



The Position of *Securities Crowdfunding* is Reviewed from the Capital Market Definition Based on Law of the Republic of Indonesia Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector

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Abstract

Crowdfunding has become one of the options for those who need funds to obtain funds from the wider community. Crowdfunding is funding a business, project, and so on that involves the community, usually done through internet networks. Crowdfunding is a technique for projects or business units involving the wider community. This study aims to determine the position of Securities Crowdfunding in terms of the definition of Capital Markets based on Indonesian Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. The research method used in this paper is the normative juridical legal research method, from Indonesian Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. The results of this study state that the position of Securities Crowdfunding in the capital market sector when viewed from the definition of the Capital Market in the Indonesian Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector still needs to be clarified. As an activity included in the capital market sector, Securities Crowdfunding activities should also be included in the definition of Capital Markets regulated in the Indonesian Laws about the capital market sector to create legal certainty.

Key word: *Crowdfunding* Capital Market Based on Law Financial Sector





1. INTRODUCTION

Crowdfunding has become one of the options for parties who need to obtain funds from the wider community. Crowdfunding is a form of funding for a business, project, and so on, that involves the community, usually done through internet networks. Crowdfunding is a technique for projects or business units involving the wider community. Another opinion about crowdfunding states that crowdfunding involves an open call, mostly through the internet, for the provision of financial resources either in the form of a donation or in exchange for a future product or some form of reward to support initiatives for specific purposes. In general, crowdfunding is a funding sourced from the community via the internet.

Crowdfunding is expected to provide fresh air for startups or small and medium enterprises in Indonesia, especially to obtain business capital. Conventionally, for start-ups or small and medium businesses, bank loans are one way to get business capital. However, when starting a business, these entrepreneurs generally have no assets that can be used as collateral, or even do not have things like financial records or good business documentation, which banks often request. Therefore, it is difficult for banks to provide business capital loans to them. Crowdfunding is believed to be able to fund various activities that are difficult to do, through conventional funding access such as banks and investors, whose processes require various requirements and go through a long bureaucracy.

One of the crowdfunding types that is applicable in Indonesia is equity crowdfunding. Equity crowdfunding is a type of crowdfunding that brings together the share issuers with the investors, through electronic systems or financial technology. Equity crowdfunding is regulated by Financial Services Authority Regulation No. 37/POJK.04/2018 concerning Crowdfunding Services through Information Technology-Based Share Offerings ("**POJK 37/2018**"). Based on Article 1 point 1 of POJK 37/2018, equity crowdfunding is a share offering service conducted by the issuer to sell shares directly to investors through an open electronic system network. According to POJK 37/2018, equity crowdfunding activities are included in financial services activities in the capital market sector, and are share-offering activities that are not included in public offering activities as stipulated in the Republic of Indonesia Law No. 8 of 1995 concerning Capital Market ("**Capital Market Law**").

In its development, equity crowdfunding regulated in POJK 37/2018 by the Indonesian Financial Services Authority ("**OJK**"), cannot maximally assist start-ups, and small and medium enterprises. One of the problems is related to the legal entity form of the business. In practice, the legal form of start-ups, or small and medium enterprises, varies and





is not always a limited liability company. Meanwhile, equity crowdfunding requires a limited liability company to be able to become an issuer in equity crowdfunding.

With the thought of not maximizing the implementation of equity crowdfunding, in 2020 OJK issued Financial Services Authority Regulation No. 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services ("**POJK 57/2020**"). POJK 57/2020 is here to replace POJK 37/2018. In the explanation section of POJK 57/2020, it is explained that the purpose of POJK 57/2020 is to expand the scope of "issuers" in crowdfunding services, as well as to expand the scope of crowdfunding services, which was originally only for equity securities in the form of shares (equity crowdfunding), so that it can include securities in other forms as well. Crowdfunding Services in POJK 57/2020 are also known as Securities Crowdfunding.

