

**THE REGULATION OF DISCLOSURE PRINCIPLE IN EQUITY
CROWDFUNDING (BETWEEN INDONESIA AND UNITED STATES OF
AMERICA)**

A BACHELOR DEGREE THESIS



by:

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INTERNATIONAL PROGRAM

FACULTY OF LAW

UNIVERSITAS ISLAM INDONESIA

2021

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AMERICA)**

A BACHELOR DEGREE THESIS

**Presented as a Partial Fulfillment of the Requirements to Obtain Bachelor
Degree at the Faculty of Law, Universitas Islam Indonesia, Yogyakarta**



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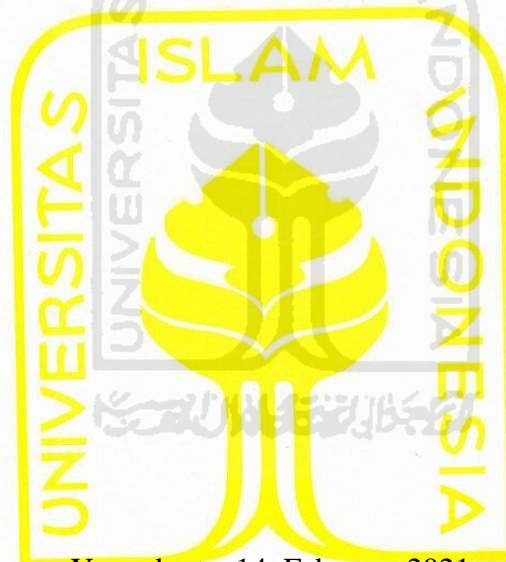
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AMERICA)**

This bachelor thesis has been proven and declared acceptable by the Thesis Language Advisor to be examined by the Board of Examiners at the Thesis Examination



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dari pernyataan tersebut. Saya juga akan bersikap kooperatif untuk hadir, menjawab, membuktikan melakukan pembelaan terhadap hak-hak saya, di depan “Majelis” atau “Tim” Fakultas Hukum Universitas Islam Indonesia yang ditunjuk oleh pimpinan Fakultas , apabila tanda-tanda plagiat disinyalir ada/terjadi pada karya ilmiah saya ini oleh pihak Fakultas Hukum UII.

Demikian surat pernyataan ini saya buat dengan sebenar-benarnya, dalam kondisi sehat jasmani dan rohani, dengan sadar serta tidak ada tekanan dalam bentuk apapun dan oleh siapapun.

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MOTTO

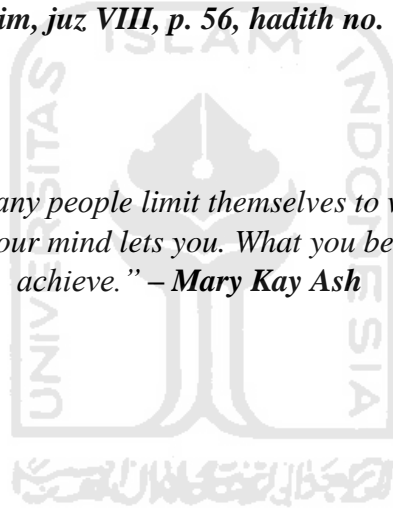
الْمُؤْمِنُ الْقَوِيُّ خَيْرٌ وَأَحَبُّ إِلَى اللَّهِ مِنَ الْمُؤْمِنِ الضَّعِيفِ وَفِي كُلِّ خَيْرٍ احْرَصْ عَلَى مَا يَنْفَعُكَ وَاسْتَعِنَ بِاللَّهِ
وَلَا تَعْجِزْ وَإِنْ أَصَابَكَ شَيْءٌ فَلَا تَقُلْ لَوْ أَنِّي فَعَلْتُ كَذَا وَكَذَا وَلَكِنْ قُلْ قَدَرُ اللَّهِ وَمَا شَاءَ فَعَلَ فَإِنَّ لَوْ
تَفْتَحُ عَمَلَ الشَّيْطَانِ

A strong believer is better and more loved by Allah than a weak believer. In each one there is indeed goodness. Really achieve what is useful for you, ask Allah for help and do not become a weak person. If any misfortune comes upon you, then do not say; "If I had done this and that, it would not have become such and such."

But say it; 'This is the destiny of Allah and what He wills He will certainly do. Because in fact the phrase 'lau' (if) will pave the way for the temptation of Satan.

" – Hadith from Muslim from Abu Hurairah radhiyallâhu 'anhu, Shahîh Muslim, juz VIII, p. 56, hadith no. 694.

"Don't limit yourself. Many people limit themselves to what they think they can do. You can go as far as your mind lets you. What you believe, remember, you can achieve." – Mary Kay Ash



DEDICATIONS

I specially dedicate this thesis to myself,
who have struggled to complete this thesis and prove to the people who always underestimate me for finish this study. I also dedicate this thesis to MSME actors to be more developed, and for policymakers hope you always make rational rules and to help the progress of MSMEs in Indonesia.



*I also dedicate this thesis to
Allah SWT,
Prophet Muhammad SAW,
My beloved parents especially my mother Hj. Fatimah,
My family, my friends, my teachers, my university, and all the youth of the nation's
future generations.*

FOREWORDS

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In the preparation of this thesis, the researcher is fully aware that this thesis is still far from perfect because the experience and knowledge of the researcher limited. Therefore, the writer hopes that criticism and suggestions from all parties are for the creation of better scientific works for the future. This thesis will not be completed without the help of a number of parties, so allow the researcher with all respect and humility to thank:

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Finally, I hope that what the researcher tries and does will get the pleasure of Allah SWT and goodness on His side, and can give the benefit for everyone. Thank you.

Yogyakarta, 8 February 2021

The Researcher,

Syarifah Zahra Al Haddar

TABLE OF CONTENT

TITLE PAGE	i
PAGE OF APPROVAL	iii
ORIGINALITY STATEMENT	vi
CURICULUM VITAE	viii
MOTTO	ix
DEDICATIONS	x
FOREWORDS	xi
TABLE OF CONTENT	xiii
TABLE LIST	xvi
ABSTRACT	xvii
CHAPTER I INTRODUCTION	1
A. Background of Study	1
B. Problem Formulation	4
C. Research Objectives	4
D. Originality of Research	5
E. Literature Review	7
1. Overview of Equity Crowdfunding.....	7
2. Overview of The Disclosure Principle.....	9
3. Overview of IPO (<i>Initial Public Offering</i>) in the Capital Market.....	10
F. Research Methods	12
1. Types of Research.....	12
2. Method Approach	12
3. Object of Research.....	14
4. Source of Data.....	14
5. Data Collection Method.....	15
6. Data analysis	15
G. Operational Definitions	15
H. Structure of Writing	16

CHAPTER II GENERAL REVIEW OF THE DISCLOSURE PRINCIPLES IN CAPITAL MARKET, EQUITY CROWDFUNDING AND INVESTOR PROTECTION.....	18
A. General Review of The Principles in Capital Market.....	18
1. Terms and Understanding of the Disclosure Principle	18
2. The Regulation of Disclosure principle in Capital Market Law in Indonesia ..	20
B. General Review of <i>Equity Crowdfunding</i>.....	26
1. Terms and Understanding of <i>Equity Crowdfunding</i>	26
2. History of Equity Crowdfunding	28
3. The Differences and Similarities between <i>Equity Crowdfunding</i> and <i>Initial Public Offering</i> (IPO)	33
4. Equity Crowdfunding in Indonesia	37
5. <i>Equity Crowdfunding</i> in United States of America.....	41
C. General Review of Investor Protection	48
D. General Review of Equity Crowdfunding in an Islamic Perspective	53
CHAPTER III THE COMPARISON OF DISCLOSURE PRINCIPLES EQUITY CROWDFUNDING BETWEEN INDONESIA AND THE UNITED STATES OF AMERICA	57
A. The Regulation of Disclosure Principles Equity Crowdfunding implementation in Indonesia	57
B. The Regulation of Disclosure Principles Equity Crowdfunding implementation in United States of America	61
C. The Similarities in the Implementation of Equity Crowdfunding between Indonesia and the United States and the reasons for differences in the Disclosure Principle Regulation between Indonesia and the United States.....	65
D. The Comparison of Disclosure Principles Equity Crowdfunding Regulation between Indonesia and United States of America.	69
E. The Implications of Disclosure Principle Regulation of Equity Crowdfunding for Organizer (Platform) and Investors	80
CHAPTER IV.....	81
CONCLUSION.....	81
A. Conclusion	81

B. Suggestions	81
BIBLIOGRAPHY	83
APPENDIX	94



TABLE LIST

Table 2.1 Differences between ECF and IPO	33
Table 2.2 Regulation of ECF disclosure principles.....	48
Table 3.1 The Similarities points Equity Crowdfunding between United States and Indonesia	65
Table 3.2 The Comparison of United States and Indonesia ECF Disclosure Regulation	69



ABSTRACT

Technological development greatly makes it easy for users to get benefit from it, including in financial technology (FinTech), which has also led to the innovation of Equity Crowdfunding (ECF). ECF is a new financing method seeking funding for MSMEs business development. In some developed countries such as the United States, the ECF has a systematic regulation of the disclosure principle.

