Legal Protection of UMKM in Indonesia in Relation to the Legality of Securities Crowdfunding

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ABSTRACT
Seeing the potential of UMKM to support the national economy, the Indonesian government has begun to shift its focus to empowering UMKM. The problem that is mushrooming in the implementation of UMKM is regarding capital. This was made worse by the COVID-19 outbreak in 2020 which made it difficult for UMKM to obtain capital. Along with the recovery of UMKM in Indonesia after COVID-19, the Indonesian government has issued various stimuli. One of them is by issuing Financial Services Authority Regulation Number 57/POJK.04/2020 of 2020 which essentially regulates Securities Crowdfunding ("SCF"). These arrangements have been updated to accelerate the empowerment of UMKM in Indonesia through Financial Services Authority Regulation Number 16/POJK.04/2021 of 2021. This research uses normative juridical methods and is based on secondary data. This research seeks to analyze how the financing model works and the implementation of regulations for implementing securities crowdfunding in supporting UMKM. The results of this research show that the regulatory role of SCF has supported MSME activities in Indonesia through various conveniences inherent in it.
INTRODUCTION
Nowadays, Crowdfunding has become a promising funding alternative for UMKM. Crowdfunding is a financing system that uses a joint venture concept. In general, there are 4 (four) types of Crowdfunding schemes, namely: (1) Donation-based crowdfunding is a financing scheme aimed at non-profit activities such as in the humanitarian, health and environmental fields; (2) Reward-based crowdfunding is carried out to finance a product or project which will later provide rewards to investors, for example in the form of vouchers, product discounts, etc.; (3) Loan-based crowdfunding is an example of crowdfunding that lends funds to borrowers and will receive interest or returns from the borrower, for example P2P Lending; and (4) Equity-based crowdfunding, namely raising funds from investors which are converted into shares with returns in the form of dividends received within a certain period of time.

Crowdfunding is only implemented through Equity Crowdfunding ("ECF"), which is an example of Equity-based crowdfunding which only offers securities in the form of shares, however, the limited types of companies that can register are one of the reasons why ECF was expanded to SCF. Previously, the ECF organizers only allowed companies in the form of limited liability companies ("PT") and individuals to register, but now by using the SCF they have expanded the company form to include CVs, firms, to civil partnerships. Apart from that, the types of securities offered are not only stock securities, but also sukuk and bonds.

LITERATURE REVIEW
This expansion is also supported by the OJK which issued a new legal umbrella, namely OJK Regulation Number 16/POJK.04/2021 as an amendment to POJK Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services which only regulates crowdfunding stock based.

METHODOLOGY
The method used in this research is normative juridical, namely a type of research method that focuses on literature study of the data obtained based on applicable norms, principles and positive law. According to Soerjono Soekanto, the scope of normative juridical research consists of 5 (five) structures, namely: (1) research to discover legal principles/rules; (2) research on legal instruments (forming legal systematics) collected in statutory regulations; (3) research on legal synchronization/consistency both horizontally and vertically; (4) legal history; and (5) comparative law.

RESULT AND DISCUSSION
SCF based on POJK SCF is a securities offering service carried out by issuers by selling securities directly to investors through an open electronic system network. The purpose of purchasing securities is to finance a project owned by the Issuer. The project in question is a form of work or activity that produces a product, whether goods/services/others, whether existing or which
will exist in the future, this also includes investment activities that have been
determined to be the basis for the issuance of securities. 45 Each project in the
framework for funding by project investors must have economic value benefits,
both for the Project from the Issuer itself or for Projects ordered by other parties.
Furthermore, POJK SCF regulates the parties involved in organizing SCF,

1. Organizer/SCF

As previously explained, SCF is a security offering
service which has the function of selling securities issued by the Issuer
directly to Investors with the assistance of the Custodian Bank. SCF is
carried out through an electronic system that has obtained an electronic
registration certificate issued by the Ministry of Communication and
Information. This is an obligation that must be fulfilled by every SCF that
carries out business in Indonesia. Apart from that, SCF must also obtain
prior permission from the Financial Services Authority ("OJK"). 48 SCF in
Indonesia is carried out by Indonesian legal entities that provide,
manage and operate SCF service. The Indonesian legal entity can be in
the form of a Limited Liability Company or Cooperative. The legal entity
can be owned by Indonesian and/or foreign citizens as well as
Indonesian and/or foreign legal entities. Foreign ownership in the SCF is
limited to a maximum of 49% (forty nine percent). SCF, the legal entity is
required to have paid-up capital of at least IDR 2,500,000,000 when
applying for the licensing process.

2. Issuer

Issuer is a legal entity or other business entity domiciled in
Indonesia, which issues securities through crowdfunding services. The
issuer can be a public company according to the Capital Markets Law
with the criteria of having paid-up capital of more than IDR
30,000,000,000.00 and/or shareholders of more than 300 people. POJK
SCF regulates parties that are prohibited from becoming publishers,
namely: (i) business entities controlled either directly or indirectly by a
business group or conglomerate; (ii) public company or public
subsidiary; and (iii) business entities with net assets of more than IDR
10,000,000,000.00 (ten billion rupiah), excluding land and buildings
where the business is located. 53 Every Issuer that will issue securities
will first check all legalities and capabilities by the Organizer.