Securities Crowdfunding means organizing securities offering services carried out by the issuer to sell securities directly to investors through an open electronic system network. From the definition of Securities Crowdfunding, it is known that OJK has expanded the object of crowdfunding from stocks to a broader one, namely securities. Based on Article 1 point 2 POJK 50/2020, the securities consist of namely debt recognition letters, commercial papers, stocks, bonds, evidence of debt, participation units of collective investment contracts, futures contracts on securities, and any securities derivatives. Similar to POJK 37/2018, POJK 57/2020 also includes a provision stating that Securities Crowdfunding is a financial service activity in the capital market sector, and is a securities offering activity that is not included in public offering activities as stipulated in Capital Market Law.

OJK makes both POJK 37/2018 and POJK 57/2020 to provide legal certainty and protection for parties involved in crowdfunding activities. This is because Capital Market Law, which is the regulation governing the capital market sector in Indonesia, does not regulate crowdfunding. Although not regulated in the Capital Market Law, it is appropriate that the OJK Regulations are subject to the provisions in the Capital Market Law in general, because the Capital Market Law is also the legal basis for making the two OJK Regulations. The most basic thing is that at least crowdfunding activity is included in the definition of the capital market as stipulated in the Capital Market Law.

The Capital Market Law explains that what is meant by the Capital Market is an activity related to the public offering and trading of securities, public companies related to the securities they issue, as well as institutions and professions related to securities. Meanwhile, the Republic of Indonesia Law No. 21 of 2011 concerning the Financial Services Authority ("**OJK Law**") states that the Capital Market is an activity related to the public





offering and trading of securities, public companies related to the securities they issue, as well as institutions and professions related to securities as referred to in the law regarding the capital market. From both these regulations, it can be concluded that activities in the Capital Market are related to "public offering and trading of securities".

In POJK 57/2020, Securities Crowdfunding is stated as an activity of the capital market sector in the form of a "securities offering that is not a public offering". That statement contradicts with the definition of the capital market based on the Capital Market Law and OJK Law. On the other hand, Securities Crowdfunding, which is only regulated in OJK Regulations, is considered less strong in terms of legal standing because it has yet to be regulated by higher laws and regulations equivalent to the Capital Market Law. According to the author, the existence of questions related to Securities Crowdfunding, which are not included in the definition of the Capital Market (as stated in Capital Market Law), as well as legal products that regulate Securities Crowdfunding only limited to OJK Regulations, affects the legal certainty for Securities Crowdfunding in Indonesia.

At the beginning of 2023, a new piece of legislation emerged in the Indonesian economy, the Republic of Indonesia Law No. 4 of 2023 on Financial Sector Development and Strengthening ("**FSDS Law**"). This law comes with an omnibus-like method, where the FSDS Law makes several changes to several laws related to the financial sector in Indonesia. One of the laws that changed was the Capital Market Law. The presence of the FSDS Law raises the question, is FSDS Law present to provide legal certainty over the position of Securities Crowdfunding in the capital market sector in Indonesia?

Based on some of the things described, this research intends to provide a more detailed explanation of the position of Securities Crowdfunding in terms of the definition of the capital market based on the FSDS Law.

2. RESEARCH METHOD

The research method used in this paper is the normative juridical legal research method, namely by analyzing the application of legal principles and harmonizing the implementation of existing laws and regulations. The approach used in this research is statutory and conceptual, namely reviewing the problems studied based on statutory provisions and legal concepts.

The primary legal materials used in this research are the Republic of Indonesia Law No. 8 of 1995 concerning the Capital Market, the Republic of Indonesia Law No. 12 of 2011 concerning the Formation of Legislation (along with its amendments), the Republic of





Indonesia Law No. 4 of 2023 concerning Strengthening the Financial Sector, and POJK No. 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services. Secondary legal materials used in this research are books, journals, information via the Internet, and other sources related to the issues studied.

Legal materials are collected by literature study and inventory based on the issues studied. The legal materials are then analyzed using deductive logic techniques, grammatical and systematic interpretation.

