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Equity Crowdfunding And Its Potential In Indonesian Market.

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In line with the economic growth in Indonesia during the past years, a new economic class has been established, i.e., the aspiring middle class – a middle-class society that is climbing to an economically secured class. The growth of this aspiring middle class has been playing a big part in the growth of new creative industries, among others: coffee shops, fashion industries, healthy food industries, which are present to support the lifestyle of the aspiring middle-class society. These new creative industries are mostly start-up companies or micro, small and medium enterprises (the MSMs), who still require capital to secure and grow their businesses. A common problem for these startups and MSMs is bankability – which makes it harder for them to grow their businesses.

This bankability issue brings opportunities for other business players, hence comes the business of Peer to Peer lending (P2P), which gathers lenders and borrowers through an electronic system operated by a platform provider. Unfortunately, these P2P businesses charge a relatively high-interest rate to the borrower. Therefore, the P2P businesses do not completely resolve the bankability issue of the startups and MSMs.

Lately, a new fintech business model has been introduced to the market, i.e., equity crowdfunding. This business model has been popular in other countries sometimes ago, but it was first introduced in Indonesia in around 2018. In response to this, the Financial Services Authority (OJK), issued Regulation Number 37/POJK.04/2018 on Information Technology-based Crowdfunding Services via Public Offerings (POJK 37).

This article will mainly discuss equity crowdfunding in Indonesia, its regulation as well as its potentiality in the market.

What is Equity Crowdfunding?

Merriam Webster defines equity crowdfunding (which also known as crowdfunding) as the practice of obtaining needed funding (as for a new business) by soliciting contributions from a large number of people, especially from the online community. The OJK, through POJK 37 defines equity crowdfunding as the implementation of shares offering services conducted by issuers to sell shares directly to investors through an open electronic system network. In short, equity crowdfunding can be summarized as a medium to gather investors and business actors who need funding.

How does Equity Crowdfunding work in Indonesia?

The equity crowdfunding activities in Indonesia are supervised by the OJK. In order to conduct equity crowdfunding activities, the business players must abide by the rules set by the OJK in POJK 37. Key regulation in POJK 37 are among others:

a) The players in equity crowdfunding

The players in equity crowdfunding activities pursuant to POJK 37 are:

- (i) Investors – parties who purchase the shares issued by the issuers through the platform providers;
- (ii) Platform providers – Indonesian legal entities who provide, manage and operate the crowdfunding activities;
- (iii) Issuers – Indonesian limited liability companies who offer its shares through the platform providers and are not (a) controlled by a business group or conglomerate, (b) public companies or a subsidiary of public companies, (c) having assets or more than IDR 10 bio (approx. USD 675k), excluding land and buildings; and
- (iv) Custodian – parties who provide custodian services for securities and other assets related to securities and other services, one of the custodian's obligation in equity crowdfunding activities is to record scriptless shares of the investors.

b) Licensing Requirement

In order to start a crowdfunding platform, a platform provider must obtain a business license from the OJK. To be eligible for applying licenses to OJK, a platform provider must fulfill the following requirements:

- it is either a limited liability company or cooperation;
- it has a minimum capital of IDR 2.5 bio (approx. USD 170k);
- it has human resources who have expertise and/or background (i) in the field of information technology; and (ii) to conduct a review on the issuer.

c) Crowdfunding Requirement

In compliance with POJK 37, the crowdfunding activity must be conducted through a platform provider who has obtained license from OJK. The total funds collected through the crowdfunding activity must not exceed IDR 10 bio (approx. USD 675k), either in one offering or more, unless otherwise stipulated by the OJK. And the shares offering period shall be carried out at no later than sixty days. POJK 37 also provides a possibility for the platform providers to create a secondary market for trading between the registered users of the platform providers.

It is understood that the OJK is planning to issue a new equity crowdfunding regulation to amend the current POJK 37. The draft of the new regulation has been uploaded on OJK's website, for further feedback from the related parties. Based on the uploaded draft on OJK's website, the biggest difference of this draft and POJK 37 is the object of the crowdfunding. While POJK 37 limits the object of crowdfunding activities only to shares, the new draft extends it to securities, among others notes, shares, bonds, participation units in collective investment contract, and securities' derivatives. In addition to this, there are also some other amendments, among others:

- the draft regulates about the possibility of platform providers to be owned by foreigners – however, the draft is silent on the maximum permitted shareholding percentage but only refers to regulation in the Presidential Regulation Number 44 of 2016 on List of Business which are Closed and Open with Limitation for Foreign Investment (Reg 44); this may create an open interpretation as the line of business of equity crowdfunding platform provider is a new business – therefore, it may not be regulated under Reg 44 yet; the draft provides an opportunity for the platform provider to cooperate with the third party in reviewing the issuer companies;
- the draft regulates that the application to be registered as an equity crowdfunding platform provider can be submitted online through OJK's system while the current POJK 37 does not clearly mention about online submission;
- as the object of equity crowdfunding is extended to securities as well, the draft provides additional regulations relating to securities, such as minimum review that must be conducted by the platform provider for these objects, maximum offer period for securities;
- the draft also prohibits investors from transferring its shares in the secondary market until one year as of the share's distribution; this prohibition is not regulated yet in the current POJK 37.