This research focuses on the comparison of the disclosure principle between the implementation of Equity Crowdfunding in Indonesia and the United States. This research method is based on normative legal research or library research.

These rules are intended to protect the process of organizing the ECF legally and professionally. In Indonesia, the ECF has just developed and has undergone two regulatory changes, from POJK No. 37 2018 to POJK No. 57 of 2020. The regulation of the disclosure principle in Indonesia is still not clear enough compared to the United States which is based on Title III JOBS Acts 2012.

Thus, this study will explain the comparison between the two countries which are Indonesia and the United States, regarding the regulation of the disclosure principle in Equity Crowdfunding on the basis of law, supervisory institutions, prospectus/Bidding Documents, the minimum amount of fundraising bid, financial reports, supporting professions, and investor protection, bid, financial reports, supporting professions, and investor protection.

Keywords: Regulation, Disclosure Principle, Equity Crowdfunding, Comparison, Indonesia, United States of America

CHAPTER I

INTRODUCTION

A. Background of Study

Equity crowdfunding is a new financing method that differs from conventional financial systems because it considers a crowdfunding model in the form of equity.¹ It is considered an innovative new financial model that explains fundraising transparency and has adjustments for minimum capital and profits directed at various groups of society². The term emphasizes "*tapping the crowd*" system,³ which means involving multiple parties in crowdfunding, not only professional investors but also entrepreneurs, as a promising tool for financing innovative businesses.^{4,5} The ECF ecosystem works not only for business actors seeking capital but also through the organizer or platform owner as an intermediary that functions to connect potential investors and companies or issuers.⁶

Equity Crowdfunding (ECF) itself has the same concept as shares, where the money deposited will become equity or a share of ownership in the company in

¹ Arash Gholamzadeh Nasrabadi, "Equity Crowdfunding: Beyond Financial Innovation," in *Crowdfunding in Europe* (Springer, 2016), 201–208.

² Kazem Mochkabad Khoramchahi, *Equity Crowdfunding Essays about the Scientific Development and the Investor Perspective* (Wuppertal, Germany Springer: Springer, 2020).

³ Paul Belleflamme, Thomas Lambert, and Armin Schwienbacher, "Crowdfunding: Tapping the Right Crowd," *Journal of business venturing* 29, no. 5 (2014): 585–609.

⁴ Gerrit KC Ahlers, Douglas Cumming, Christina Günther, and Denis Schweizer, "Signaling in Equity Crowdfunding," *Entrepreneurship theory and practice* 39, no. 4 (2015): 955–980.

⁵ Jörn Block, Lars Hornuf, and Alexandra Moritz, "Which Updates during an Equity Crowdfunding Campaign Increase Crowd Participation?," *Small Business Economics* 50, no. 1 (2018): 3–27.

⁶ Jonas Löher, "The Interaction of Equity Crowdfunding Platforms and Ventures: An Analysis of the Preselection Process," *Venture Capital* 19, no. 1–2 (2017): 51–74.

exchange for dividends.⁷ The ideal ECF should place potential investment objects open to crowdfunding investors, meaning that each platform must have the courage to evaluate its business first, especially based on the business plan, short presentations, videos, and project descriptions provided, including providing information boards on investment decisions and transparency.⁸ The ECF opens up new ways of interacting between the financial system and the social space involving a new technological environment with a new socio-economic value system.⁹ In addition, the problem of financing sources is a classic problem that hinders the growth of MSMEs or start-up companies that do not receive financing facilities from the banking sector; apart from difficult conditions, MSMEs players are also hampered by loan interest.¹⁰

In developed countries such as the United States and the United Kingdom, *crowdfunding* is more developed through equity-based and *debt-based* types.¹¹ Investors prefer this system to get a *return* on a project in the form of dividends or interest with the guarantee of the disclosure principle and regulatory certainty. The disclosure principle is one of the guarantees of trust related to legal protection for investors regarding collections from the public.¹²

⁷OJK. *Equity Crowdfunding Jadi Alternatif Permodalan*. <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/20569>, accessed on 15 October 2020, 19.00 WIB.

⁸ Simon Kleinert, Christine Volkmann, and Marc Grünhagen, "Third-Party Signals in Equity Crowdfunding: The Role of Prior Financing," *Small Business Economics* 54, no. 1 (2020): 341–365.

⁹ Dennis Brüntje and Oliver Gajda, *Crowdfunding in Europe: State of the Art in Theory and Practice*. (Springer Science, 2016).

¹⁰ BRI. KUR. <https://bri.co.id/kur>, accessed on 15 October 2020, 18.00 WIB.

¹¹ Dhoni Siamasyah Fadillah Akbar, *Pendanaan Infrastruktur di Indonesia*, in <https://www.kemenkeu.go.id/media/4402/konsep-crowdfunding-untuk-pendanaan-infrastruktur-di-indonesia.pdf> accessed on 15 October 2020, 18.00 WIB.

¹² Nasution Bismar, *Keterbukaan Dalam Pasar Modal*, (Jakarta: National Library, 2001). 13.

The regulation of the disclosure principle of the ECF in Indonesia is inadequate; even in the new OJK regulation regarding ECF / Crowdfunding Services, it no longer mentions the review obligation for ECF organizers to the issuers. However, in the new regulation, issuers are only required to provide Annual Reports which are based on POJK No. 57 of 2020 article 51 paragraph 5, which states in its Annual Report that the Issuer contains information regarding at least:

- a. realization of the use of proceeds from the offering of debt securities or *Sukuk* through Crowdfunding; and
- b. Project development including obstacles, if there are obstacles.

In this regulation, it is explained that ECF activities are the provision of securities offering services by issuers to sell securities directly to investors through an open electronic system network.¹³ ECF is a financial service activity in the capital market sector.¹⁴

Different in the United States of America based on the update *Securities Act of 1933*, the offering and sale of securities must be registered, including additional regulations through the *Title III of Jumpstart Our Business Startups (JOBS) Act of 2012* by adding the *Securities Act* Section 4a paragraph (6) which provides exemptions from certain *crowdfunding* transactions *registration*. Meanwhile, in 2015, this rule began to be adopted as the *Crowdfunding Regulation*, which then every company must fulfill the requirements and licenses to raise capital through the *Crowdfunding Regulation* officially since May 16, 2016¹⁵. The regulations

¹³ POJK No. 57 of 2020, Article. 1 sec. 1.

¹⁴ *Ibid.*, Article 2 sec. 1

¹⁵ United States Crowdfunding Regulation (2015) based on <http://www.sec.gov/rules/final/2015/33-9974.pdf>. Updated March 31, 2017 <https://www.sec.gov/rules/final/2017/33-10332.pdf>. Also in the detailed section of service provider registration regulations

govern the existence of a licensed *broker-dealers* or through a registered online funding portal.

The publication of all these rules is briefly regulated in *Regulation Crowdfunding: A Small Entity Compliance Guide for Issuer* in point 3 regarding *disclosure by issuers which necessarily be applied as the disclosure principle to protect investors*.¹⁶ In addition, these points are made to verify the existence of a project with a risk of failure on a platform used. There is existence of financial reporting requirements based on the number of shares offered and sold based on Crowdfunding Regulations through periodic reporting for 12 months and must involve a Public Accountant. Thus, this study will explain the comparison of the disclosure principle between the implementation of *Equity Crowdfunding* in Indonesia and the United States of America.

B. Problem Formulation

How is the comparison of disclosure principle in equity crowdfunding between Indonesia and the United States of America?