3. RESULT AND DISCUSSION

The position of Securities Crowdfunding in the capital market sector according to POJK 57/2020 and the Capital Market Law

Before explaining the position of Securities Crowdfunding in the FSDS Law, the author will explain the position of Securities Crowdfunding in the capital market sector according to the Capital Market Law and POJK 57/2022. Based on POJK 57/2022, Securities Crowdfunding, the issuer implements securities offering services to sell securities directly to investors through an open electronic system network.

"Issuer" herein is an Indonesian business entity that issues securities through Securities Crowdfunding services, whether in the form of a legal entity or other business entity. Meanwhile, an "Investor" is a party that purchases securities the Issuer owns through Securities Crowdfunding. The Issuer and the investor will be brought together in the electronic system of financial services provided by the system organizer with a license from OJK, and the electronic system must be registered at the Ministry of Communication and Information of the Republic of Indonesia. The electronic system used in Securities Crowdfunding is generally a website or application that can be accessed via mobile phone. One of the electronic systems that has been registered and licensed by OJK is Santara. Santara is the first official equity crowdfunding platform in Indonesia that can be accessed through the website www.santara.co.id or users can download the application through Google Play or the App Store.

There is an opinion that, at first glance, Securities Crowdfunding is similar to the public offering process in the capital market, as both offer securities from those who need funds to those who have funds. But on the other hand, both also have differences, including registration (listing) requirements and costs, secondary market orientation, and investor orientation and convenience.





According to the provisions of the Capital Market Law, all the provisions of an initial public offering regulated in the Capital Market Law apply to a limited liability company that wants to sell shares to the public. The company also needs to go through the stages of a general meeting of shareholders, amendments to the articles of association, application for registration of share issuance to OJK to obtain an "effective statement" to conduct a public offering, and cooperate with institutions and professions related to securities. These things are different from Securities Crowdfunding because the securities offering is not a public offering as regulated in the Capital Market Law.

Not being a public offering as referred to in the Capital Market Law is also emphasized in one of the provisions of Article 3, paragraph (1) POJK 57/2020: "securities offering by each issuer through Crowdfunding Services is not a public offering as referred to in the Capital Market Law if:

- a) The securities offering is conducted through an organizer that has obtained a license from the Financial Services Authority;
- b) The securities offering is conducted within a maximum period of 12 (twelve) months; and
- c) The total funds raised through the securities offering is at most Rp.10,000,000,000,- (ten billion rupiah)."

The three conditions above are the conditions that the securities offering in Securities Crowdfunding is categorized as "not a public offering" according to the Capital Market Law. Looking further at the provisions in POJK 57/2020:

- 1) In accordance with Article 5 POJK 57/2020, Securities Crowdfunding organizers must have a business license from OJK. This means that the requirements of Article 3 paragraph (1) letter a POJK 57/2020 are met; and
- 2) In accordance with Article 33 paragraph (1) POJK 57/2020, it is stipulated that the limit of fundraising through Securities Crowdfunding within a period of 12 (twelve) months is Rp.10,000,000,000,- (ten billion rupiahs), which means that the requirements of Article 3 paragraph (1) letter b and c POJK 57/2020 are met.

This provision in POJK 57/2020 emphasizes that the securities offering in Securities Crowdfunding is not a public offering as regulated in the Capital Market Law.

In an effort to avoid doubts over the position of Securities Crowdfunding in the capital market sector, Article 2 POJK 57/2020 stated: "Crowdfunding Service activities are financial services in the capital market sector". This provision seems to want to strengthen that Securities Crowdfunding is part of the capital market sector.





Based on the explanation in the Introduction section of this paper, the definition of the Capital Market according to the Capital Market Law is an activity related to: (i) public offering and trading of securities; (ii) public companies related to the securities they issue; (iii) and institutions and professions related to securities. From this definition, it can be said that the main activity in the capital market is the public offering and trading of securities. Referring to the definition of a Capital Market in the Capital Market Law, the two activities (public offering and trading of securities) can be said to be related, as explained by the conjunction "and".

