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JURIDICAL STUDY OF LEGAL PROTECTION AT THE DIGITAL-BASED SECURITIES CROWDFUNDING AGENCY

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ABSTRACT

Background: The concept of financial technology, adapted to technological advances and combined with the financial sector, is expected to introduce a more practical, secure and modern financial transaction process. Products that can be categorized into the field of fintech include payment processing (payments), investment, financial planning, financial research, transfers, buying and selling shares, and financing (lending) etc.
Aim: This study aims to analyze the legal protection of digitalized crowdfunding agencies.
Method: This study uses a normative and empirical legal approach. There are two types of data used: secondary data and primary data. Data collection through library and field surveys. The data analysis used is juridical qualitative.
Findings: With regard to consumer protection, violations of criminal acts committed in the implementation of SCF may be subject to criminal sanctions. In this case, the Criminal Sanction is not regulated in the POJK SCF. However, criminal sanctions are regulated in the Capital Market Law concerning Capital Market Crimes. Sanctions for violations of Capital Market Crimes are regulated in Articles 103 to 110 of the Capital Market Law and are also regulated in POJK No. 3/POJK.04/2021. Sanctions for criminal acts in capital market activities include fines, confinement to imprisonment.

KEYWORDS

Legal protection, crowdfunding service agencies, digital-based

INTRODUCTION

The rapid advancement in the world of information technology today has a very deep contribution to provide various transaction opportunities in the financial sector in society and improve the ease of easier financial access, in addition to the progress in the financial sector will be the existence of technological institutions in the financial services sector (Fintech), the existence of financial technology has the goal in facilitating and expanding an access that will be given to the financial sector. Society is concerned with the forms of financial products followed by an understanding of finance.

In addition to advances in information technology and followed by the development of a digital-based economy has an impact with the birth of a new innovation related to the financial sector, new innovations in the service of the financial sector which of course will provide benefits and complexity to the technology commonly known as financial technology (Fintech). Fintech is a technology that can connect an industry in the financial services sector used by a user or the public, The new innovations presented in Fintech are so wide and cover a variety of sectors, can now be seen from B2B (Business to Business) to B2C (Business to Consumer), with the advancement of Fintech will affect a trading habit in the community and make the process will have a more practical impact. Efficiently, it will refer to the fact that the use of fintech will be able to have an impact on indonesia's economic growth sector. Based on a study

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conducted by the Institute for Economic and Financial Development (Indef) together with the Indonesian Financial Technology Association (Aftech), the impact that is welcomed by the use of the financial technology industry (Fintech) sector has an impact on the Indonesian economy of 25.97 trillion rupiah (Widodo, 2020).

According to the classification that has been done by Bank Indonesia (BI), crowdfunding is currently underway, Crowdfunding can be said to be a new innovation in the sector in the financial world. Crowdfunding is a method of intermediation in the world of finance used online or public funding is often known as crowdfunding, in its development, crowdfunding not only becomes a financial intermediary, but also has a role to form a dominance of social capital, one form of financial technology (fintech) that is developing in the field of crowdfunding is crowdfunding of securities, Now fintech crowdfunding companies with this type of securities will provide a service through an application that will then be able to bring together various owners, startups, and small and medium-sized businesses, who want to carry out fundraising, this will certainly open an opportunity for start-ups or small businesses to be able to get funding to build their businesses (Bhawika, 2017).

The concept of financial technology that has been adapted to technological advances and juxtaposed with the financial sector is expected to be able and can introduce a transaction process in the financial sector that is more practical, secure and modern, products now that can be classified as Fintech include payment process, investment, financial planning, financial research, transfer, stock trading, and loans (Manroe, 2021).

The globalization of the financial system as well as the rapid development of information technology and financial innovation have created a very complex, dynamic and interconnected financial system in terms of products and institutions between financial sub-sectors. Similarly in the financial institutions sector, the goal is to help economically vulnerable communities who need funds, but there is no material available as collateral to support business. Financial institutions are indeed changing because many financial models are developed using information technology (Rizal, 2016).

Public offerings are entering a new chapter that can encourage the growth of financing alternatives for the business world and the growth of investment media for the community. One of the technological innovations available to the public in the financial services industry is better known as crowdfunding services or crowdfunding services through the provision of information technology-based securities. Crowdfunding is one of the fintech products that connects stock issuers with investors or investors through electronic systems or information technology (Belleflame et al., 2013).

Currently the crowdfunding business is growing rapidly until new innovations arise related to public offerings (crowdfunding security type). Fintech that is growing rapidly in Indonesia is concerned about the legal protection of its users because there is no clear law on fintech. Whether it's about protecting the privacy or privacy of user data listed on online platforms. Therefore, the issue of confidentiality protection and confidentiality of data becomes relevant. Although some countries have adopted privacy and data protection provisions, Indonesia has not (Rosadi, 2015).