C. Research Objectives

Based on the formulation of the problem above, this research aims to compare the regulation of disclosure principle in equity crowdfunding between Indonesia and the United States of America.

<http://www.sec.gov/divisions/marketreg/tmcompliance/fpregistrationguide.htm>, accessed on 12 October 2020, 18.00 WIB.

¹⁶ US Securities and Exchange Commission, *Regulation Crowdfunding: A Small Entity Compliance Guide for Issuers*, 2020 at <https://www.sec.gov/info/smallbus/secg/rccomplianceguide-051316.htm#3> accessed on 12 October 2020, 18.00 WIB.

D. Originality of Research

A thesis written by the researcher is a legal research entitled "Regulation of Disclosure principle in *Equity Crowdfunding* (A Comparative Study between Indonesia and the United States of America)". This research was conducted by minimizing plagiarism or duplication of research carried out by other studies by classifying several studies with similar topics that the researcher had done. Following are some of the previous studies related to Law, Capital Markets, Disclosure principle and *Equity Based Crowdfunding*.

First, a research journal entitled "Application of Capital Market Law in Stock Offering Activities Using Equity Based Crowdfunding (Comparative Study with Malaysia)", written by Naomi Norita and Deborah Harahap in 2019 from the Faculty of Law, University of Indonesia. The journal raises a comparison between Indonesia and Malaysia in the context of *Equity based Crowdfunding services* and the comparative application of capital market law in it. At the same time, the researcher's research examines more about the regulation of disclosure obligations in the implementation of *equity crowdfunding* between Indonesia and the United States.

Second, the thesis "Regulation of the Disclosure principle Obligations in the Implementation of *Equity Crowdfunding* and Its Implications for Investor Protection", written in 2020 by Rohai Widati from the Faculty of Law, Islamic University of Indonesia. This thesis aims to identify and analyze the regulation of the disclosure principle obligations in the ECF operation and the implications of setting the disclosure principle in the ECF on investor protection. Meanwhile, the

researcher's research examines the regulation of disclosure principle obligations in the implementation of *Equity Crowdfunding* in Indonesia and in the United States.

Third, a journal entitled “Equity-based Crowdfunding: Potential Implications for Small Business Capital”¹⁷ written by Ryan Taylor. Taylor explained that there is a potential gap between companies with large capital and small capital companies. The research took samples from two ECF services named Crowdcube and Sellaband, which have the potential for small companies' capital growth. Meanwhile, the researcher's research only focuses on setting the disclosure principle obligations in the implementation of *Equity Crowdfunding* in the United States and Indonesia.

Finally, a research journal entitled “Should securities regulation promoted equity crowdfunding” by Lars Hornuf and Armin Schwienbacher in 2016¹⁸. This research focuses on the formulation of investor protection regulations related to prospectus and implementation requirements. This was done to minimize losses to small companies and the development of the ECF in the future. Meanwhile, the researcher's research focuses more on the regulation of disclosure principle obligations in the implementation of the *Equity Crowdfunding* in the United States and Indonesia.

¹⁷ Ryan Taylor, *Equity-based Crowdfunding: Potential Implications for Small Business Capital*, 2015, p. 1–8, https://www.mbda.gov/sites/default/files/migrated/files-attachments/Issue-Brief-5-Equity-Based-Crowdfunding_2.pdf

¹⁸ Lars Hornuf and Armin Schwienbacher, “Should securities regulation promote equity crowdfunding?” *Small Business Economics*, Vol. 49, No. 3 (2017): 579–593.

E. Literature Review

1. Overview of Equity Crowdfunding

Equity crowdfunding is a type of *fintech* in Indonesia that is included in the Financial and Investment category. In general, fintech companies engaged in this field cover two fields, namely *crowdfunding* and *peer-to-peer lending* (P2P Lending).¹⁹ P2P Lending facilitates lending of funds, while *crowdfunding* is more focused on the model of raising funds in the form of social fundraising or business development-oriented projects.²⁰

Activities *Crowdfunding* has at least four models, namely *donation-based crowdfunding*, *reward-based crowdfunding*, *lending-based crowdfunding*, and *equity-based crowdfunding*.²¹ While the general definition, ECF is as a part of the offering and sale of shares, which is equity for all investors. This equity is owned by an investor who buys his shares in the company that issues the shares. This kind of bidding process is only possible when there is an organizer or intermediary.²²

¹⁹ Sarwin Kiko Napitupulu, Aldi Firmansyah Rubini, Kurniatul Khasanah, Aryanti Dwi Rachmawati, *Perlindungan Konsumen Pada Fintech Kajian Perlindungan Konsumen Sektor*. (Jakarta : Departemen Perlindungan Konsumen OJK, 2017). p. 28

²⁰ Paramita Prananingtyas, Irawati. *Analisa Yuridis Crowdfunding (Penggalangan Dana) Bagi Pembiayaan Usaha Di Indonesia*, FH: UNDIP. 2018. [online unpublished]. <http://eprints.undip.ac.id/73414/>

²¹ 21 European Commission Joint Research Center Science and Policy Report, *Understanding Crowdfunding and its Regulations, How can Crowdfunding help ICT Innovation*, (Sevilla: European Union, 2015), p. 3.

<https://publications.jrc.ec.europa.eu/repository/bitstream/JRC92482/lbna26992enn.pdf>

²² Nir Vulkan, Thomas Astebro, and Manuel Fernandez Sierra, *Equity crowdfunding: A new phenomenon* in the *Journal of Business Venturing Insights*, Vol. 5 (2016): 37–49, <https://www.sciencedirect.com/science/article/abs/pii/S2352673416300026>

ECF regulations in Indonesia have existed since December 2018 through the OJK, which issued its regulations based on POJK 37/2018²³. In detail, it can be seen in article 1 number 1 POJK No. 37 / POJK.04 / 2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings (*Equity Crowdfunding*). ECF is defined as an issuer direct share offering service to sell shares directly to investors through an open electronic system network. ECF technical requirements are set from the issuer and investor, as well as the operation of an ECF registered with the OJK, including other requirements being registered as an electronic system organizer (platform) at the Ministry of Communication and Information.

The offer of shares at ECF is facilitated by the Organizer (platform) with a total fund raised of a maximum of IDR 10,000,000,000 along with an agreement for ECF activities between the organizer and the issuer as well as an agreement between the investor and the organizer. Meanwhile, in the United States, ECF regulations are based on the 2012 JOBS act (Title III) regulation in the section *Securities Act*.²⁴ The rules in the United States require the disclosure principle in the organizing portal to anticipate risks for investors as well as serve as educational material services on the importance of vigilance in using ECF, including its advantages and disadvantages. An audit for the issuer's operational and spatial results report must be provided

²³ POJK 37/2018

²⁴ *Securities Act* in JOBS act (Title III) 2012

by the organizer to ensure the protection of investors and the public interest to avoid fraud problems.

2. Overview of The Disclosure Principle

The disclosure principle is one of the most important components in the process of organizing the ECF. For potential investors, the disclosure principle allows them to make rational decisions in investing.²⁵ In addition, the disclosure principle becomes the conditions that must be met in terms of holding an ECF, including guaranteeing the right of investors to obtain information and the obligation of organizers to provide and serve information requests openly.²⁶

The principle of disclosure is an information activity that states the existence of transparency and accountability as part of a report on a particular project and aims to increase public trust. The principle is based on transparency and "presumption in favor of disclosure," which means providing information compulsorily, especially if there is no strong reason not to share it.²⁷ This is very important because every disclosure principle can

²⁵ Xuechun Li, Yuehuan Tang, Ningrui Yang, Ruiyao Ren, Haichao Zheng, Haibo Zho. "The value of information disclosure and lead investor in equity-based crowdfunding" *Nankai Business Review International*, Vol. 7, No. 3 (2016): 301–321. <https://www.emerald.com/insight/content/doi/10.1108/NBRI-01-2016-0002/full/html>

²⁶ Benjamin E. Hermalin, Michael S. Weisbach, "Information disclosure and corporate governance" *The Journal of Finance*, Vol. 67, No. 1 (2012): 195–233. <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1540-6261.2011.01710.x>

²⁷ IFC.org, *Information Disclosure*, p. 28–31. https://www.ifc.org/wps/wcm/connect/c2e523cc-c94b-4bdb-b6d7-5d5a35d26b46/PartOne_InformationDisclosure.pdf?MOD=AJPERES&CVID=jkD14uM

affect a company's reputation as well as engaging in information dialogue with stakeholders.