Referring to the definition of Capital Market in the Capital Market Law, then associated with the provisions of POJK 57/2020 that the securities offering in Securities Crowdfunding is not a public offering, it is not wrong if there is an opinion that Securities Crowdfunding is not appropriate when included in the capital market sector. This is because Securities Crowdfunding is not included in activities based on the definition of the Capital Market according to the Capital Market Law itself. And it is not wrong if there are questions such as (i) doesn't the OJK Regulation related to the capital market must still refer to the applicable Capital Market Law, but why does Securities Crowdfunding seem to ignore the definition of the capital market in the Capital Market Law?; or (ii) does it mean that OJK Regulations can be equivalent to the Capital Market Law because there are OJK Regulations that regulate things that are not regulated in the Capital Market Law, or other questions that certainly lead to the conclusion that legal certainty has not been created regarding the position of Securities Crowdfunding in the capital market sector.

The Capital Market Law is an old legal product, is ultimately unable to adjust to economic developments in Indonesia and requires renewal. There is an opinion that the Capital Market Law in providing an understanding of the capital market does not provide a comprehensive understanding, but focuses on the activities and actors of a capital market only. In other words, the definition of Capital Market in the Capital Market Law is still narrow and has yet to accommodate the development of the times. The narrow understanding of the capital market in the Capital Market Law results in legal uncertainty related to the position of Securities Crowdfunding.

The position of Securities Crowdfunding in the FSDS Law in general

In the explanation section, the FSDS Law regulates the Capital Market, Money Market, and Foreign Exchange Market to encourage the application of the principle of same activity, same risk, same regulation for financial instrument transactions, expanding access to





competitiveness, including through interoperable market infrastructure, carbon exchanges, and special purpose vehicle arrangements to increase the variety of financial instruments, as well as trustee fund managers for deepening and increasing the participation of financial market participants and increasing information disclosure rules and good governance. With the presence of the FSDS Law, the Capital Market Law changed to around 32 articles and received additional articles of around 29. Interestingly, in the FSDS Law related to changes in the Capital Market Law, there are several new provisions relating to securities offerings using the services of electronic system organizers, or known as Securities Crowdfunding. The amendments to the Capital Market Law related to Securities Crowdfunding regulated by the FSDS Law include:

1. There are changes to the regulatory authority owned by OJK by adding the authority to regulate the organization of public funds through Securities Crowdfunding;
2. Strengthening OJK's authority in point 1 above, as outlined in Chapter IX of the Capital Market Law which was previously titled "Issuers and Public Companies", by the FSDS Law changed to "Securities Offerings and Public Companies", in Part One, whose title was also changed to "Securities Offerings, Public Offerings, and Registration Statements" (previously only "Registration Statements"), there is an additional article, namely Article 69 A. This new article regulates :
 - a. that to expand the access of micro, small and medium enterprises to obtain funding from the capital market, OJK regulates Securities Crowdfunding;
 - b. The requirements for the maximum amount of fund raising and the requirements for financiers/investors in Securities Crowdfunding will be regulated by OJK;
 - c. Electronic system providers in Securities Crowdfunding must obtain a business license from OJK;
 - d. Financial Services Institutions (FSIs) that become organizers in Securities Crowdfunding and already have an OJK license, then the FSI is required to obtain registration and approval from the OJK;
 - e. FSIs acting as organizers in Securities Crowdfunding must apply the principles of prudence and risk management;
 - f. Provisions regarding the mechanism for raising public funds through Securities Crowdfunding, specifically including: (i) the status of a public company; (ii) the transfer of rights to shares; (iii) the composition of the company's organs; and (iv) the organization of the General Meeting of Shareholders, may be exempted from laws and regulations including those regarding limited liability companies.





With the insertion of a new article, namely Article 69A into the provisions of the Capital Market Law, it can be said that the FSDS Law gives a new position to Securities Crowdfunding in Indonesia. The FSDS Law also provides new authority for OJK to regulate the implementation of Securities Crowdfunding in Indonesia.

