

Juridical Analysis of Money Laundering Crimes in Financial Technology Based Equity Crowdfunding Services in Indonesia

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ABSTRACT

The importance of the convenience of practical and efficient financial transactions in today's business world, has led to new innovations in the financial sector called financial technology or (fintech). The type of research carried out is normative juridical research by proposing legislation in conducting the study, selecting the type of normative juridical research, then this research is also supported by empirical data in which the researcher conducts interviews with the Head of OJK Regional 5 North Sumatra Office, and the Prosecutor. The scope and rules regarding fintech services based on equity crowdfunding in Indonesia are first registration, Second Regulatory Sandbox, Third Operator Licensing and Approval, Fourth Monitoring and Supervision. Legal certainty in regulating money laundering crimes in fintech services based on equity crowdfunding in Indonesia is related to the existence of POJK Number 37/POJK.04/2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings that have an effect on filling legal gaps in the process of establishing an equity company. crowdfunding and the practice of equity crowdfunding in Indonesia so that legal certainty refers to the implementation of the POJK No. 37/POJK.04/2018 law is clear, plus the existence of Law No. 8 of 2010 strengthens the duties, functions, and PPATK in prevention and eradication Money Laundering crime. The obstacles in preventing the eradication of money laundering crimes in fintech-based equity crowdfunding services in Indonesia are the first obstacles in terms of legal structure, second obstacles in terms of legal substance, and third obstacles in terms of legal culture.

Keywords : Money Laundering, Equity Crowdfunding, Financial Technology

INTRODUCTION

One form of fintech in Indonesia is a crowdfunding system known as crowdfunding. Fintech Crowdfunding generally raises funds for a project or for social fundraising. In the mechanism, the company will display a proposal for a project, business, event, or social activity proposed by a person or a party through the website or application of the Fintech Crowdfunding company. Lending and equity-based crowdfunding can be classified as a financial services business using Financial Technology (Fintech). The fintech can be in the form of Payments, Loans and Capital. Fintech Payment (Payment System) is regulated and supervised by Bank Indonesia, while Fintech Lending (Peer-to-Peer Lending) and Fintech Capital (Equity Crowdfunding) are regulated and supervised by the Financial Services Authority.

Article 1 of POJK Number 37/POJK.04/2018 explains that crowdfunding services Fund Through Information Technology-Based Stock Offering (Equity Crowdfunding), hereinafter referred to as Crowdfunding Service, is the implementation of a stock offering service carried out by the issuer to sell shares directly to financiers through an open electronic system network. In the Regulation of the Financial Services Authority of the Republic of Indonesia Number 37 / POJK.04 / 2018 also states specifically that: the issuer as a user of crowdfunding services is an Indonesian legal entity in the form of a Limited Liability Company (PT) that offers shares through the Operator. With the development of fintech that continues to grow, resulting in payment products, transaction service providers and business models becoming increasingly complex, as a result of which fintech is prone to misuse such as misuse of crowdfunding services that are

equity crowdfunding used as a place for money laundering. Fintech, which initially aimed to facilitate people's financial transactions, by individuals or groups of people, was used as a new medium or place to launder money from the proceeds of criminal acts.

Fintech has become interesting to be misused as a place for money laundering, because to use these services, it can be done with an online system without meeting in person. This is different from banking which if we want to use financial services provided by banks. In addition, because fintech is a new thing, in terms of supervision and regulation, it is still less than that of banking financial institutions that first prevent money laundering crimes. Based on the description of the problem formulation above, the objectives of this study are as follows:

1. To find out the scope and rules about fintech-based equity crowdfunding services in Indonesia.
2. To find out legal certainty in regulating money laundering crimes on fintech-based equity crowdfunding services in Indonesia.
3. To find out the obstacles in preventing the eradication of money laundering crimes on fintech-based equity crowdfunding services in Indonesia.

THEORETICAL BASIS

Theory of Legal Certainty

Legal certainty contains 2 (two) meanings, namely firstly the existence of general regulations that make individuals know what actions can or cannot be done, and secondly in the form of legal security for individuals from government authority because with the general rule of law, individuals can know what the state can impose or do on individuals. According to Kelsen, law is a system of norms. A norm is a statement that emphasizes the "supposed" or *das sollen* aspect, by including some regulations on what to do.

Norms are deliberative human products and actions. Laws that contain rules of a general nature become guidelines for individuals to behave in society, both in relations with fellow individuals and in relation to society. Those rules become a limitation for society in burdening or taking action against individuals. The existence of that rule and the implementation of the rule give rise to legal certainty. In connection with this theory, the purpose of establishing a crowdfunding service company through information technology-based stock offerings (crowdfunding) needs to be regulated, implemented and supervised based on the provisions of applicable laws and regulations to provide legal certainty for parties involved in crowdfunding activities in terms of preventing money laundering crimes.

Legal Protection Theory

Legal protection is to provide protection to the human rights of those who are harmed by others and such protection is given to the community so that they can enjoy all the rights granted by law or in other words, legal protection is a variety of legal remedies that must be given by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party.