The principle of disclosure also requires the fulfillment of material completeness as a guideline for investing as well as a form of reporting for a certain period of time-based on the immediate basis: on a daily basis and the periodic basis: quarterly or annually.²⁸ This obligation is carried out to ensure full, correct, clear, and timely disclosure principles to maintain investor confidence.²⁹ The process of the ECF disclosure principle is very important because it determines the level of trustworthiness, financial reporting, and minimizes the potential for fraud on ECF-based platforms.³⁰

3. Overview of IPO (*Initial Public Offering*) in the Capital Market

Requirements for the principle of disclosure regarding an IPO (*Initial Public Offering*) or an initial public offering are required as a condition for conducting a public offering for a public company.³¹ IPO in the activity of selling securities is publicly traded on the primary market with the permission of the OJK, which then results in a permit for announcements *prospectus* through the mass media³². *Prospectus* contains detailed information about the

²⁸ Janis Sarra, *Disclosure as Public Policy Instrument in Global Capital Markets*, Hein-Online. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/tlj42§ion=38 p. 877

²⁹ Hamud M. Balfas, *Hukum Pasar Modal Indonesia*, (Jakarta: Tatanusa, 2017), 28

³⁰ Lars Hornuf, Armin Schwienbacher. *Op. Cit.*, p. 579–593.

³¹ Silvio Vismara, “Information cascades among investors in equity crowdfunding”. *Entrepreneurship Theory and Practice*, Vol. 42, No. 3, (2018): 467–497.

³² Yulia Saftiana, Muna Amelia. “Analisis Faktor-Faktor Yang Mempengaruhi Underpricing Penawaran Umum Perdana (Ipo) Di Bursa Efek Jakarta”. *Jurnal Penelitian dan Pengembangan Akuntansi*, Vol. 1 No. 2, (2017): 103-118. <https://repository.unsri.ac.id/16954/>

status and prospects of the company to prospective investors in gnats who know and are interested in buying securities issued by issuers.

A public offering is an activity carried out by an issuer to sell securities to the public based on procedures stipulated in law and its implementing regulations³³. This regulation refers to Market Law No. 8 of 1995 concerning the Capital Market, which explains the securities offered and the rules for public offerings carried out by issuers and obtaining permission from the Financial Services Authority (OJK) to submit a registration of their securities.

IPO activities can only be carried out by public companies with the status of “Tbk” or publicly listed with at least 300 (300) three hundred shareholders and a paid-up capital of at least Rp. 3,000,000,000 (Three billion rupiah) or an amount of capital and shareholders as regulated by a Government Regulation³⁴. This offering goes through a listing or listing process so that it can trade securities from the primary market to the secondary market. Public offering cannot be separated from the issuer's obligation in the process of carrying out the principle of disclosure or the *principal's disclosure* on various aspects, including reporting of company activities³⁵. This reporting is in line with the Company Law for issuers of Article 70 paragraph (1) of the Law No. 8 of 1995 and public companies regulated in Article 73 No. 8 of

³³ Law No. 8 of 1995 concerning the Capital Market.

³⁴ Andika Wijaya, Wida Peace Ananta, *IPO Right Issue Penawaran Umum Obligasi*, (Jakarta: Sinar Grafika, 2018), 5; Munir Fuady, *Hukum Bisnis Dalam Teori dan Praktek*, (Citra Aditya Bakti, Bandung, 1996), 52.

³⁵ Inda Rahadian, *Pokok-Pokok Hukum Pasar Modal Indonesia*, (Yogyakarta: UII Press, 2017),

1995 about Capital Market Law so that public offerings on the capital market can run in an orderly and safe manner in order to increase public confidence in Capital Market activities.

F. Research Methods

Scientific research is based on a research method model through normative legal research or library research.

1. Types of Research

This research type is based on the first three models based on empirical research, normative research, and joint research. Researchers emphasize normative research, which focuses more on literature review on primary and secondary material sources.³⁶

2. Method Approach

The Approach is based on the legal discipline which emphasizes the analysis and explanation of law normatively based on several approaches, including³⁷:

- a) The *statute approach*.

This normative research examines in detail the laws and regulations as the foundation of the main theme of this research.

- b) Conceptual approach (*analytical approach*).

³⁶ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2006), 46.

³⁷ *Ibid.*, 300.

It is conducted to understand the abstract phenomena that appear to be analyzed.

c) *Comparative approach*

Comparative research is used to compare one law or legal system with other institutions or legal systems.

d) *Historical approach (historical approach).*

The approach considers the laws and regulations that cannot be separated from the history and background used to minimize mistakes in the research process.

e) *Philosophical approach*

It emphasizes speculative and comprehensive analysis on certain legal cases.

f) *The Case Approach*

It emphasizes the dimensions of the application of legal norms and practices.

Based on some of the approaches above, the researcher's research position emphasizes the statutory approach (*statue approach*), conceptual approach (*concept approach*), and a *comparative approach* regarding setting the disclosure principle in the implementation of *equity crowdfunding* in Indonesia and United States and the implications of setting the disclosure principle in equity crowdfunding on investor protection.

3. Object of Research

The object of this research is based on the Disclosure principle Obligations in the Implementation of *Equity Crowdfunding* in Indonesia and the United States related to the disclosure principle based on the capital market rules and the *equity crowdfunding* regulations of the two countries.

4. Source of Data

The data are based on primary data and secondary data sources. Primary data are related to the research subject, while secondary sources are based on additional data.³⁸ This research is a normative study, so its sources are based on primary, secondary, and tertiary legal materials.

- a. Primary data materials are from laws and regulations relevant to the topic of this research study. Regulations in Indonesia are based on: POJK RI Number 57/POJK.04.2020 concerning Equity Crowdfunding through Equity *Crowdfunding*, Capital Market Law No. 8 of 1995, and other relevant regulations. Meanwhile, in the United States, they are based on the *Securities Act* of 1933, *Title III of Jumpstart Our Business Startups (JOBS) Act* in 2012, and *Crowdfunding Regulation: A Small Entity Compliance Guide for Issuer*.

³⁸ Tim Buku Pedoman Tugas Akhir Fakultas Hukum UII, *Panduan Penulisan Tugas* (Yogyakarta: UII, 2016), p. 12; Cf. Sri Mamudji, *Metode Penelitian dan Penulisan Hukum*, (Jakarta: Nadan Penerbit FH UI, 2005), 28.

- b. Secondary data materials are in the form of further explanation of the research data. Secondary data materials are generally in the form of references from books, scientific journals, and relevant references.
- c. Tertiary data materials are in the form of materials that provide further explanation of the secondary data and primary data in the form of legal dictionaries or other relevant dictionaries.

5. Data Collection Method

This research uses data collection techniques selected based on the primary and secondary data through library research and document studies, as well as archives taken from legal materials, both primary, secondary, and tertiary.

6. Data analysis

The data analysis based on the qualitative analysis chosen by the researcher includes classifying data, editing data, presenting the analysis results in the form of a narrative, and drawing conclusions.³⁹

G. Operational Definitions

Regarding the operational definition, the sub-chapter aims to avoid multiple interpretations related to the direction of the research discussion scope. The meaning of the terms used in this study is described as follows:

³⁹ Sri Mamudji, *Op. Cit.*, 13.

1. **Disclosure Principle** is a guideline for company organs, both Directors and Commissioners who are required to inform the public and investors regarding the company's activities.⁴⁰
2. **Equity Crowdfunding (ECF) or Crowdfunding** is a method of financing in raising funds by offering company shares to investors on a large scale small openly via a network of electronic systems.⁴¹
3. **Issuer** is a legal entity that develops, registers, and sells securities to finance its operations.⁴²
4. **Investors** It is explained in Article 1 point 4 of Law Number 25 of 2007 concerning Investment: investors can be individuals or business entities that carry out investment originating from domestic investors and foreign investors.

H. Structure of Writing

The researcher organized the thesis into 4 (four) which are divided as follows:

CHAPTER I is an introduction which contains research background, problem formulation, research objectives, literature review, research methods and research systematics.

CHAPTER II provides an overview and theoretical basis for research based on primary, secondary, and tertiary sources, especially regarding the concept of

⁴⁰ Hamud M. Balfas, *Op. Cit.*, 28

⁴¹ Gerrit K.C. Ahlers, Douglas Cumming, Christina Gunther, Denis Schweizer, *Op. Cit.*

⁴² Investopedia: <https://www.investopedia.com/terms/i/issuer.asp>, Accessed on 25 October 2020, 11.56 WIB.