For users of technology services in Indonesia has not fully met security standards. This legal uncertainty prompted the government to set rules on information technology-based effects that offer urun dana services to minimize risk and provide legal protection to users of

information technology-based funds. In Indonesia, the financial technology industry in the capital market is growing and serving people of all ages. Understanding and investing in the capital market began to be loved especially millennials who understand the importance of preparing money for the future. This is motivated by the ease of access to investment supported by various applications (Iman, 2016).

The development of the world of capital markets is also increasingly advanced with the form of investment instruments that are always innovating, such as with the emergence of new investment instruments for Small and Medium Units (MSMEs) namely Equity Crowd funding (ECF) which has been refined into Securities Crowd funding (SCF). The legal basis of SCF itself is regulated in POJK No.57/POJK.04/2020 on Securities Offerings Through Technology-Based Fund Urun Services or called Securities Crowd funding (POJK SCF), so that the use of SCF is protected by law and provides certainty to the public. SCF is a fund service scheme in which MSMEs as issuers offer capital ownership to investors through SCF application organizers (Soemarsono & Sofianti, 2021).

METHOD

In conducting this research the author takes a normative and empirical legal approach. The regulatory approach gathers all laws related to two-factor authentication, analyzes the contents of the book, and focuses on the evaluation of laws and regulations on legal mechanisms and their meaning in Indonesia, and the laws that apply through court (Soekanto & Mamudji, 2006). The approach used is based on direct study of the research subject through observation and interview. After receiving primary and secondary data, the authors checked the completeness and relevance of the data according to the problem. After verifying the completeness of the data, you can check it in the data used for analysis. Descriptive analysis, i.e. data analysis, is the process of organizing and classifying data into pattern categories and basic units of description according to the nature of this research to find topics and formulate working hypotheses as suggested (Suryabrata, 2008). Qualitative legal analysis is time consuming because it is in-depth and detailed. As a result, qualitative legal analysis is very specific to summarize data and incorporate it into a stream of analysis that can be easily understood by others. The authors drew conclusions from this study using deductive methods. That is, all data was first disclosed in terms of certain attributes and then narrowed down to the disclosure of certain data.

RESULTS AND DISCUSSION

Financial Technology Regulations According to Laws and Regulations in Indonesia

Fintech can be said to be an application and use of technology as an effort to improve services, especially in the world of banking and finance, which in general will be done by a startup using the latest software, Internet, communication, and computing technology, the main services in the fintech sector today are payments (Digital wallets, P2P payments), investment (Security crowdfunding, peer-to-peer lending), finance (Crowdfunding, micro-lending, credit facilities), insurance (Risk management), cross-processing (Big data analytics), predictive modeling), infrastructure (Security) (Soemarsono & Sofianti, 2021).

With a concept in the Fintech sector that has adopted on the development of technology that is then converging in the financial sector of banking institutions, it is expected to be able

to provide a facilitation in the financial transaction process that creates convenience to the public in using banking institutions that are more practical and modern and so also including digital financial services, namely through a payment channel system that is recently developing. In Indonesia, the use of digital banking, digital online insurance, peer-to-peer lending and crowdfunding, by continuing to use a financial technology that can meet the increasing public demand for online-based financial services and the use of internet media to be able to access data digitally, the application of financial technology certainly aims to improve a quality in banking services that are more efficient in the world. current operations for our customers (Santi, 2017).

The rapid development of financial technology must be followed by the existence of laws that regulate in regulating an industry development itself because of the rights of the community that must be protected as technology users in the financial services sector, the Government through BI and OJK as an authority that has the authority in regulating fintech in accordance with the type and form has issued various kinds of legal rules products to prevent the occurrence of financial services. future problems, regarding provisions related to financial technology, which are:

1) POJK Number 57/POJK.04/2020 on Funds Management Services through IT-Based Securities Offering (*Securities crowd funding*)
2) POJK Number 37/POJK-04/2018 on Fund Management Services throughh IT-Based Stock Offering (*Equity crowd funding*)
3) POJK Number 77/POJK.01/2016 on Financial Technology-Based Lending Sevrices (POJK *Fintech*)
4) PBI Number 11/12/PBI/2009 on Electronic Money amended in PBI No. 16/8/PBI/2014
5) PBI Number 18/40/PBI/2016 concerning the Implementation of Payment Transaction Process
6) PBI Nomor 19/12/PBI/2017 on the Implementation of Financial Technology (Referred to as PBI Fintech)
7) Regulation of the Board of Governors No. 19/14/PADG/2017 on Financial Technology Regulatory Sandbox
8) Regulation of the Board of Governors No. 19/15/PADG//2017 on Procedures for Registration, Delivery of Information, and Utilization of Financial Technology Organizers

The related laws regarding financial technology are:

1) Civil Code of Law
2) Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions
3) Law No. 21 of 2011 concerning the Financial Services Authority

With various legal rules that have been made, of course, as an effort to monitor fintech businesses in Indonesia today carried out by two official state institutions that have independence in exercising their authority as an authority in the financial sector, namely Bank Indonesia (BI) and the Financial Services Authority (OJK), based on its authority it is known that one of BI's duties is to be tasked with regulating and supervising the business of payment system services. Financial Technology (SP-Tekfin) and financial services authorities have

the authority to be able to organize and supervise various fintech business ventures outside of monetary and payment systems.

