drawn that every investment instrument basically has the possibility of risk for each user. As with other investment instruments, crowdfunding securities also have a risk of loss to Users. As contained in Article 16 Paragraph 1 letter (i) POJK Number 57/POJK.04/2020, that there are various types of risks that may occur in investing in crowdfunding securities, whether by issuers, investors, or the organizers themselves, including risks business, investment risk, liquidity risk, electronic system failure risk, risk of scarcity of dividend distribution, and risk of dilution of share ownership and default on debt securities or sukuk. Of course, this cannot escape the attention of all parties involved in this crowdfunding. If you look at the protection aspects contained in each existing process, it can be seen that there are aspects of the relationship between consumers and producers that are also intertwined in the securities crowdfunding scheme. As the relationship between consumers and producers is established in conventional transactions, the relationship

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<sup>39</sup> *Ibid.*

<sup>40</sup> CNBC Indonesia,

<https://www.cnbcindonesia.com/market/20210107103429-17-214092/resmi-ojk-terbitkan-aturan-disgorgement-fund-apa-isinya>, diakses pada 7 Juli 2022.

between issuers, organizers and investors certainly has the same relationship to be protected with a consumer approach.

Protection for consumers themselves in Indonesia is regulated in Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law). In order to create a healthy investment climate, OJK has actually regulated the obligations of organizers as producers, to implement systems and schemes that protect issuers and investors as users of this crowdfunding securities service, which in the context of the Consumer Protection Act plays the role of consumers themselves. Overall, there are several main points regarding the protection of crowdfunding service users which are then detailed in Articles 72 to Article 81 of POJK SCF. **First**, in Article 72 POJK No. 57/POJK.04/2020, it is said that administrators must apply the basic principles of protection to investors and issuers, including transparency, fair treatment, reliability, confidentiality and data security, as well as simple, fast and affordable resolution of user disputes. The provisions of article 72 are actually relevant to consumer rights regulated in the Consumer Protection Law Article 4 letter (a) where it is said that consumers have the right to convenience, security and safety in consuming goods and/or services provided by organizers in the context of securities crowdfunding.

**Second**, Article 73 stipulates that organizers are required to provide up-to-date and certainly not misleading information regarding the Securities Crowdfunding Platform owned by the organizer. This article relates to the rights of consumers listed in Article 4 letter (c) of the Consumer Protection Law which states that consumers have the right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services. This is important for Users as consumers so that they can know clearly and in detail about the implementation of Securities Crowdfunding before starting to invest. **Third**, Article 74 stipulates that organizers are required to provide information regarding acceptance, delay or rejection of applications related to Securities Crowdfunding. If the application is rejected, the administrator must provide reasons that can be used as an evaluation for the user regarding what must be done so that later when submitting the next application, it is not postponed or rejected again.

**Fourth**, in article 75 it is conveyed that administrators must use simple understanding of terms that are easy for users to understand in Indonesian in each Electronic Document. One example of such Electronic Documents is the standard agreement between the user and the operator at the beginning of the implementation of Securities Crowdfunding. This is relevant to Article 18 paragraph (2) of the Consumer Protection Law which stipulates that business actors, in this case, are Providers, may not include standard clauses whose forms are difficult to understand and tend to be unclear to Users. If this happens, the document or agreement is declared null and void by law. **Fifth**, Article 79 stipulates that the organizer is responsible for losses to investors and issuers due to errors and/or negligence of directors, employees and/or other parties who work for the organizer when carrying out their business activities. Such arrangements are of course intended to protect consumer rights from all losses that occur beyond the control or influence of consumers. This is also linear with the provisions in Article 4 letter (h) of the Consumer

Protection Law which stipulates that consumers have the right to receive compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should be.

*Sixth*, article 80 stipulates that the organizer must make a Standard Operating Procedure (SOP) for the implementation of Securities Crowdfunding on the Provider's website. This is intended so that issuers and investors can find out how it works and the technical mechanism for using the site where investment transactions are made. When viewed from a consumer perspective, such regulation aims to accommodate consumer rights as stipulated in Article 4 letter (f) of the Consumer Protection Law which reads that consumers have the right to receive consumer guidance and education. *Seventh*, Article 81 stipulates that organizers must uphold the confidentiality of data and/or information relating to parties in the implementation of Securities Crowdfunding to third parties, except in circumstances specified in the POJK, in which this prohibition is also stated in Article 26 paragraph (1) and paragraph (2) of Law no. 19 of 2016 concerning Information and Electronic Transactions. With regard to consumer protection, criminal offenses committed in the implementation of the SCF may be subject to criminal sanctions. In this case, the Criminal Sanctions are not regulated in POJK No. 57/POJK.04/2020. However, criminal sanctions are regulated in the Capital Market Law regarding Capital Market Crimes which are contained in Articles 103 to 110 of the Capital Market Law and are also regulated in POJK No. 3/POJK.04/2021 concerning the Implementation of Activities in the Capital Market Sector. The sanctions for criminal acts in capital market activities include fines, and imprisonment.

## CONCLUSION

The presence of Securities Crowdfunding services in Indonesia is still relatively new along with the issuance of POJK No. 57/POJK.04/2020 and its amendments to fill the legal void in the capital market sector. Nevertheless, the provisions stipulated in the POJK still contain many gaps, especially regarding the information asymmetry between investors and issuers which can lead to implications for increased risk for investors in investing. To overcome this, the platform can maximize their role by bridging the interests between the investors and issuers through a contractual approach which will be preceded by a Confidentiality Agreement. The Confidentiality Agreement acts as a safety net for confidential information with a model similar to a prospectus disclosed by the issuer to investors. Through this mechanism, the parties will benefit from each other, where the financier gains a more comprehensive understanding of the company for investment considerations, and the issuer will not have to worry as much about the risk of spreading their confidential information. Through this mechanism, the law acts as an instrument which responds to innovation and the use of digital information technology in order to support efforts that help boost economic growth in Indonesia, and using MSEs as the main driving wheel of the essential economy. Thus, the legal framework must be capable of reaching digital technologies to encourage the development of financial technology, especially Securities Crowdfunding as an alternative financing for MSEs in Indonesia.



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