To describe the obstacles in preventing money laundering crimes on fintech-based equity crowdfunding services in Indonesia, it will use Lawrence Meir Friedman's frame of mind about law enforcement. According to Lawrence Meir Friedman, the success or failure of law enforcement depends on the legal substance, legal structure and legal culture.

Scope and rules regarding Fintech-based equity crowdfunding services in Indonesia

In the implementation of Financial Technology (Financial Technology) in Indonesia has a scope covering Registration, Regulatory Sandbox, and Licensing and Approval, and Monitoring and Supervision. With the following explanation:

1. Registration
2. Regulatory Sandbox (Financial Technology Provider test room)
3. Licensing and Approval
4. Monitoring and Surveillance

Legal Certainty in The Regulation of Money Laundering Crimes in Fintech Based Equity Crowdfunding Services in Indonesia

The existence of OJK Regulation No. 37/POJK.04/2018 actually has an influence in filling the legal gaps in regulating equity crowdfunding practices in Indonesia. Both Financiers and Issuers have alternative investments or funding that have been based on the law and supervised by the Financial Services Authority. With the issuance of OJK regulation number 37 / POJK.04 / 2018 concerning crowdfunding services through information technology-based stock offerings (equity crowdfunding), there have been rules and procedures related to the establishment of equity crowdfunding companies and the licensing process. The POJK is expected to provide certainty for investors who use equity crowdfunding services and business actors to understand products and services such as procedures, benefits, costs or obligations, risks and security aspects.

In relation to the legal certainty of equity crowdfunding practices, in the latest developments OJK has issued a new regulation, namely the Financial Services Authority of the Republic of Indonesia Regulation Number 57 / POJK.04 / 2020 concerning Securities Offering through Information Technology-Based Crowdfunding Services. The financial services authority's regulation on offering securities through information technology-based crowdfunding services is a substitute for POJK Number 37/POJK.04/2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings (Equity Crowdfunding). According to OJK, this replacement is needed to accommodate the needs of small and medium enterprises in utilizing crowdfunding services as a source of funding in the capital market, namely by expanding the securities instruments that can be offered through crowdfunding services so that they are not only in the form of shares (equity securities) but also in the form of debt securities.

In OJK Regulation Number 57 /POJK.04/2020, there are 4 (four) main regulations, namely regarding providers, crowdfunding services, issuers, and financiers with the subject matter of regulation, including:

1. The Organizer's criteria include:
 - a. Operators who will carry out crowdfunding services must have a business license from the Financial Services Authority;
 - b. The Organizer is an Indonesian legal entity in the form of a limited liability company or cooperative;
 - c. Ownership of the operator's shares by foreign nationals and/or foreign legal entities, either directly or indirectly, at most 49%; and
 - d. The organizer must have paid-up capital or own capital of at least IDR 2.5 billion at the time of applying for a permit.
2. Conditions related to crowdfunding services, including:
 - a. Securities that can be offered through crowdfunding services include equity

- securities, debt securities, or Sukuk;
 - b. the maximum limit for raising funds through crowdfunding services by each issuer within a period of 12 months is at most IDR 10 billion;
 - c. The securities offering period is no longer than 45 days; and
 - d. Arrangements regarding the purchase of securities, the delivery of funds and securities, and the trading of securities.
 - 3. Issuer means an Indonesian business entity in the form of a legal entity or other business entity that issues securities through crowdfunding services. However, publishers are prohibited as:
 - a. A business entity that is controlled either directly or indirectly by a business group or conglomerate;
 - b. Public company or publicly listed subsidiary; and
 - c. Business entities with a net worth of more than IDR 10 billion, excluding land and buildings for business premises.
 - 4. Financiers who can buy securities through mandatory crowdfunding services:
 - a. Have a securities account with a Custodian Bank specifically for storing securities and/or funds through crowdfunding services;
 - b. Have the ability to purchase issuer securities; and
 - c. Meet financier criteria and securities purchase restrictions. However, with the following limitations:
 - 1) Income up to IDR 500 million, maximum investment of 5% of income per year;
 - 2) Income of more than IDR 500 million, maximum investment of 10% of income per year; and
 - 3) If:
 - a) The financier is a legal entity;
 - b) Financiers have investment experience in the capital market; or
 - c) Debt securities or Sukuk are guaranteed or covered with a guarantee value or insurer value of at least 125% of the value of raising funds, then the investment amount is not limited.

Although in carrying out regulatory duties in the financial services sector, the authority of the OJK is only limited to establishing regulations for the implementation of OJK laws and enacting laws and regulations in the financial services sector. Regulations related to crowdfunding services or equity crowdfunding are a relatively new type of financial services activity that is not found in either the OJK law or the capital market law. So that regulations related to the establishment of crowdfunding service companies, their licensing and implementation should be regulated in a form of law either by the establishment of a new law that specifically regulates the practice of equity crowdfunding or making changes or amendments to Law Number 8 of 1995 concerning the Capital Market.