Equity Crowdfunding, the ECF Disclosure principles procedure in Indonesia and in the United States.

CHAPTER III contains discussion analysis based on problem formulation. The discussion of CHAPTER III comprehensively explains the differences between the two procedures for the ECF's disclosure principles in Indonesia and the United States. In addition, this discussion of CHAPTER III explains the implications of setting the disclosure principle in equity crowdfunding on investor protection.

CHAPTER IV is divided into conclusions and suggestions from this research for the development of further research



CHAPTER II

GENERAL REVIEW OF THE DISCLOSURE PRINCIPLES IN CAPITAL MARKET, EQUITY CROWDFUNDING AND INVESTOR PROTECTION

A. General Review of The Principles in Capital Market

1. Terms and Understanding of the Disclosure Principle

The disclosure principle describes a report on the condition of a clearly audited balance sheet or financial report based on financial information both numerically and qualitatively.⁴³ All capital markets are required to have a *full disclosure principle*. The disclosure principle emphasizes that there is an obligation for public companies, issuers, or related parties to provide accurate, clear, and complete information regarding the results of material facts and company actions that are strongly correlated with shareholders' decisions.⁴⁴ This means that openness or *disclosure* is a major component in the cycle of the capital market industry in any country, so at least it requires clear regulation in the process of its implementation. As with IOSCO (*International Organization of Securities Commissions*), which has published three main objectives of capital market

⁴³ Abd-Elsalam, Omneya Hassan. *The Introduction and Application of International Accounting Standards to Accounting Disclosure Regulations of a Capital Market in a Developing Country*. PhD Thesis Diss. Heriot-Watt University, p. 5 (1999).

⁴⁴ Raffles, Analysis of the Application of the disclosure principle in the Capital Market in Relation to Good Corporate Management, <https://media.neliti.com/media/publications/43194-ID-analysis-application-transparency-principles-in-capital-market-relation-to-pen.pdf>, p. 28. Accessed on 31 December 2020, 20.00 WIB.

regulation, i.e., i) *Protection of investors*, ii) *Ensuring that markets are fair, efficient and transparent*, iii) *reduction of systemic risk*.⁴⁵

The disclosure principle is needed so that investors can get clear and accurate information or decisions when buying or not buying securities. The disclosure principle or disclosure was stated by Bismar Nasution include: i) maintaining public trust in the market, ii) creating an efficient market mechanism, iii) providing protection to investors.⁴⁶ Maintaining public trust is the most essential thing considering that investor confidence is very relevant to market strengthening and preventing *capital flights* mass. An efficient market must provide adequate technical information for exchange members and capital market professionals. Therefore, this openness will indirectly guarantee a sense of security and protection for investors as well as anticipate capital market violations or crimes.⁴⁷

The obligation to openness involves legal aspects to align the interests of investors and the market⁴⁸ so as to guarantee the principles of legal doctrine regarding the obligation of openness for public companies, including: i) the principle of the degree of accuracy of information, ii) the principle of the degree of completeness of information, iii) The principle of equilibrium (balance)⁴⁹. On the other hand, the closure of capital market information is often encountered if the information presented is not complete in relation to the relevant material facts or

⁴⁵ International Organization Of Securities Commissions, *Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation*, 2017, 10

⁴⁶ Inda Rahadiyan, *Pokok-Pokok Hukum Pasar Modal Indonesia*, Op. cit, 115

⁴⁷ Bruce Ian Carlin, Florin Dorobantu, and Sean Viswanathan, *Public trust, the law, and financial investment*, Journal of Financial Economics, Vol. 92, No. 3 (2009): 321–341.

⁴⁸ Adrian Sutedi, *Legal Aspects of the Capital Market*. (Jakarta: Ghalia Indonesia, 2009), 104.

⁴⁹ Munir Fuady, *Hukum Bisnis Dalam Teori dan Praktek*, Op. cit., 79.

information. The closure of information can create *misleading* or deviation from the principle of disclosure which affects the decision of investors to buy or not.²¹ Therefore, it is necessary to have *full and fair disclosure* to overcome information ambiguity and investors' doubts in investing their capital while maintaining the adequacy of information provided by industry players in the Capital Market.⁵⁰

2. The Regulation of Disclosure principle in Capital Market Law in Indonesia

In order to increase the transparency of corporate governance practices, every Company is required to conduct transparency as a guideline for governance practices.⁵¹ Referring to one of the universally applicable principles regarding the disclosure principle, at least it has been accommodated through the provisions of Indonesian capital market law.⁵² Transparency or the disclosure principle as stated in Article 1 No. 25 Law Number 8 Year 1995 concerning Capital Market defines the disclosure principle, namely:

"General guidelines requiring issuers, public companies, and other parties subject to this law to inform the public in a timely manner all material information about their business. or the effect that may affect the investor's decision on the said securities and / or the price of said securities. "

⁵⁰ Agus Riyanto, *Full & Fair Disclosure di Pasar Modal*, in <https://business-law.binus.ac.id/2017/07/29/full-fair-disclosure-di-pasar-modal/> accessed on 25 December 2020 , 17.00 WIB.

⁵¹ POJK No. 21 /POJK.04/2015 Peraturan tentang Layanan Urun Dana melalui Penawaran Saham Berbasis Teknologi Informasi. Cf. Linton Hans Pratama Purba. *Kewenangan Otoritas Jasa Keuangan Dalam Penerapan Prinsip keterbukaan Oleh Perusahaan Publik Menurut POJK NOMOR 31/POJK.04/2015*, Undergraduate Thesis, Fakultas Hukum, Universitas Sumatera Utara, 2014.

⁵² POJK. No. 37 /POJK.04/2020 Tata Cara Pengecualian Pemenuhan Prinsip Keterbukaan Bagi Emiten Atau Perusahaan Publik Yang Merupakan Lembaga Jasa Keuangan Dalam Rangka Pencegahan Dan Penanganan Krisis Sistem Keuangan, <https://www.ojk.go.id/id/regulasi/Documents/PagesTata-Cara-Pengecualian-Pemenuhan-Prinsip-Keterb-open-bagi-Emiten-pojk%2037-2020.pdf>, accessed on 30 December 2020, 18.00 WIB.

In addition, Article 1 No. 7 The Capital Market Law 1995 defines material information or facts as follows⁵³:

“Information or material facts are important and relevant information or facts regarding conditions, events, or facts that can affect the price of Securities on the Stock Exchange and or decisions of investors, potential investors, or other parties with an interest in the information or facts. It is important and relevant information or facts regarding events, incidents or facts that can affect the price of securities on the stock exchange and / or decisions of investors, prospective buyers or other parties with an interest in such information or facts. ”

Reference Article 1 No. 7 The Capital Market Law 1995 provides coverage of information or material facts regarding at least the following information:

1. Business *merger*, takeover or *acquisition, consolidation, and* joint venture formation.
2. Stock splits or dividends distribution (*stock dividends*)
3. Extraordinary income and dividends
4. Acquisition or loss of important contracts
5. Meaningful products or new inventions
6. changes in the company's financial year; and
7. Changes in control or important changes in management as long as the information can affect the price of securities and/or decisions of investors, potential investors, or other parties with interest in the information or facts.

⁵³ Law No. 8 year 1995 concerning Capital Market, <https://jdih.kemenkeu.go.id/fulltext/1995/8TAHUN~1995UU.HTM>, accessed on 30 December 2020, 18.00 WIB.

The correct form of transparency is through reports to Bapepam-LK (former term), now the Financial Services Authority (OJK) in the Capital Market as regulated in Article 85 of the Capital Market Law. The disclosure principle or the disclosure principle is also an obligation for issuers or public companies. This is as specifically regulated in Article 2 paragraph (1): "Issuers or Public Companies are required to submit Material Information or Facts to the Financial Services Authority and announce Material Information or Facts to the public." The disclosure principle is carried out in at least three stages, including during public offerings (*primary market level*), securities trading on the secondary market (*secondary market level*), and disclosure of reports that must be submitted on time (*timely disclosure*).⁵⁴

The first stage of openness refers to being open during a public offering or *primary market*. This disclosure principle occurs when a company or potential issuer enters the *go public* or pre-issuance process. At the pre-emission stage, prospective issuers are required to submit a registration statement or *registration statement* to the OJK.⁵⁵ The public offering process cannot be separated from an important document that becomes a reference for investors, which is called a prospectus. The prospectus itself becomes the material for investors in the investment decision-making process. This disclosure principle will have a positive

⁵⁴ M Irsan Nasarudin, "Prinsip keterbukaan Oleh Perusahaan Publik," *Jurnal Hukum & Pembangunan*, 18, no. 3 (2017): 248–253.