How the Market Response to the Equity Crowdfunding Business?

Even though the equity crowdfunding business seems promising, unfortunately, only a few platform providers have obtained OJK's approval to legally operate the crowdfunding activities. From the market's perspective, it is understood that there are some hurdles for business players in developing this crowdfunding business. Some of the big issues are:

- a) Obtaining the license from OJK may take some time for most of the platform providers due to the prerequisite requirements by POJK 37;
- b) Not all custodians are ready to take part and operate in the equity crowdfunding scheme;
- c) Some of the regulation in POJK 37 needs to be further modified to create a seamless streamline with the current laws and regulations in Indonesia – so that there is no uncertainty on the implementation of the equity crowdfunding activities.

The Author's Note on the Equity Crowdfunding Business from Indonesian Law Perspectives

The concept of equity crowdfunding business is good business opportunities because it supports economic growth by bridging the needs of funds by MSMEs and startup companies with the middle-class investors, who have funds surplus but are not sophisticated yet to invest in the stock exchange. In addition, this concept also has other added values, such as:

- a) it creates efficiency for investors who wish to establish a business but does not have time to develop a business model; by the existence of equity crowdfunding, these investors do not have to reinvent the wheel and can just choose to invest in the existing businesses which gather their interest;
- b) it creates automation which eliminates redundancy and repetition in a decision making – the business players do not have to pitch their products to every single investor (compared to the conventional method);
- c) the existence of a secondary market makes equity crowdfunding as a liquid investment because it provides convenience for investors to divest their shares.

In order to boost the success of equity crowdfunding business, the authorities (OJK) may consider the following:

- **It needs to modify some regulations in POJK 37 to create a seamless streamline with other prevailing laws and regulations in Indonesia so that it will create legal certainty for investors in investing through an equity crowdfunding platform**

Some of the regulations that need to be synchronized with the equity crowdfunding regulation are:

I) Regulation in Law Number 40 of 2007 on Limited Liability Companies (Company Law)
There are some regulations of the Company Law which may need to be further modified to be in line with the business model of equity crowdfunding, as regulated in POJK 37, among others: a mechanism for the transfer of shares in a secondary market (whether a general meeting of shareholders is required for this transfer) and the rights of shareholders during a general meeting of shareholders.

II) Regulation in Reg 44

The control mechanism for foreign investors in investing through an equity crowdfunding platform may need to be incorporated in the equity crowdfunding regulation, especially for some line of businesses which are closed for foreign investment.

III) The regulation relating to Online Single Submission (OSS) and Synchronization with the System of Ministry of Law and Human Rights (MOLHR) Synchronization process for registering the equity crowdfunding investors as shareholders in a company in the MOLHR's system and OSS' system must be created, so that there is a seamless integration for this process

IV) Regulation Number 30/POJK.04/2019 on Issuance of Debt Securities and/or Sukuk Issuance without Public Offering (POJK 30)

This will only be applicable for the new draft of equity crowdfunding regulation since it extends the object of crowdfunding to securities. POJK 30 regulates quite a heavy requirement for legal entities to offer notes and/or sukuk without a public offering. These requirements may be too burdensome for MSMEs and startup companies, therefore it would be better if these requirements are waived for the purpose of equity crowdfunding activities.

V) Relevant Tax Regulations

Especially for the income taxes to be paid by the investors (particularly for foreign investors) for the capital gain earned from the investments (either from the dividend, or from transferring the shares). In order to create integration with taxation regulation, it would be better if the equity crowdfunding regulations regulate who will be responsible to collect these income taxes.

To simplify this process, OJK may adopt some of the existing regulations which are relevant to the equity crowdfunding business, e.g., regulations relating to the capital market.

- OJK may loosen some of the requirements which may be burdensome for the business actors, without jeopardizing the public's interests, so that more players can actively participate in the equity crowdfunding business.

Once legal certainty can be established for the business players, hopefully, more equity crowdfunding platforms will be available to investors. With the increase of investors in investing in MSMEs and start-up companies through the equity crowdfunding platforms, hopefully the Indonesian economic can grow without dependency on foreign parties.

For further information, please contact:

Freddy Karyadi, Partner, ABNR
 +62818103949
 fkaryadi@abnrlaw.com

Anastasia Irawati, Senior Associate, ABNR
 airawati@abnrlaw.com