Electronic Initial Public Offering (e-IPO) Business Dispute Resolution in Indonesia

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Abstract. The dynamics of economic, commercial, and technological progress have the potential to produce disagreements among those engaged. Disputes arise as a result of variances in each party's interests, and one party feels that his or her interests are distinct to those of the other side. One of the most common types of technology application is in the economic area, sometimes known as financial technology or FinTech. Financial Technology (FinTech) is a partnership of technology and financial aspects, or it may be regarded as a financial sector regeneration with a technological twist. Equity Crowdfunding is one sort of financial technology, which in Indonesia should be conceptually associated with Electronic Initial Public Offering (e-IPO) in Capital Market regulation. E-IPO is a web-based electronic means provided by public offering system operators, such as the Indonesia Stock Exchange, to the public to support the initial public offering process, such as providing IPO information and ordering IPO shares from issuers conducting public offerings through the e-IPO system. Despite the fact that the Financial Services Authority (OJK) laws do not require it, e-IPO issues are resolved through BANI. The research intends to learn how stock transactions via e-IPO are regulated in Indonesia and how e-IPO disputes are resolved through the Indonesian National Arbitration Board (BANI). A normative legal research method with a statute approach and legal concept analysis is used in this work. The idea of agreement and the concept of law as a policy process were used to examine the challenges. The e-IPO method in Indonesia and the provision on binding the e-IPO dispute settlement may be decided by this research.

Keywords: Electronic Initial Public Offering (e-IPO) · Dispute · BANI

1 Introduction

Along with exploring economic development through the impact of technological advances and dynamic social interactions, it has brought the world of capital to know the e-IPO method. Whatever the underlying procedures are, the impact of any technology on the profession may be separated into two categories: automation and innovation (Susskind, 2017, p. 109). Article 1 point 1 of the Financial Services Authority (OJK) Regulations Number 41/POJK.04/2020 defines the term "e-IPO."

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Implementation of Electronic Public Offering Activities of Equity Securities, Debt Securities, and/or Sukuk is referred to as a public offering, that is, securities offering activities conducted by issuers to sell securities to the public in accordance with the procedures outlined in the Capital Market Act and its implementing regulations. The party making the public offering is referred to as the issuer.

After the company fulfils the requirements stipulated by the laws and regulations of the OJK, the public offering process can be carried out. Technological advances introduce business actors to the term e-IPO in line with the need for issuers to be more efficient in going public. In the provisions of the e-IPO, it is stated that any disputes related to or arising from these terms and conditions of use will be resolved through the Indonesian National Arbitration Board ("BANI"). Legal experts say there are four basic and essential principles in the field of arbitration, such as the principle of autonomy, Pacta Sunt Servanda, good faith and the principle of efficiency. The research aims are to know how is the regulation of stock transactions through e-IPO in Indonesia made and how is e-IPO dispute resolution through the Indonesian National Arbitration Board (BANI) carried out.

2 Method

This study employs the normative legal research technique, which is used by examining the e-IPO procedural regulatory norms based on OJK regulation No.41/POJK.04/2020 Concerning the Implementation of Electronic Public Offering Activities for Equity Securities, Debt Securities, and/or Sukuk. The requirements of the e-IPO stipulate that conflicts between parties involved in the implementation of the e-IPO are resolved through BANI. At the same time, in this regulation, there is a gap in norms regarding the regulation of e-IPO disputes.

One of the problem approaches used in this study is a statute approach applied by examining problems based on concepts, theories, principles, and applicable laws and regulations. Researchers need to examine the views of legal scholars from various countries regarding this matter. Analyzing legal concepts is hoped to improve legal researchers' ability to understand legal science's substance. Other approaches used are the conceptual approach and analytical approach to normative research. The data used by researchers in normative legal research consists of secondary data, a type of data sourced from library research, such as data obtained not directly from the first source but data documented in the form of legal materials.