⁵⁵ Inda Rahadian, *Pokok-Pokok Hukum Pasar Modal Indonesia*, Op.cit, p. 120

impact on investors to be able to find out all information on material facts that are known to be true and not misleading.⁵⁶

The documents that must be submitted in order to submit a registration statement as stated in Article 3 of OJK Regulation Number 7 / POJK.04 / 2017 concerning Registration Statement Documents for Public Offering of Equity Securities, Debt Securities, and/or Sukuk include: i) Cover letter for Registration Statement in accordance with the format of Cover Letter for Registration Statement, ii) Prospectus, iii) Brief Prospectus, iv) Initial Prospectus (if any); and other documents that must be submitted as part of the Registration Statement.⁵⁷ Meanwhile, the definition of Prospectus, Brief Prospectus, and Initial Prospectus is regulated in the general provisions of the POJK, namely: i). Prospectus is any written information relating to a Public Offering with the aim of getting other Parties to buy Securities. ii). The Abridged Prospectus is a summary of the contents of the Initial Prospectus. iii) Initial Prospectus is a written document containing all information in the Prospectus which is submitted to the Financial Services Authority as part of the Registration Statement, except for information regarding the nominal value, amount and price of Securities offering, underwriting, bond

⁵⁶ Nabil Abduh Hilabi, *Prinsip keterbukaan sebagai Perlindungan Hukum terhadap Investor dalam Transaksi Penawaran Umum di Pasar Modal*, Undergraduate Thesis, Jakarta: Fakultas Hukum Universitas Indonesia, 2012, p. 76.

⁵⁷ Law No. 7 /POJK.04/2017, *Dokumen Pernyataan Pendaftaran Dalam Rangka Penawaran Umum Efek Bersifat Ekuitas, Efek Bersifat Utang, Dan/Atau Sukuk*, <https://www.ojk.go.id/id/kanal/pasar-modal/regulasi/regulations-ojk/Documents/Pages/POJK-Documents-Registration-Statement-In-Order-Public-Offering-Equity-Securities,-Debt-Effects-and-Sukuk/SAL%20POJK%207%20Dokumen%20Penawaran%20Umum%20final.pdf>, accessed on 29 December 2020, 18.00 WIB.

interest rates, or other matters related to the terms of the offer that have not been determined.⁵⁸

The second stage of disclosure after emissions is openness in the *secondary markets*. At this stage, the public company or the Issuer is obliged to convey company information by making, among others: i) Periodic Reports, ii) Annual Reports, iii) Mid-Year Reports, and iv) Incident Reports.⁵⁹ Another obligation is to submit reports regularly and continuously (*continuous disclosure* as stipulated in Article 86 paragraph 1 of the Capital Market Law 1995. Information submitted regarding material facts is no later than the end of the second working day and reports must be made periodically every six months. In addition, there are annual reports referring to Article 1 No. 1 of OJK Regulation No. 29 / POJK.04 / 2016 concerning the Annual Report of Issuers or Public Companies. This report is submitted to the General Meeting of Shareholders which is compiled based on the provisions of the Financial Services Authority Regulation. Annual Report at least must include:

1. Overview of key financial data
2. Stock information
3. Report of the board of directors
4. Report of the board of commissioners
5. Profiles of issuers or public companies

⁵⁸*Ibid.*,

⁵⁹ Anthon Nainggolan, "Prinsip Prinsip keterbukaan (Disclosure) Dalam Kegiatan Pasar Modal Menurut UU RI No. 8 Tahun 1995 Tentang Pasar Modal: Suatu Tinjauan Yuridis," *to-ra* 2, no. 1 (2016): 267–278.

6. Analysis and discussion of management
7. Issuer or public Governance
8. Company's social responsibility and the environmental issuer or public company
9. Audited annual financial statements
10. Letter of Statements from members of Directors and members of the board of commissioners regarding the responsibility for the annual report.⁶⁰

The third stage related to disclosure refers to reports on important events in a timely manner or *timely disclosure*. Article 2 of OJK Regulation Number 60 / POJK.04 / 2015 regulates the disclosure obligation for each Director or Board of Commissioners to report to the Financial Services Authority on company shares no later than 10 (ten) days from the transaction. In the event of failure or bankruptcy as stipulated in Article 2 POJK Number 26 / POJK.04 / 2017 concerning the disclosure principle for Issuers or Public Companies Requested for Bankruptcy Declaration, they must submit a report as soon as possible no later than 2 (two) working days after the Issuer or Public Company experiences failure or knowing the inability to avoid failure.

The obligation to implement the disclosure principle becomes an administrative obligation, and if there is a violation in the implementation process,

⁶⁰ 30 /SEOJK.04/2016, *Bentuk dan Isi Laporan Tahunan Emiten atau Perusahaan Publik*, [https://www.ojk.go.id/id/kanal/pasar-modal/regulasi/surat-edaran-ojk/Documents/SAL% 20-% 20SEOJK L Report% 20Tahunan% 20Emiten.pdf](https://www.ojk.go.id/id/kanal/pasar-modal/regulasi/surat-edaran-ojk/Documents/SAL%20-%20SEOJK_L_Report%20Tahunan%20Emiten.pdf), accessed on 29 December 2020, 18.00 WIB.

OJK has the authority to impose administrative sanctions in the form of written warnings, fines, restrictions on business activities, freezing of business activities, revocation of business licenses, cancellation of approval and cancellation of registration.

B. General Review of *Equity Crowdfunding*

1. Terms and Understanding of *Equity Crowdfunding*

Equity crowdfunding is a new financing method that is different from conventional financial systems because it considers a crowdfunding model in the form of equity.⁶¹ *Equity crowdfunding* is considered an innovative new financial model that explains fundraising transparency and has adjustments for minimum capital and profits directed at various groups of society.⁶²

Equity Crowdfunding term focus is on a "tapping the crowd"⁶³ involving crowdfunding from multiple parties, not just professional investors, but also as a promising tool for financing innovative businesses that are new.⁶⁴ The ECF ecosystem works not only for business actors seeking capital

⁶¹ Arash Gholamzadeh Nasrabadi, *Equity Crowdfunding: Beyond Financial Innovation*. In: Brüntje D., Gajda O. (eds) *Crowdfunding in Europe. FGF Studies in Small Business and Entrepreneurship*. (Springer, Cham, 2016). https://doi.org/10.1007/978-3-319-18017-5_14

⁶² Kazem Mochkabad Khoramchahi, *Equity Crowdfunding Essays about the Scientific Development and the Investor Perspective*, (Wuppertal, Germany: Springer, 2020).

⁶³ Paul Belleflamme, Thomas Lambert, and Armin Schwienbache. loc cit., 2014.

⁶⁴ Gerrit KC Ahlers, Douglas Cumming, Christina Günther, Denis Schweizer. loc. cit. 2015.

but also through the organizer or platform owner as an intermediary that functions to connect potential investors and companies.⁶⁵

The ideal ECF should place potential investment objects open to crowdfunding investors, meaning that each platform must have the courage to evaluate its business first, especially based on the business plan, short presentations, videos, and project descriptions, including providing information boards on investment decisions and transparency.⁶⁶

The ECF is a new branch of the tightly regulated private capital market. Just as the existing branch has grown over the last few decades, the ECF has had legal and regulatory adjustments to bridge the two main motives between the social drive and the financial need to invest in 'private securities' through the ECF.⁶⁷ The ECF opens up new ways of interacting between the financial system and the social space involving a new technological environment with a new socio-economic value system.⁶⁸

Expansion of the definition of ECF more emphasis on ecosystems and interactions between different stakeholder groups, namely entrepreneurs, investors, and platforms or organizers, each with different interests and goals.

⁶⁵ Jonas Löher . “The interaction of equity crowdfunding platforms and ventures: an analysis of the preselection process”. *Venture Capital: An International Journal of entrepreneurial finance*, Vol. 19, No. 1–2, (2016): 51–74.