In addition to OJK's authority, the FSDS Law also provides a legal basis for OJK Regulations related to Securities Crowdfunding in the future. If previously POJK 57/2020 was made referring to the Capital Market Law even though the Capital Market Law does not regulate Crowdfunding Services, then in the future OJK Regulations related to Securities Crowdfunding can refer to the provisions of the FSDS Law which regulates changes to the Capital Market Law.

The position of Securities Crowdfunding in the capital market sector is viewed from the definition of Capital Market according to the FSDS Law

The previous section discussed about the FSDS Law, which has regulated the provisions related to Securities Crowdfunding and included it in the amendment to the Capital Market Law, then this section will discuss how the position of Securities Crowdfunding is viewed from the definition of Capital Market stipulated in the FSDS Law. The new definition of Capital Market as stipulated in the FSDS Law is as follows:

"Capital Market is part of the Financial System related to activities:

- a. public offering and transaction of Securities;
- b. investment management;
- c. Issuers and Public Companies related to the Securities they issue; and
- d. Securities-related institutions and professions."

If explained one by one, the definition of Capital Market in the FSDS Law includes the following:

1. The Capital Market is **part of the Financial System**. The provision that the Capital Market is part of the financial system is a renewal of the definition of the Capital Market which was not previously stated. The Financial System itself is a unit consisting of financial services institutions, financial markets, and financial infrastructure, including payment systems, which interact in facilitating the collection of public funds and their allocation to support national economic activity, as well as corporations and households connected to financial services institutions;
2. The Capital Market relates to **public offering activities and securities transactions**. Public Offering shall mean securities offering activities conducted by the Issuer to sell





securities to the public based on the procedures stipulated in this Law and its implementing regulations. Whereas what is meant by a securities transaction is any activity or contract to obtain, release, or use securities that results in a transfer of ownership or does not result in a transfer of ownership in the capital market;

3. The Capital Market relates to **investment management activities**. What is meant by "investment management activities" is the management of securities portfolios for individual customers or the management of collective investment portfolios for a group of customers carried out by investment managers, including investment management service activities;
4. The Capital Market relates to **the activities of Issuers and Public Companies about the securities they issue**. Issuer is a party conducting a public offering. Meanwhile, a Public Company is a Company with the number of shareholders and paid-up capital stipulated by the Regulation of the Financial Services Authority. Securities are securities or investment contracts both in conventional and digital form or other forms due to technological developments that give the owner the right to directly or indirectly obtain economic benefits from the issuer or certain parties based on agreements and any derivatives of securities which can be transferred and traded on the capital market; and
5. The Capital Market relates to **the activities of securities-related institutions and professions**. Securities-related institutions include the Clearing and Guarantee Corporation, and the Depository and Settlement Corporation. In addition, there are also Custodian Banks, Securities Administration Bureaus, Trustees, and Securities Rating Agencies. Securities-related professions include public accountants, legal consultants, appraisers, notaries, and other professions stipulated by OJK Regulation.

On the other hand, the FSDS Law also provides an explanation related to Securities Crowdfunding, where the issuer implements securities offering services to sell securities directly to investors through an open electronic system network. When looking at the definition of Securities Crowdfunding and associated with the definition of the Capital Market, the activities in Securities Crowdfunding should be included in the activities of "public offerings and securities transactions" in the Capital Market.

Based on the definition of the Capital Market, the first activities categorized in the Capital Market are "public offerings and securities transactions". The two activities have different meanings. A public offering is an activity of "offering securities" for the first time in the primary market, while securities transactions are "contracts" made to acquire, release or use securities, which in the author's opinion are included in secondary market activities.





Judging from the form of writing, "The Capital Market is part of the Financial System related to public offering activities and securities transactions...", the author argues that the two activities are interrelated activities.

