



# Legal Protection for Investors in Equity Crowdfunding Technology-Based Share Offering Services that are Friendly to the Control of Agrarian Resources to Avoid the Risk of Fraud

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**Abstract.** The current era of globalization provides transformations that are relevant to various aspects of human life, including in the social, cultural, economic, and other fields. The world of commerce today is growing rapidly along with the development of time from time to time. This is natural because there are human needs that must be met. Along with the development of the world of commerce, people want everything to be practical without wanting to be preoccupied with other things. This condition accelerates entrepreneurs to maximize the company's capacity in order to compete with other companies. For this reason, transaction activities are also required to balance the intensity of trade, both nationally and internationally. Technology is a tool to make it easier for people to utilize the resources they need. With the existence of technology, the utilization of resources has become easier and more efficient. Until now technology continues to spread. One technology that is increasingly being used by the public is the internet.

**Keywords:** equity crowdfunding · technology-based company · friendly agrarian resources · share stock

## 1 Introduction

The rapid development of the internet is being used by various layers of society and technology and information systems continue to give birth to various innovations, especially financial technology to meet financial needs. So is the case with financial services, the more widespread technology is, the easier and more efficient people are in utilizing financial services. The application of technology in financial services is very helpful for the public in transactions so that people who have not been able to access the key service The presence of financial technology is very helpful for the public in accessing financial products and makes it easier for people to carry out financial transactions anywhere and with a touch of technology. The development of the digital economy has led to innovations in the financial sector. Innovations related to financial services that utilize the sophistication of popular technology are called technology-based financial services

or financial technology (fintech). This technology-based financial service is essentially a technology that becomes a liaison between the financial sector and the users or the general public. The innovations offered by technology-based financial services are very broad and in various segments, be it business to business (B2B) to business to consumer (B2C).

Technology-based financial services thanks to advances in information technology have given birth to what is known as Financial Technology (Fintech). Various types of technology-based innovative financial business models are growing rapidly around the world, including Indonesia [1].

Technology-based financial services have the potential to influence people's transaction habits to become more practical and effective. This causes technology-based financial services to have the potential to affect economic growth, especially in Indonesia. Most of Financial Technology companies in Indonesia are Online based. They have an office but they are very Friendly to the Control of Agrarian Resources. They don't use big amounts of land, they don't use gas and chemical as industrial companies, and they are very eco-friendly which is their work based on the internet. Bizshare is one of the largest crowdfunding company in Indonesia [2]. So far, until March 2022, there are only 7 (Seven) companies in Indonesia that are officially registered and supervised by the Financial These are the legal Equilty Companies in Indonesia, Santara, Bizhare, Crowdana, LandX, Dana Saham, SHAFIQ, and FundEx.

Crowdfunding services or CrowdFunding is a form of cooperation to raise money in support of businesses initiated by individuals or organizations. There are 4 (four) types of crowdfunding services, one of 4, which is information technology-based stock offerings or Equity CrowdFunding. Regarding Article 1 point 1 of the Regulation of the Financial Services Authority of the Republic of Indonesia No. 37/POJK.04/2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings (Equity Crowdfunding) which reads "Crowdfunding Services Through Information Technology Based Stock Offering (Equity Crowd Funding)" Everyone, here in after referred to as Crowdfunding Service, is the organization of a transparent stock offering service that is carried out by publishers to sell sales of electronically accessible securities on a direct basis. In connection with the rapidly increasing growth of startup companies domiciled in Indonesia, funding schemes based on information technology-based stock offerings or Equity Crowd Funding are very suitable for startup companies to use to obtain capital or capital as startups [3].

The need for regulation of the principle of openness in the implementation of the ECF is an urgent matter, which has implications for the weak guarantee of legal protection for ECF investors. So far, legal protection for ECF investors is still scattered in various laws and regulations. Meanwhile, technical regulations related to investor protection [4].

In the Financial Services Authority Regulation Number 37/POJK.04/2018 there is no article that regulates legal protection between the Operator and the issuer against investors. Only the agreement between the organizer and the issuer is made under Notary Public deed, this is stated in article 44 of the Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Share Offerings. This is as explained in Article 44 paragraph (1) of the

Financial Services Authority Regulation Number 37/POJK.04/2018 Regarding Crowdfunding Services Through Information Technology-Based Stock Offerings which states that [5]: “Furthermore, in paragraph (2) it is also explained that: “The deed as referred to in paragraph (1) can be in the form of a notarial deed.” Meanwhile, Article 45 paragraph (3) of the Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Offerings only mentions that the agreement (Equity Crowdfunding) only discusses the agreement between the organizers and the financier. between the operator and the investor must be in a standard form and determined by law such as the agreement between the operator and the issuer which is regulated in the provisions of article 44 of the Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Share Offerings. Article 44 paragraph (3) Financial Services Authority Regulation Number 37/POJK.04/2018 Concerning Crowdfunding Services Through Information Technology-Based Stock Offerings which states that: “Deeds, as referred to in paragraph (1) may be in the form of Electronic Documents.” Financial Services Authority Regulation Number 37/POJK.04/2018 Regarding Crowdfunding Services Through Information Technology-Based Stock Offerings does not mention guarantees of legal protection for investors [6].