3 Result and Discussion

3.1 Regulation of e-IPO Submission Based on Financial Services Authority Regulation (POJK) Number 41/POJK.04/2020

According to Law No. 8 of 1995 regulating the Capital Market, Initial Public Offering (IPO) refers to "Activities of Securities Offering carried out by Issuers to sell Securities to the public in accordance with the processes prescribed in this Law and its implementing rules." The goal of an Initial Public Offering (IPO) is to raise capital from the

general public to support the Business's operations in the intention of improving company performance. Based on the definition of Initial Public Offering (IPO) given by Law Number 8 of 1995 and Equity Crowdfunding in Financial Services Authority Regulation Number 37/POJK.04/2018, by intent, Equity Crowdfunding and Initial Public Offering (IPO) are essentially an activity of offering shares to the public to obtain funds from the public. The term e-IPO means an electronic-based Indonesia Public Offering.

The following is a simple procedure for submitting an e-IPO through one of the system providers:

1. Initial Information
   During the initial information period, investors will obtain information about prospective listed companies that will conduct a public offering of shares, including an initial prospectus, book building price range, and a timeline for the offering period.
2. Book Building
   During the book-building stage, investors can show interest in a stock IPO. The book-building time can run up to 7 working days and up to 21 working days.
3. Offering
   Next is the public offering period, which lasts five working days. At this stage, investors must provide funds by the order and inform the interest submitted during the Book Building period to become an order during the Offering period.
4. Allocation
   All incoming orders will be allotted and allocated during the allocation period by OJK Regulation No. 41 of 2020 (Scope of e-IPO source: https://bions.id/edukasi/post/e-ipo-beli-saham-ipo).

Preparation of companies for conventional IPOs and e-IPOs can be carried out in several stages, such as company restructuring, preparation of documents, documentation and private placement (Munir, 2008, p. 54). Company restructuring is carried out through financial, business, corporate, human resources (HR) restructuring, and debt/loan restructuring. The financial restructuring process includes re-evaluating assets, paying off bank loans, and selling subsidiaries that are losing money and do not provide much profit for the parent company.

In the preparation stage of going public, document management carried out by the corporate secretary is also needed, which includes the preparation of archives and company permits. The final preparation stage is a private placement. This is when the Company tries to find funding from outside parties, which will then be paid in shares during the go public and the proceeds from it.

The process of going public consists of several stages, such as: filing a registration statement, public expose, making and printing a prospectus and loading a prospectus in newspapers, road shows, allotment on the primary market, and the process of printing shares on the stock exchange as well as the process of buying and selling shares in the secondary market (Munir, 2008, p. 61).

The electronic initial public offering (e-IPO) is a means of aiding the public with the initial public offering process. Before the Company's shares are listed and sold on the Indonesia Stock Exchange, a procedure known as the IPO or Initial Public Offering or

Public Offering takes place. This IPO is a technique of initial public offering (primary market), in which interested investors can place orders for shares offered on the main market. Following the initial public offering procedure, the Company's shares are listed on the Exchange and may be traded on the Indonesia Stock Exchange (secondary market). Securities include debt acknowledgements, commercial securities, shares, bonds, evidence of debt, participation units in collective investment contracts, securities futures contracts, and any derivatives of securities.

The Financial Services Authority (OJK) Regulation Number 41/POJK.04/2020 concerning Implementation of Electronic Public Offering Activities of Equity Securities, Debt Securities, and/or Sukuk, which was released on July 2, 2020, includes requirements for e-IPO implementation. With this e-IPO, it is hoped that the public offering process through e-IPO can provide benefits, which include:

1. Providing broad and easy-to-reach access for retail investors, in particular, to participate in the Primary Market, where previously retail investors had limited access to be able to participate in the primary market share subscription;
2. Increasing opportunities for retail investors to obtain initial share allotment; as well as
3. Expand the participation of Securities Companies as Selling Agents in a public offering process through e-IPO to expand opportunities for all investors to participate in a public offering.