In the financial world it is known that securities crowdfunding is a new phenomenon in Indonesia today, it certainly will not prevent securities crowdfunding in becoming an alternative source of funding for beginners and small businesses who want to develop their business, in general, especially small startups that have difficulty when going to borrow money from banks, the emergence of a low level of trust in the people who will borrow and the possibility of payment. Lower, and the lack of guaranteed assets owned by borrowers, is one of the difficult for the public to buy money in the bank because the bank is afraid that a borrower will fail in paying off his debt, the presence of new breakthroughs such as stock crowdfunding will certainly make it easier for a business opportunity in the financing sector for start-ups and small and medium-sized businesses and also, Crowdfunding is a stock that is generally cheaper than having to borrow from a bank, investing through crowdfunding securities will have the risk in offering returns by banks higher than bank deposits (Widodo, 2020).

Legal arrangements against the Indonesian financial industry, namely OJK (Financial Services Authority), one of which is POJK No. 57 / POJK.04 / 2020 Related to crowdfunding services through securities offerings based on information technology (Security crowdfunding), these regulations will regulate in several ways related to crowdfunding services, such as in legal security and providing legal protection to investors and issuers, With legal certainty and legal protection to all parties, start-ups gain access to capital market financing and rapidly increase participation in indonesia's existing financial sector, while investors and issuers are protected by law.

SCF or called Supply Chain Financing is a service that aims to offer securities that are provided by issuers to sell directly to investors, in addition investors can also go through a network that is open on electronic systems, if viewed this is in accordance with the definition in Article 1 Number 1 POJK SCF, Sovcomflot's main objectives are to provide alternative financing/capital for MSMEs and secure funding for startups to ensure business continuity through the capital market. When scf has not been enacted in Indonesia, there is already known as a fund service scheme called Equity Crowd funding (ECF). The use of this scheme is then developed by prioritizing the expansion of the scope of the SCF itself which will be intended for all MSMEs without having to form a legal entity. In addition, the forms of securities as the object of the offer in this SCF have no limit on its shares, because there are also securities that can be in the form of a bond, *sukuk*, debentures, etc.

The parties who have involved themselves in the implementation of SCF will be divided into two parts consisting of providers and users of crowdfunding services, it is clear in accordance with what is stated in Article 1 Number 5 POJK SCF, which reads the organizer is a limited liability company (PT) with indonesian legal entities that provide, operate and operate SCF as a crowdfunding service. In addition, regarding the provisions of Sovcomflot operators that include the discussion of licensing, business activities, legal entities, capital, personnel qualifications, permit application procedures, changes in ownership, obligations and prohibitions, reporting and return of permits by operators, an organizer must have a business license from OJK and must be registered as an electronic system organizer with the Ministry of Communication and Informatics in accordance with Article 5 SCF POJK.

Article 8 and Article 11 POJK SCF states that the Organizer can only be in the form of a PT or Cooperative with the minimum paid-up capital needed to become an Organizer in the form of PT is Rp.2,500,000,000.00 (Two billion five hundred million Rupiah). An interesting point of POJK SCF is the return of permits by the Organizer. The provisions of the article are stipulated in Article 26 of POJK SCF. In returning the Permit will be done by applying for a permit return to OJK. And then it will be continued with the delivery of funds that must be done to other organizers and the settlement of all obligations and responsibilities of the Organizer related to the service of urun dana before his business license is revoked.

Securities Crowdfunding Services Business Activities through Information Technology-Based Securities Offerings in a Financing Legal Perspective

A user who will take advantage of SCF will be further divided into two parts which each consists of several Investors and Issuers, in this case a financier can be referred to as a party who will make the purchase of securities, then the issuer that has been offered to SCF and then the Publisher can also be said with a domestic business entity that has been shaped into a legal entity or in the form of other business entities in this case such as a civil partnership. and the alliance of firms, as well as comconditer alliances that can issue securities through SCF, it is in accordance with what is in the provisions of Article 1 Number 7-8 POJK SCF. It is known before being able to provide a SCF service, MSMEs who fulfill the desire to collect donations in the form of funds from SCF must first pass several stages of review that will be carried out by the organizer, these stages include various reviews or reviews related to documents that must be submitted by MSMEs as a prospective Issuer and also consider the business credit information from the institution. credit information manager.