## 2 Method

This research uses normative legal research. This normative juridical research is carried out by taking an inventory of laws and regulations, concepts/theories, and legal principles [7]. This type of normative juridical research is used by the author with the aim of filling the legal vacuum related to legal protection for investors in crowdfunding activities or called equity crowdfunding in the event of a risk of loss in the form of fraud due to the absence of legal rules and terms and conditions. of services that clearly protect investors. The research approach used by the author is a statutory approach, this statutory approach is used to find the continuity of legislation both vertically and horizontally, in this legal research, namely between legal regulations in the form of *Burgerlijk Wetboek*, Law consumer protection, as well as the POJK, as well as a conceptual approach, this approach is important because an understanding of the views/doctrines that develop in legal science can be the basis for building legal arguments when resolving legal issues at hand. This legal research uses analytical techniques in the form of systematic interpretation. This interpretation is used to analyze legal provisions regarding equity crowdfunding services in the event of Fraud Risk, especially legal protection for investors in equity crowdfunding services in the event of Fraud Risk.

## 3 Results and Discussion

The emergence of economic inequality and social inequality that leads to problems of legal certainty for the community. This failure began with the emergence of a welfare paradigm, which promised prosperity and justice, and tended to see the people as objects of development. In fact, in the implementation of welfare-oriented development it is still inherent that the people are seen as the object of development, not as the subject

of development. This causes people to become very dependent on the government in protecting, saving, and improving their lives. This will weaken the people's fighting power in solving their problems or fostering participation in sustainable development. Green economy development principles are based on harmonizing economic with the achievement of medium and long term climate change mitigation and sustainability goals [8]. In an effort to respond to the threat of a recession in 2023, the antidote that can be offered is the Green Economy. The green economy is defined as an environmentally friendly economy for the community [9].

Green Economy offers a development strategy that does not have to cause conflict between economic development goals, social goals and environmental preservation. Currently, Indonesia is taking concrete and important steps towards implementing the Green Economy. The core of the Green Economy principle has been mainstreamed into the National Long Term Development Plan. Development in accordance with Law Number 32 of 2009 concerning Environmental Protection and Management which is also a strategic start in achieving safe environmental management without sacrificing economic growth. The concept of sustainable development is the result of a growing awareness of the global relationship between increasing environmental problems, socio-economic problems related to poverty and inequality, and concerns about a healthy future for humanity. It links economic and social environmental issues [10].

The concept of green economy can be interpreted as a form of environment-level economy in which there is alignment between development and economic development without disturbing the environment by always prioritizing the principle of *sustainable development* (prolonged development). The concept of green economy is used as an operational standard or guideline in achieving progress in environmental economics as a pillar of the implementation of sustainable development by leading to a low-carbon and green economy [11].

Discussions about the economy and the environment cannot be separated. Developing a conventional economy will likely degrade the environment, considering the environment is one of the factors of production to be processed. In fact, ideal development cannot be separated from environmental balance so as to give birth to the concept of environmentally sound development, sustainable development and so on. Maintaining environmental balance in the economy is increasingly being discussed. The expected results of the Green economy include the occurrence of green growth. Green growth theory provides space for policy makers to form a barrier between economic growth and pollution. Meanwhile, green growth cannot be separated from sustainable development. The determining factors for creating green growth are population size, level of economic development, technological innovation, industrial structure, urbanization, environmental regulation and FDI. Advanced economies are increasingly being forced to act to mitigate climate change and reduce the impact of human activities on the environment. The main strategy promoted by The Organization for Economic Co-operation and Development (OECD) and other international organizations is green growth. The main principle of green growth is the ability of science and technology to allow the economy to grow without destroying the environment [12].