With the form of equity crowdfunding regulation in the form of a law, it is also possible to regulate content material regarding criminal provisions related to equity crowdfunding practices because based on Article 15 paragraph (1) of Law Number 12 of 2012 concerning the Establishment of Laws and Regulations, it is stated that the content material regarding criminal provisions can only be contained in the law. In the concept of anti-money laundering, the perpetrator and the proceeds of the criminal act can be known through tracing to subsequently the proceeds of the crime are seized for the state or returned to the rightful. If the property from the criminal act controlled by the perpetrator or organization of the crime can be confiscated or

seized, it can naturally reduce the crime rate. For this reason, efforts to prevent and eradicate money laundering crimes require legal certainty and a strong legal foundation to ensure legal certainty, the effectiveness of law enforcement as well as the tracing and return of assets from criminal acts.

Obstacles in Preventing the Eradication of Money Laundering Crimes in Fintech-Based Equity Crowdfunding Services in Indonesia

Based on the legal protection theory used in this study, there are several obstacles in preventing the eradication of money laundering crimes in fintech-based equity crowdfunding services in Indonesia. To describe these obstacles will use the frame of mind of Lawrence M. Friedman that determines the law enforcement process, namely the components of structure, substance and culture. Soerjono Soekanto, said these three components are part of the law enforcement factors that cannot be ignored because if ignored, it will lead to the achievement of the expected law enforcement.

1. Obstacles in terms of legal structure

The practice of law enforcement of money laundering crimes is not an easy thing, money laundering crimes occur due to internal factors of financial service providers or other providers of financial goods and services as a result of weak data or systems in the analysis of suspicious financial transactions so that they have not been able to prevent from the beginning the placement of crime proceeds into the fintech system. Then the slowness of intelligence information about suspicious financial transactions and the lack of cooperation between agencies both between financial service providers and other providers of goods and services with law enforcement officials (Police, Prosecutors, Courts) as well as PPATK.

2. Obstacles in terms of legal substance

The substance of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes when compared to the two previous money laundering laws, namely Law No. 15 of 2002 which was later amended by Law No. 25 of 2003, there are several changes. In the old law theoretically the law (doctrine) was *lex specialist*, that is, administrative (regulative) laws reinforced with criminal sanctions. As for the new title, namely the Law on the Prevention and Eradication of Money Laundering Crimes (PPTPPU Law), theoretically (doctrine) reflects special criminal laws (*lex specialis*) which are preventive measures and repressive measures in one package. This is certainly not an easy thing to implement, considering that there are so many completeness that must be met in order for this law to be implemented optimally.

3. Obstacles in terms of legal culture

Society and culture can also be included in the category of legal culture because in society and culture can be seen the growth and development of legal culture. The existence of legal culture in society can be equated with the existence of law in a society that has culture. However, the concern is the law which is a coercive and regulating community life regulation to ensure the order of the community, whether the process can run optimally. That is, laws that have norms in laws and regulations can run well so that they are able to reflect a good legal culture or vice versa the law is just a mere rule but its implementation is not optimal at all so as to produce a bad legal culture.

CONCLUSION

The scope and rules regarding equity crowdfunding-based fintech services in Indonesia are first registration, Second Regulatory Sandbox, Third Licensing and Approval, Fourth Monitoring and Supervision. Legal certainty in regulating money laundering crimes in equity crowdfunding-based fintech services in Indonesia, namely related to the existence of POJK Number 37 / POJK.04 / 2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings (Equity Crowdfunding) has an effect in filling legal vacancies in the process of establishing equity crowdfunding companies and equity crowdfunding practices in Indonesia so that thus legal certainty pointing to the legal enforcement of POJK Number 37/POJK.04/2018 is clear, in addition, the existence of Law Number 8 of 2010 strengthens the duties, functions, and authorities of the Financial Transaction Analysis Reporting Center (PPATK) in the prevention and eradication of money laundering.

Obstacles in preventing the eradication of money laundering crimes in Indonesia-based fintech services are firstly obstacles in terms of legal structure due to the loose application of know-your-customer principles and weak data or systems in analyzing suspicious financial transactions. The two obstacles in terms of the legal substance of the provisions of the law on the prevention and eradication of money laundering crimes do not clearly distinguish the indications of acts that can be subject to the act of delaying transactions, temporary suspension, and blocking transactions, the law only regulates who is authorized and how long it takes. The three obstacles in terms of legal culture are opinions, beliefs, habits, ways of thinking and ways of acting both from citizens about the law and various phenomena related to the law because the stigma that arises in society regarding law enforcement is quite negative in society. The suggestions that can be used as recommendations in this study are as follows: The Indonesian Government should expand the scope of reporting parties in order to prevent money laundering crimes by adding companies providing online buying and selling sites and it is better for fintech based equity crowdfunding service providers to make preventive efforts by tightening the principle of recognizing customers again.

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