In a flow for the collection of funds through SCF, the Issuer is required to have the underlying of the collection of funds, it is called the "Project". According to Articles 59 and 60 of POJK SCF, there are several conditions that are required for a project that can be given to financing, first, the project must have a related benefit about economics. Second, wajin projects owned by individuals or themselves can also be orders from others. Third, in terms of issuing effects in the form of Sukuk, the project cannot be different from sharia principles in the capital market.

In carrying out investments a financier is required to meet several things before going to invest in SCF, including having an securities account on a Custodian Bank that only stores Securities funds or funds through SCF, a financier is expected to be able to buy Issuer Securities, in addition it must also be able to meet various criteria from the financier and also there are limits in the purchase of securities. A harys financier has an income of up to Rp. 500,000,000.00 per year and can make investments with a nominal amount of 5% of his income. In addition, if the income of a Financier is more than Rp. 500,000,000.00, it can make an investment of a maximum of 10% per year.

According to the services of SCF, there are provisions to securities that can be offered through SCF which includes equity securities, debt securities, or a sukuk if you look into Article 28 of POJK SCF, in addition to equity securities will be prohibited from using more than one organizer who will offer this effect in accordance with Article 31 POJK SCF, In making the securities offer will be done within a period of 12 months, which at the time of the

period will be able to be done in one time or several times the offer only, this is in accordance with Article 33 POJK SCF.

Legal protection for users of securities crowd funding services through Information Technology-Based Securities Offerings

In every economic activity, of course, there is a relationship between producers and consumers that needs to be regulated regarding the limits of their rights and obligations. In the implementation of SCF, SCF Users act like a consumer and the Organizing Company as a Manufacturer. POJK SCF has accommodated the obligations of the Organizer in providing protection to Users, consisting of Investors and MSMEs. Overall, there are several main points regarding the protection of users of urun dana services which are then detailed in Article 72 to Article 81 POJK SCF.

Related to Consumer Protection also, as an effort to prevent some actions that have violated the rules of implementation of this SCF, has several legal sanctions that have been regulated into Article 85 and Article 86 POJK SCF which states there are only two types of legal sanctions only if there is someone who commits a violation. First, it will be given a violation that is administrative sanctions, this sanction will be imposed by the competent authorities, namely OJK as an institution that oversees and is authorized to sanction the Organizer of Urun Dana Service as in accordance with what is contained in Article 85 paragraph (3) of POJK SCF, administrative sanctions can be imposed if the Urun Dana Service Provider violates the provisions of the Protection of Service Users. Urun Dana regulated directly in POJK SCF, in addition, the types of administrative actions can also be issued only in the form of written reprimands, and are subject to fines due to negligence (obligation to pay certain amounts), restrictions on business activities, the existence of business freezes, revocation of business licenses, revocation of permits, and others.

Second, Article 86 explains that OJK can impose sanctions other than Administrative Sanctions, namely in the form of certain action sanctions that have been regulated in The Explanation of Article 86 POJK SCF. Such action is in the form of termination of the sale of Securities of An Equity nature by the Operator of Urun Dana Services for a certain period of time. After the imposition of Administrative Sanctions or Certain Actions mentioned above, OJK can publish to the Public about it according to Article 87 POJK SCF. Both of these sanctions have previously been regulated in the POJK ECF, but then added an explanation of Certain Actions in the Explanation of Article 86 POJK SCF.

With regard to consumer protection, violations of criminal acts committed in the implementation of SCF may be subject to Criminal Sanctions. In this case, the Criminal Sanctions are not regulated in the SCF POJK. However, such criminal penalties can be found in the Capital Market Act on Capital Market Crimes, Sanctions given for capital market violations including Article 103-110 of the Capital Market Law and POJK No. 3 / POJK.04 / 2021. Criminal sanctions in capital market activities include Fines, Confinement to Prison.

CONCLUSION

Based on the results of the discussion of the research conducted by the author, it can be concluded that:

1) In 2020, OJK refined ECF to SCF. Thus, SCF became one of the revival of MSMEs to restore indonesia's economy in the informal sector due to the pandemic. SCF is the implementation of securities offerings in the framework of financing MSMEs as issuers to Financiers or Investors through electronic systems.
2) There is a fundamental difference between the implementation of SCF and other investment instruments, from the requirements of issuers, financiers to SCF Organizers who must become members of the association first.
3) With regard to Risk, as with other investment instruments, SCF also has risks in its implementation such as possible *Platform Errors* and losses for Users. In terms of consumer protection, scf implementation is governed by the Consumer Protection Act, the ITE Act and the Capital Markets Act, which protect consumers as consumers when implementing SCF investment plans.

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