OJK picked Stock Exchange, Clearing Guarantee Institution, and Depository and Settlement Institution as system providers for the electronic public offering (e-IPO) system. System Providers, according to OJK regulations, are the Stock Exchange, Clearing Guarantee Institution, and Depository and Settlement Institution, whose tasks include providing a continuous Electronic Public Offering System in conjunction with their respective functions; being responsible for the operation and management of the Electronic Public Offering System by its authority; establishing standard operating procedures for Electronic Public Offering System administration; Ensuring that the Electronic Public Offering System can be used for electronic Public Offering activities and its continuity is maintained; applying the principles of adequate control and security over the Electronic Public Offering System by the provisions of the legislation in Indonesia and/or national and international applicable standards; informing users of the Electronic Public Offering System in the event of changes or system developments, including the addition of system services and features; providing an audit track record of the entire process in the Electronic Public Offering System for supervision, law enforcement, dispute resolution, verification, testing, and other examinations by the Financial Services Authority or other parties with the approval of the Financial Services Authority; and It is maintaining the confidentiality of user data and information and using the Electronic Public Offering System.

The e-IPO submission procedure tends to be more practical and efficient when compared to conventional IPO submissions. This is because the initial data collection and corporate financial restructuring process are carried out conventionally. In addition, the registration and adjustment of data needed by securities companies are carried out electronically.

3.2 e-IPO Business Dispute Resolution Through the Indonesian National Arbitration Board (BANI)

Implementation of the public offering system is guided by the standard procedures determined by the POJK, regarding dispute resolution is not explicitly regulated. In the e-IPO registration terms provisions, it is stated that any disputes related to or arising from these Terms and Conditions of Use will be resolved through the Indonesian National Arbitration Board ("BANI"). However, settlement of business disputes is not only limited to BANI. There are several forums for the resolution of business and trade disputes, such as the International Center for Settlements of Investment Disputes (ICSID), Singapore International Arbitration Center (SIAC), general courts and several other foreign arbitration bodies. Thus, with various choices, it will be easier for issuers and other parties to choose a dispute resolution forum in the future.

A dispute is defined by Black's Law Dictionary as "a quarrel or controversy, especially one that has given birth to a specific litigation" (Black's Law Dictionary, 2014: 505). A dispute is a quarrel that arises from differences and disputes. The characteristic of a dispute is the emergence of a new agreement due to a difference of opinion on a previously agreed agreement so that if a problem does not lead to a new agreement, it cannot be categorized as a dispute. In the provisions of the e-IPO submission in chapter V letter b, these Terms and Conditions of Use are governed by and construed under the laws of the Republic of Indonesia. Any disputes that arise as a result of these Terms and Conditions of Use shall be decided by the Indonesian National Arbitration Board ("BANI"). If there is a dispute between the parties, it will be settled by BANI using the normal procedures of the e-IPO organizing organization, however not all parties will agree on this standard method. An arbitration clause is the result of a mutual agreement between the parties.

The birth of an agreement is based on several regards, including the wishes of the parties, the agreement of the parties and something that is the object of the agreement. There are three theories of the birth of an agreement: will theory, statement theory and belief theory. The theory of will (wilsleer, wilsthorie) claims that a new contractual engagement exists only if and to the extent that the statement is based on an intentional decision that is by it. Statement Theory (verklaringsleer; verklaringstheorie) states that a person is bound by his or her statements. Finally, belief Theory (vetrouwensler; vertrouwenstheorie), a new theory as a teaching to be followed (hersendeleer), is a middle ground theory that bridges the weaknesses and shortcomings of the previous theory. Likewise, an agreement with an arbitration clause was born from these three elements and then resulted in an agreement between the parties who agreed.

If a contract involves two legal subjects of different nationalities, then there will be two different legal systems: Foreign Law and the National Law of a state. This can cause problems in international civil Law because the parties bring their respective legal systems into a contract. They can choose their national or foreign Law as long as it does not conflict with public order or coercive rules. For agreements with transnational aspects, the matter of choice of Law is essential. Not all foreign parties feel comfortable if their agreement is construed according to Indonesian Law. A foreign legal forum for an agreement involving Indonesia is lawful and enforceable if agreed upon by the parties and specified in the agreement's clause.

The primary components of a contract include agreements, as well as contractual rights and responsibilities (Bayu, 2013, p. 269). It is easy to see why parties wanting to settle contractual disputes turn to international arbitration. Arbitration proceedings can be significantly more advantageous than the rigidity and complexity of litigation in national courts (Dana, 2010, p. 583). Finally, companies prefer arbitration agreements over burdensome national courts.