⁶⁶ Simon Kleinert, Christine Volkmann, Marc Grünhagen. “Third-party signals in equity crowdfunding: the role of prior financing”. *Small Business Economics*, Vol. 54, No. 1, (2020): 341–365.

⁶⁷ David M. Freedman, Matthew R. Nutting. *Equity crowdfunding for investors: A guide to risks, returns, regulations, funding portals, due diligence, and deal terms*. (US: John Wiley & Sons. 2015), 243.

⁶⁸ Brüntje, Dennis, Gajda, Olive. (Eds.). *Crowdfunding in Europe: State of the Art in Theory and Practice*. (Springer. 2015), 202.

Due to this interrelationship and dependency, this ECF phenomenon has made a fundamental contribution related to the demand side (entrepreneur perspective) of equity crowdfunding.⁶⁹ while knowledge of the supply side (investor perspective) is still limited. In the context of research and development research, the ECF is still in its early stages.⁷⁰

2. History of Equity Crowdfunding

In an era of technological and information developments, a financing approach model that aims to raise funds is often referred to as *crowdfunding* which provides more certainty of transparency, efficiency, and effectiveness. *Crowdfunding* in Indonesia has been approved by the Financial Services Authority (OJK) as a crowdfunding service through technology-based stock offerings or what is often referred to as *equity crowdfunding*. *Equity crowdfunding* is similar to an *Initial Public Offering* (IPO), but as an alternative financing *Equity Crowdfunding* has become a public concern lately. Therefore, there is a need for a comprehensive explanation regarding the history of *equity crowdfunding*.

The history of *crowdfunding* cannot be separated from an alternative to collective funding efforts and involves more public attention. In some developed and developing countries, *crowdfunding* becomes a fundraising from the community itself for a project with the help of *platform* or internet-

⁶⁹ Gerrit KC Ahlers, Douglas Cumming, Christina Günther, Denis Schweizer. loc. cit. 2015

⁷⁰ Aaron F. McKenny, Thomas H. Allison, David J. Ketchen, Jr., Jeremy C. Short, R. Duane Ireland. "How Should Crowdfunding Research Evolve? A Survey of the Entrepreneurship Theory and Practice Editorial Board". *Entrepreneurship: Theory and Practice*, Vol. 41, No. 2, (2017): 291–304.

based organizer. The Oxford Dictionary case defines *crowdfunding* as an activity for raising funds for a particular project or business by involving a community whose contribution is relatively small which is chained by the presence of internet facilities. In technical terms, *crowdfunding is* a funding strategy for projects or business units that involve the wider community.⁷¹ According to Belleflamme et al., Crowdfunding is a call for anyone to be able to donate or provide a good source of funding with a specific mechanism to support an activity that has a specific purpose via the internet.⁷²

The history of *crowdfunding* was first sparked in the United States in 2003 on a web platform called *Artistshare*.⁷³ The site offers fundraising for music fans to help finance a work. In addition, in the following decades, sites emerged, new *crowdfunding* such as *kickstarter*, which was involved in funding the creative industry in 2009 and *Gofundme* which managed funding for various events and businesses in 2010. Crowdfunding itself was quite well known internationally and is estimated to have raised \$ 16. 2 billion dollars in 2014.⁷⁴

⁷¹ Dhoni Siamasyah Fadillah Akbar, *Konsep Crowdfunding Pendanaan Infrastruktur di Indonesia*, 30 Sep 2015, <https://www.kemenkeu.go.id/publikasi/artikel-dan-opini/konsepcrowdfunding-untuk-pendanaan-infrastruktur-di-indonesia>, accessed on 20 December 2020, 13.00 WIB.

⁷² Paul Belleflamme, Thomas Lambert, Armin Schwiendbacher, *Crowdfunding : An industrial organization perspective*. In Prepared for the workshop Digital Business Models: Understanding Strategies', held in Paris on June, 2010, p. 25–26.

⁷³ David M. Freedman, and Matthew R. Nutting. *A brief history of crowdfunding. Including Rewards, Donation, Debt, and Equity Platforms in the USA*, 2015. <https://aboutcrowdfundinginfo.com/wp-content/uploads/2020/01/History-of-Crowdfunding.pdf> accessed on 20 December 2020, 13.45 WIB.

⁷⁴ *Ibid.*,

The concept of *crowdfunding* is a derivative of *crowdsourcing* because it relies on activities that can be carried out by a crowd or many people through the internet media. This concept is similar to the idea of information and communication technology-based mutual cooperation.⁷⁵ Initially, *crowdsourcing* used Linux as a technology company in order to carry out '*common-based peer production*'. This activity aims to involve cross-border communities with the provisions of reciprocity for certain service offerings.⁷⁶ Over time, the concept of mutual cooperation with the help of the internet has created a new platform called *crowdfunding* with the aim of being a space for raising donations that turn towards a positive goal for financing small business actors' projects. The expansion of the concept of *crowdfunding* is divided into two, namely: *Community Crowdfunding* and *Investment Crowdfunding* or *Financial Return Crowdfunding*.⁷⁷ Activity *crowdfunding* cannot be separated from the three main components, namely the existence of a) Initiator as an investee or a party in need of funds, b) *Crowdfunding of the Website Platform* or Organizer, c) Investors or the owner of funds who channel funds to the Investee.⁷⁸ Structurally, the following are the stages of *crowdfunding* activity process:

⁷⁵ Paul Whitla. "Crowdsourcing and Its Application in Marketing Activities". *Contemporary Management Research*. Vol. 5 No. 1, (2009): 15–28.

⁷⁶ Anhai Doan, Raghu Ramakrishnan, Alon Y. Halevy. "Crowdsourcing systems on the world-wide web". *Communications of the ACM*, Vol. 54, No. 4, (2011): 86–96.

⁷⁷ Mónica Kuti, Gábor Madarász. "Crowdfunding", *Public Finance Quarterly*, Vol. 59, No. 3, (2014): 355.

⁷⁸ Paramita Prananingtyas, Irawati. Loc. cit., 2018.

3. The initiator or investee presents an idea of the required fundraising target amount through a proposal to the *crowdfunding organizer*.
4. The submission process is carried out professionally and online through the available sites.
5. Platform organizers carry out investigations and tests of proposals submitted both in terms of performance, finance, and risks to the intended project or fundraising plan.
6. The submission process is on the platform and includes administrative fees and financial service fees from the *platform*.
7. If there has been an agreement or agreement between the initiator and the platform owner, the platform owner is required to display the idea, design, or proposal submitted through the organizer's website.
8. Support in the crowdfunding process can be in the form of loans or *peer to peer lending* and/or through the purchase of shares or *equity funding*.
9. The general public can access bidding proposals for donation projects or investment proposal projects submitted openly and transparently.
10. Finally, when there is interest, the general public can carry out a crowdfunding process or channel money for investment purposes and the funds raised are forwarded to the investee or initiator.

In Indonesia, *Community Crowdfunding* is not very popular because commonly only countries with high income and high social awareness usually organize donations *based on crowdfunding and/or reward-based*

crowdfunding to achieve their humanitarian goals activities in a positive way. In Indonesia, what is possible is a project with legal status such as foundations and / or associations under the authority of the Ministry of Social Affairs.⁷⁹ In the United States, *Gofundme* has succeeded in becoming *the largest social fundraising platform* in the world, which has raised more than 5 billion US dollars from 70 million donors. The extent of coverage of *community crowdfunding* usually leads to efforts to finance micro-businesses for innovation development.⁸⁰

Investment crowdfunding or *financial return crowdfunding* is an alternative option and part of *fintech* in Indonesia because it involves a technology-based financial system. The process of implementing a technology-based financial or financial system that has been regulated in Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology (hereinafter abbreviated as PBI No. 19/12 / PBI / 2017). Article 1 number 1 PBI No. 19/12 / PBI / 2017 regulates the general provisions of financial technology as part of the use of technology in the financial system that can produce new services, products, and business models.

The other objectives are to achieve monetary stability, financial system stability, and/or efficiency, smoothness, security and reliability of the

⁷⁹ Irfan, Maulana, "Crowdfunding sebagai Pemaknaan Energi Gotong Royong Terbarukan". *Share: Social Work Journal*, Vol. 6, No. 1 (2016).