3. Investors

Investors are parties who purchase the Issuer's securities through
crowdfunding services. 55 Investors can come from individuals, legal
entities, and/or business entities. In this case, investors will channel their
money in the form of investments in securities issued by the issuer and
hope to make a profit from the funds they distribute. Investors who
purchase securities through SCF are required to comply with the
following:

➢ Have a securities account at a Custodian Bank specifically for storing
  securities and/or funds through crowdfunding services;
➢ Has the ability to purchase the Issuer's securities;
➢ Meet the investor's criteria and securities purchase limits.
Investors have criteria in order to become funders in the SCF with criteria and purchase limits. The securities instruments that can be issued by the Issuer in the SCF are classified in more detail into 3 categories, namely as follows:

1. Equity Securities

Equity securities can be in the form of shares, collective investment participation units, futures contracts on securities, and/or any derivatives of securities. For example, if Equity Securities are shares, then the investment funds provided by the Investor for the shares of the Issuer who has disposed of their shares will become the property of the Investor. Investors who purchase Equity Securities will become shareholders of the issuing company and will receive the inherent rights of those shareholders, one of which is dividends. If the securities issued are of the equity type, namely shares, the Issuer is required to register ownership of the Investor's shares in the shareholder register.

2. Debt Securities

In particular, in the case of SCF serving debt securities or Sukuk offerings by the Issuer, the Organizer is obliged to act as the Investor's proxy. When issuing debt securities, you must comply with the following provisions:

- Issued in Rupiah currency;
- Has a maximum maturity of 2 years;
- Has a practice that is the basis for the issuance of debt securities/sukuk;
- Cannot be traded;
- Payment of interest, principal, margin, yield, profit sharing ratio, and/or yield can be made periodically or at maturity;
- Can be repaid early before maturity, as long as it obtains approval from the majority of debt/sukuk securities holders present at the GMS.

The form of debt securities can be as follows:

- Debt acknowledgment letter,
- Proof of debt, and
- Commercial securities. In the case of an investor purchasing debt securities, the investor will act as a creditor of the issuer who acts as a debtor.

3. Sukuk

Sukuk are sharia-based securities which can take the form of proof of ownership or certificates. Where the securities are of the same value and are syuyu' or represent an undivided or inseparable part of the underlying asset. 69 Sukuk have similarities with debt securities, namely that in the issuance process a review must be carried out of the legality of the project that will be the basis for the issuance.

The SCF organizer is obliged to ensure that the sukuk issued have received a statement of sharia conformity from a team of sharia experts who have a capital market sharia expert license. If the SCF offers offerings of debt securities or sukuk by the issuer, the SCF is obliged to act as the investor's
proxy. The issuance of sukuk has provisions that must be adhered to, the same as the provisions for debt securities as explained in the explanation of debt securities. Other general provisions related to SCF include:

1. The maximum limit for raising funds through SCF by each Issuer within a 12-month period is a maximum of IDR 10 billion;
2. The maximum securities offering period is 45 days; And
3. Capital market or secondary market transactions can only be carried out through the SCF Operator platform and are limited to a maximum of 2 times a year.

Every SCF in Indonesia is obliged to comply with all provisions in the form of obligations or prohibitions contained in the POJK SCF. Furthermore, every Crowdfunder is required to submit reports to the OJK including: semi-annual reports, annual reports and incidental reports.

CONCLUSIONS AND RECOMMENDATIONS

SCF is an open electronic network-based securities offering service carried out by an issuer through direct sales to investors and financiers. SCF involves 3 (three) parties, namely: Issuer, Organizer, and Investor. The crowdfunding process through SCF lasts for 45 days, during which UMKM verified by the Organizer can offer securities in the nature of equity, debt or sukuk. Next, investors invest their funds and get profits in the form of dividends, interest or profit sharing from the securities they have purchased. SCF as an alternative investment option is useful for improving the investment climate and quality for UMKM in Indonesia through the role of Organizers and Investors who purchase securities from UMKM/Issuers. Apart from that, the presence of SCF can be a solution to the challenges faced by UMKM in Indonesia, especially when the COVID-19 pandemic hit where UMKM in Indonesia had many difficulties, one of which was financial or funding difficulties. The presence of SCF helps UMKM in terms of making it easier for UMKM to get capital opportunities for his business. This happened thanks to the collaboration carried out by the Government, Investors, Operators and UMKM in simplifying licensing and expanding the types of securities offered. The success of SCF for Issuers can be supported by several factors, namely minimum capital that can have affordable value for Investors, as well as projected investment yields and total profits that can enable an increase in the number of Investors. Each party needs to be aware that in the investment process, which in this case is SCF, there are risks which include:

1. Investment risk;
2. Liquidity risk;
3. Risk of electronic system failure;
4. Business risk;
5. Risk of default on debt securities;
6. Risk of dilution and/or scarcity of dividend distribution.
FURTHER RESEARCH
This research still has limitations so further research needs to be done on this topic “Legal Protection of UMKM in Indonesia in Relation to the Legality of Securities Crowdfunding.”

REFERENCES


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