Green finance is a pattern of integrating environmental protection with economic benefits, meaning that financial distribution in the money market includes green or environmentally friendly elements in transactions. Several aspects of green finance are green credit, green insurance, green securities, carbon finance and the establishment of a green financial system. Green finance, in line with green investment. Corporate green finance plays an important role for sustainable development. The important thing to develop green growth related to investment is done by building infrastructure for green investment, difficulties in approaching funding for green investment activities, incentives to access capital for green investment, understanding of corporate green investment. Green investment is defined as investment that implements energy efficiency and efforts to accelerate the development of renewable energy sources from alternative sources. Currently the role of the state with an investment pattern to save nature is increasing, the instruments used are through subsidies and tax incentives. Thus, there are several investment aspects that have the opportunity to be developed in green investment, namely: forest sector, Eco-tourism, water resources, green construction, green transport, energy sector, industrial production, green fisheries, and agriculture [13].

The definition of law is to protect the interests of individuals by distributing power to them to act in their interests. In this case, the interest is part of the claim because it contains witness and protection factors. Legal protection is an activity to protect a person in accordance with applicable values or rules from actions that are not in accordance with the rule of law which aims to realize the goals of justice, order and peace in one's life [14]. Therefore, it is necessary to have a legal arrangement in order to provide legal protection for investors in information technology-based stock offering services in the event of a risk of fraud, including the following:

### **3.1 Protection Arrangements for Investors Through the Role of OJK**

The emergence of equity crowdfunding services in Indonesia is predicted to facilitate the success of funding effectively other than conventional methods. Social networks and online platforms will create new opportunities to raise funds for businesses and enable nonprofessional investors to place their funds without the use of financial intermediary systems. Whereas with the service in the form of equity crowdfunding, new opportunities can be created to obtain funds in business activities and can involve unaccredited investors to enter their capital without financial system intermediaries. The obligation of the issuer who offers shares through the equity crowdfunding service is to provide dividends if the company has made a profit [15]. In addition, as an equity crowdfunding service provider, it is also obligatory to maintain the confidentiality of data from these investors. OJK as an institution that has the authority to supervise the implementation of equity crowdfunding provides protection measures for parties involved in fintech, one of which is investors as parties in entering capital into the platform.

OJK has accommodated the protection that can be given to investors through article 35 which among others requires issuers as companies offering shares through the equity crowdfunding platform to submit documents or inform the main risks faced by issuers and the risk of possible illiquid shares offered to be submitted to investors. through the organizer. So it is hoped that investors will have clear information regarding the shares to be purchased. Furthermore, OJK stipulates that providers and users of equity

crowdfunding services are required to maintain the confidentiality of the data contained in the platform, both information data regarding share issuers and data related to investors [16]. Operators are also required to provide a security system, all security systems required by OJK are inseparable from efforts to provide protection for anyone who uses the equity crowdfunding platform in financial transactions. Given that an investor's profit in the form of dividend distribution depends on the success rate of the issuer whose shares are purchased [17]. So that it is possible for investors not to get dividends if the issuing company does not experience profits.

OJK provides an opportunity for operators to provide secondary trading facilities. In addition, there is also a risk of dilution of share ownership because the issuer may offer shares like other rights issue schemes to the public, without offering them to existing shareholders. Another risk is the operational failure of the organizers even though they must have a safe and reliable system according to the Information and Electronic Transactions Act (In addition, there is a risk of inappropriate information and the quality of the information provided by the issuer to the public. This is because the report SAK-ETAP-based non-audited finance. Due to these risks, the role of the OJK in supervising the implementation of equity crowdfunding in Indonesia is very important [18]. The OJK has provided regulations that contain several important points in order to provide protection to investors. As an institution that has the authority to grant permits to Fintech providers, the OJK implements a Regulatory Sandbox for every Fintech provider company that wants to register for licensing. Through the Regulatory Sandbox, the OJK will conduct tests on these fintech companies, whether or not permission is granted. So with the Regulatory Sandbox, the role of OJK is getting stronger in preventing the implementation of fintech, the type of equity crowdfunding, which is detrimental to those who use it, be it, publishers or investors. The protection of investors in the equity crowdfunding platform is fully under the supervision of the OJK [19].

### **3.2 Protection Arrangements for Investors Through the Role of Investors**

- a. Operators are required to apply the basic principles of User protection, namely: transparency, fair treatment, reliability, confidentiality and data security; and resolution of User disputes in a simple, fast, and affordable way. This article explains that transactions carried out in ECF services must be transparent so as to create a fair climate for all investors. Personal data protection is also something that must be done so that investors feel safe in investing in the services provided by ECF;
- b. The Operator must facilitate and/or convey the latest information related to the Services provided by the ECF which is carried out correctly, honestly, clearly, and not misleadingly. As stated in the information, it must be placed on the Operator's website;
- c. The Operator is obliged to convey information to the User regarding the acceptance, postponement, or rejection of the Crowdfunding Service application;
- d. The Operator must use simple terms, phrases, and/or sentences in Indonesian which are easy to read and understand by Users in each Electronic Document. Indonesian in the document is juxtaposed with other languages. In the event that there is a difference in interpretation and/or information presented in another language with