Arbitration by a court or judges as an alternative settlement or dispute resolution is founded on the parties' agreement to submit to or follow the judgments of the judges or judges they select or appoint (Suleman, 2013, p. 9). According to Eisenberg and Miller, if a type of alternative conflict resolution, such as binding arbitration, produces more societal benefits than litigation, the process's dynamics should tend to drive the parties to include a clause requiring future disagreements to be settled by arbitration (Christopher, 2010, p. 433). Because the process is dynamic by adding an arbitration clause in the parties' agreement, alternative dispute resolution through binding arbitration provides higher benefits than litigation.

According to Sophar Maru Hutagalung (2012: 317), businesspeople choose arbitration for a variety of reasons, including:

a. The confidentiality of the parties' dispute is guaranteed because the decision is not published;
b. Delays caused by procedural and administrative matters can be avoided;
c. The parties can choose an arbitrator who, in their opinion, has sufficient knowledge, experience, and background regarding the disputed case;
d. The parties can determine the choice of Law to resolve the problem as well as the process and venue for the arbitration; and
e. The arbitrator's decision is a binding decision.

If the parties want to resolve their disagreement through arbitration, the regulations of the arbitral institution apply. There is also ad hoc arbitration, in which the parties use a national arbitration measure or arbitration rules customized for ad hoc arbitration, such as the UNCITRAL Arbitration Rules, to agree on the nature of the proceedings. Arbitration is a method of resolving legal disputes by a neutral and private third party, rather than by a panel of judges or jury, based on the terms of the agreement that the parties have willingly agreed upon. Arbitration is frequently regarded as a more expeditious and cost-effective alternative to litigation.

Another advantage of arbitration is that it is a private and closed procedure; an arbitrator is a person or group of qualified and experienced persons chosen by the parties. This is done to avoid the notoriety that is common in open court by judges who may not be well-versed in the subjects at hand. The arbitration's non-public nature is also seen to have played a role in its success.

According to the researchers, business contracts or agreements related to arbitration are in line with the theory of will and the theory of agreement. The reason is that the agreement made by the parties is the sincerity of the will of the parties to make an agreement which, if a dispute occurs in the future, it will be resolved through a specific arbitration institution and that the concrete form of this will is the agreement of the parties as outlined in a business contract.

The principle of the binding power of contract (Pacta Sunt Servanda) is a logical consequence of the impact of binding force on the contract. This principle shows that the parties have agreed upon the business contract is the Law for each party; all clauses listed in it bind the parties to implement it, as well as if it contains an arbitration clause.

Business activities carried out by business actors must take into account and consider the risks that will occur and have occurred from the business experiences of their predecessors. However, this can always be anticipated to cover possible risk gaps by including several prevention clauses. Thus, if the anticipated risk occurs, a solution can be found as soon as possible so as not to interfere with the smooth actualization of the previous business agreement.

The dispute resolution chosen by the provisions for submitting an e-IPO through BANI arbitration, according to the researcher, is not by the will theory of the agreement because to determine the choice of dispute resolution forum, it must be an agreement on the will of each party in the agreement, so that the parties, investors, securities companies and issuers can understand the choice of mutually agreed dispute resolution forums.

4 Conclusion

Electronic methods of supporting the general public in the initial public offering process. An IPO, or Initial Public Offering, happens prior to the listing and sale of the Company's shares on the Indonesia Stock Exchange. This is an IPO (initial public offering) method in which interested investors can place orders for shares offered on the primary market. The Company's shares will be listed on the Exchange and traded on the Indonesia Stock Exchange following the initial public offering (secondary market). Debt acknowledgements, commercial securities, shares, bonds, evidence of debt, participation units in collective investment contracts, Securities futures contracts, and Securities derivatives are all examples of securities.

The Republic of Indonesian laws govern and govern the interpretation of the e-IPO Terms & Conditions of Use. Any disputes arising from these Terms and Conditions of Use will be resolved by the Indonesian National Arbitration Board ("BANI"). If there is a disagreement between the parties, BANI will resolve it in line with the fundamental requirements of the e-IPO organizational organization. However, it is questionable whether all parties would agree on these terms and circumstances.

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