The definition of Capital Market in the FSDS Law still limits it to "public offering" activities, while it is clear that Securities Crowdfunding is a securities offering that is not a public offering as stipulated in the Capital Market Law. On the other hand, it is also inappropriate if Securities Crowdfunding is included in the definition of securities transactions. Because in accordance with its definition, Securities Crowdfunding is included in the category of "securities offering" activities, Securities Crowdfunding can be compared to activities in the primary market as well as public offerings. Therefore, the author argues, the position of Securities Crowdfunding in terms of the definition of capital market in the FSDS Law still needs to be clarified. This is still the same as when viewed from the definition of the Capital Market under the Capital Market Law.

Unfortunately, when lawmakers have the opportunity to make changes to the Capital Market Law by presenting the FSDS Law, there are things that still need to be included in the revamping. One of them is related to the improvement of the definition of Capital Market. It would be better, if in making changes to the definition of Capital Market, the legislator is more observant so that the definition of Capital Market can apply broadly and accommodate current and future capital market transactions.

The definition of the capital market, both in the Capital Market Law and the FSDS Law, is part of the general provisions of laws and regulations. General provisions in laws and regulations should contain:

- 1) Limitation of understanding or definition;
- 2) Abbreviations or acronyms set out in the definition or definition limitation; and/or
- 3) Other matters of a general nature that apply to the next article or several articles.

The definition in the general provisions of a law is very important, because in addition to being information related to the meaning of a term, it is also a reference to the understanding that will be used in every use of the term in a law. In addition, the use of language in a law is also important. The language of laws and regulations differs from the language commonly used. The characteristics of the language of laws and regulations include:

- a. Straightforward and definite to avoid similarity of meaning or confusion;
- b. Frugal, only the necessary words are used;
- c. Objective and suppress subjective feelings;
- d. Standardize the meaning of words, expressions and terms used consistently;





- e. Provide careful definitions or limits of understanding;
- f. Writing words with singular or plural meanings is always formulated in the singular; and
- g. The initial letters of words, phrases, or terms that have been defined or given definition limitations are capitalized.

Returning to the definition of Capital Market in the FSDS Law, and associated with Securities Crowdfunding, the author feels that the definition of Capital Market in the FSDS Law still needs to meet the characteristics of good statutory language. This is because the definition of Capital Market in the FSDS Law still needs to be clarified, and has not provided a careful definition or limitation of understanding, because it has not accommodated Securities Crowdfunding. The author understands that Securities Crowdfunding should indeed be part of the capital market sector because it is related to securities transactions, but on the other hand the author also regrets that the definition of Capital Market in the FSDS Law currently does not accommodate Securities Crowdfunding.

Then whether the FSDS Law has provided legal certainty for Securities Crowdfunding activities, the author argues that "still not yet". When viewed from the regulatory side, it may appear that the FSDS Law has provided legal certainty for Securities Crowdfunding because it has regulated it in one of the articles. But on the other hand, if viewed from the definition of the Capital Market itself, then Securities Crowdfunding activities are still not included in capital market activities under the FSDS Law. If indeed the legislator categorizes Securities Crowdfunding as an activity in the capital market sector, it should be included in the definition of the Capital Market itself.

4. CONCLUSION AND SUGGESTION

Based on the discussion above, it is known that although the contents of the FSDS Law regulate Securities Crowdfunding, the definition of Capital Market in the FSDS Law has not accommodated Securities Crowdfunding activities. When viewed from the definition of Capital Markets in the FSDS Law, the position of Securities Crowdfunding in the capital market sector still needs to be clarified. As an activity included in the capital market sector, Securities Crowdfunding activities should also be included in the definition of Capital Markets regulated in the FSDS Law. This uncertainty creates legal uncertainty for the position of Securities Crowdfunding in the capital market sector.

It is hoped that there will soon be new legislation that updates the definition of Capital Markets, so that the definition can accommodate all current and future capital market





activities. The author also hopes that the legislators can be more observant in formulating the general provisions of a statutory regulation, one of which is related to the definition of a Capital Market. This aims to create legal certainty for the things regulated in the legislation.

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