- that presented in Indonesian, the interpretation and/or information used as a reference is the interpretation and/or information provided using the Indonesian language;
- e. Organizers are required to assist in the implementation of activities aimed at increasing state financial literacy and inclusion;
  - f. The Operator must write down and/or mention in every service offer or promotion consisting of: the name and/or logo of the Operator; and, a statement that the Provider is registered and supervised by the Financial Services Authority (OJK);
  - g. In the matter of implementing a standard agreement, the standard agreement must be prepared in accordance with the provisions of the legislation. The standard agreement is prohibited: “stating the transfer of responsibility or obligations of the Operator to the User, and stating that the User is subject to new, additional, continued and/or changes made unilaterally by the Operator during the period of using Crowdfunding Services by the User [20].”

### 3.3 Protection Arrangements for Investors Through the Secondary Market

A Secondary Market is a market where investors can buy and sell securities after the securities are listed on the stock exchange or securities that have been issued in the Primary Market (hereinafter referred to as IPO). In the ECF system itself, there is no term IPO, this term is replaced by the name of a public offering. IPO is an Initial Public Offering (hereinafter referred to as IPO) is the sale of shares by a company for the first time. In this initial sale, the company will receive cash and profits from the difference between the nominal value of the shares and the stock price on the primary market. Actually, what is the difference between IPO and Public Offering in ECF. Although there are differences between equity crowdfunding and IPOs, in principle both have similarities, among others: “a source of financing by selling company shares (equity), complying with the principle of disclosure of information about financial conditions in the form of financial reports (financial reports) and reports on the use of proceeds from the offering. shares, recording information on shareholders (Investors/Investors) at the custodian [21].”

The ECF Public Offering is made easier because it is intended for startups and MSMEs as issuers who are looking for capital without incurring debt. Then the price of offering shares is made cheaper and accredited and unaccredited investors are also allowed to make share purchase transactions [22]. Even so that the secondary market will be held as soon as possible by the organizers, it is also intended for the benefit of users, especially investors to make it easier to sell shares that have been purchased by the investor market. The Operator may operate a system for investors to transact shares of the Issuer that have been sold through the ECF Service it operates. So that share transactions can only be carried out between Investors registered with the Operator. The secondary market system can facilitate fair prices as a guide for sellers and buyers; and organize a communication system for Users that can be used as a communication tool between Users to make transactions to buy or sell shares [23].

According to Satjipto Rahardjo’s concept, the law protects a person’s interests by allocating power to him to act in a measurable way in his interests. Interests are the target of rights because rights contain elements of protection and recognition. So, it can



be concluded that legal protection is an activity for maintain or maintain the community in order to achieve justice. Then legal protection is constructed as [24];

- a) In the form of service, this service is provided by law enforcement officers and security forces,
- b) Protected subjects

Meanwhile, in the opinion of Phillipus M. Hadjon, that legal protection for the people is a preventive and repressive government action. Preventive legal protection aims to prevent disputes from occurring, which directs the government's actions to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes, including handling them in the judiciary [25]. Legal protection is an action or effort to protect society from arbitrary actions carried out by authorities, not by the rule of law to create order and tranquility that allows humans to enjoy their dignity as human beings. Legal protection will not materialize if justice has not been upheld [26].

## 4 Conclusion

Legal protection for investors in crowdfunding services or equity crowdfunding can be done by making new legal provisions in the future related to the role of the Financial Services Authority in terms of providing legal protection to investors, the role of the organizers by making rules that regulate: Operators are required to apply the basic principles of protection Users are: transparency, fair treatment, reliability, confidentiality and data security; and User dispute resolution in a simple, fast, and affordable way. The Operator must facilitate or convey the latest information regarding the Services provided by the ECF which is carried out correctly, honestly, clearly and not misleadingly. The Operator is obliged to convey information to the User regarding the acceptance, postponement, rejection of the Crowdfunding Service application. The Operator must use simple terms, phrases or sentences in Indonesian that are easy to read and understand by Users in each Electronic Document, the Operator must assist in the implementation of activities aimed at increasing financial literacy and inclusion of the state, the Operator must write down and/or state in every service offer or promotion consisting of: the name and/or logo of the Operator; and, a statement that the Provider is registered and supervised by the Financial Services Authority (OJK) agency, and in the case of the implementation using a standard agreement, the standard agreement must be prepared in accordance with the provisions of the applicable laws and regulations, or by making legal rules related to the availability secondary market.

**Acknowledgement.** The author would like to express the deepest gratitude to my team who helps writing this manuscript, and also my institution University of Brawijaya.



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