⁸⁰ Li, Yung-Ming, et al. A social fundraising mechanism for charity crowdfunding, "Decision Support Systems", Vol. 129, (2020): 113170.

payment system. Institutional rules that guarantee a smooth process and supervise investment activities in *crowdfunding* or *equity crowdfunding* are regulated in all functions, duties and authorities of the OJK based on Law Number 21 of 2011 concerning the Financial Services Authority to organize an integrated regulatory and supervisory system for all activities in the financial services sector, including the capital market sector, is an institution that has the authority to regulate and oversee investment activities *crowdfunding*.

3. The Differences and Similarities between *Equity Crowdfunding* and *Initial Public Offering (IPO)*

In general, there are several differences between *Equity Crowdfunding* (EC) as part of the implementation of *fintech* and *crowdfunding* in Indonesia with an *Initial Public Offering (IPO)* as an initial public offering in the Capital Market listed in Table 2.1.

Table 2.1
The Differences between ECF and IPO

No.	The Difference	<i>Equity Crowdfunding</i>	<i>Initial Public Offering (IPO)</i>
1	Term of stock seller	Issuer, not a public company	Issuer
2	Provisions for capital costs	Issuers have assets of not more than 10 billion Rupiah.	It has a minimum of 300 shareholders and has a minimum capital of 3 billion Rupiah or a

			number of shareholders and reported / paid-up capital in accordance with Government Regulation.
3	Provisions of Legislation and	Law on Limited Liability Company Law (UUPT), POJK No. 57 / POJK.04 / 2020	Limited Liability Company Law (UUPT) and Capital Market Law (UUPM)
4.	Share	<i>Equity Crowdfunding Platform</i>	Initial Public Offering (IPO)
5.	Share the offer of value	The limit of the value of shares offered is 10 billion Rupiah.	The value is not regulated, it is only approved in the General Meeting of Shareholders (GMS)
6.	The duration of the offering is	45 (forty five) days.	IPO to the public 1-5 working days
7.	Involvement of supporting institutions	It directly involves issuers, investors, providers, supervisory agencies (OJK) as a solution for a source of financing that is practical (efficient) and	Initial Public Offering (IPO) is a process that requires a grace period because legal, financial and administrative requirements must be fulfilled, it also involves at least 6 (six) capital market supporting institutions,

		<p>low cost (effective) compared to IPO.</p>	<p>namely (i) issuer underwriters, (ii) legal consultants, (iii) notary public, (iv) accountant, (v) appraiser, (vi) custodian, and the number of these supporting institutions increases to at least 11 (eleven) when the share offering is listed on the stock exchange. Supporting institutions include (vii) clearing and guarantee institution, (viii) settlement and depository institutions, (ix) the effects of administrative bodies, (x) the insurer, (xi) the investment advisor</p>
8.	Disclosure guideline	<p>The presentation of information is not only sufficient to introduce the Issuer regarding the capacity, achievements and objectives of the stock offering through the ECF</p>	<p>Article 71 UUPM: Public offering must be accompanied by a prospectus as a basis for knowledge of potential investors to obtain information about legality, financial</p>

		and reporting in the form of an annual report and incentives.	conditions, potential and risks associated with the company.
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Apart from the difference between *Equity Crowdfunding* and IPO, they both have similarities, namely: i) becoming as a source of financing with the sale of company shares, ii) following the disclosure principle regarding spatial reports and reports on the use of proceeds from the stock offering, iii) recording investor information at the Custodian.⁸¹ In addition, *crowdfunding* also has several risks such as: i) default risk, ii) fraud risk, iii) platform or site failure risk, iv) information quality is not full, and v) liquidity risk.

The advantage of *Equity Crowdfunding*⁸² apart from being an innovation and alternative source of funding that is more effective and efficient based on financial technology in the capital market, *EC* is involved as well as in supporting startup companies and other Micro Business Units. The advantage is also found in the scale of investment and rotation of financing sources that are in accordance with the needs but not too large as the circulation of securities and while maintaining the development of financial technology.

Equity crowdfunding also has the potential for exponential economic growth because it does not cost much to raise funds. *Equity Crowdfunding*

⁸¹ Cindy Indudewi Hutomo. Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (Equity Crowdfunding). *Perspektif*, Vol. 24, No. 2, (2019): 72.

⁸² Cindy Indudewi Hutomo, *Op. cit.*, p. 73.

also does not require a lot of special guarantees so that startup companies that do not have enough assets can develop with a low minimum capital. *Equity crowdfunding* organizers can apply for a simple and fast process when they have fulfilled the statement set by the OJK as the Institution that supervises, regulates, and fosters EC in Indonesia. Therefore, the convenience of EC also ensures transparent, flexible fundraising activities and raises awareness of the importance of financial technology.

4. Equity Crowdfunding in Indonesia

In general, related to *crowdfunding* investment or *Equity Crowdfunding* in Indonesia, it has been regulated in various predetermined laws and regulations. First, based on OJK Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services; OJK Regulation No. 13 / POJK.02 / 2018 concerning Digital Financial Innovation in the Financial Services Sector, and OJK Regulation No. 37 / POJK.04 / 2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings (*Equity Crowdfunding*). During the development of *Equity Crowdfunding* in Indonesia, various regulations regarding services through technology-based share offerings have been regulated in OJK regulations regarding types of crowdfunding, including: i) *peer to peer lending* (P2P Lending) as an information technology-based lending and borrowing service based on POJK No. 77 / POJK.01 / 2016. ii) *equity crowdfunding* as a service through an information technology-based

share offering based on POJK No. 37 / POJK.04 / 2018 and updated to appear POJK No. 57 / POJK.04 / 2020.

According to the Indonesian Joint Funding Fintech Association (AFPI) as an organization and association of *P2P Lending* or Technology Financial Online Funding in Indonesia, which is officially licensed at the OJK, many platforms have been used as a place for the funding and loan process. Rules *P2P Lending* based on Article 6 paragraph (2) POJK No. 77 / POJK.01 / 2016, regarding the maximum limit of total loan disbursement of not more than 2 billion Rupiah and must meet the specific requirements of these regulations. Unlike *P2P Leading*, *EC* based crowdfunding services are new, both in terms of implementing and issuance of regulations from the OJK. OJK has made regulations similar to the capital market, but the implementation process is simpler. It has supporting institutions, capital orientation, objectives, and scope of investors. The subject receiving capital is referred to as the Issuer. This is as stipulated in Article 1 point 5 POJK No. 57 / POJK.04 / 2020 concerning Crowdfunding Services for Crowdfunding Service Providers, hereinafter referred to as the Organizer, is an Indonesian legal entity that provides, manages, and operates Crowdfunding Services.

In accordance with the provisions of Article 4 POJK No. 57 / POJK.04 / 2020 that the issuer in *Equity Crowdfunding* on the Capital Market with the condition that the maximum share value offered by the Issuer via ECF has a number of shareholders of the Issuer of more than 300 parties and the amount

of paid-up capital is not more than 30 billion Rupiah within a period of 12 month and every operation or *platform* acts as an underwriter.

Certainty regarding the performance of the Provider is determined during the share offering period as stated in Article 35 No. 57/POJK.04 / 2020, namely a maximum of 45 (forty) days and according to Article 36 No. 57 / POJK.04 / 2020 during the offering period. Issuers are prohibited from canceling their share offerings until the end of the share offering period. In addition, based on Article 56 Paragraph 3, an investor as a party who purchases Issuer shares through an *equity crowdfunding platform* must be a legal subject who has the ability and income of up to 500 million Rupiah per year, is able to buy EC shares at most 5% of their total income per year. Years and investors earning more than 500 million Rupiah per year can buy shares of at most 10% of their total income per year.

Article 58 POJK No. 57 / POJK.04 / 2020 regulates legal protection for investors whereby they can cancel their share purchase plan through the *equity crowdfunding* within 48 hours after purchasing shares and prior to settlement of the transaction through the Organizer. In addition, the regulatory updates in Article 72 and Article 73 (1) POJK No. 57 / POJK.04 / 2020 as explained "Providers are required to apply the basic principles of User protection in the form of: a. transparency; b. fair treatment; c. reliability; d. data confidentiality and security; and e. User dispute resolution is simple, fast, and affordable ". "Providers are required to provide and / or convey the latest

information regarding Crowdfunding Services which is accurate, honest, clear, and not misleading"⁸³.

Article 5 and Article 6 No. 57 / POJK.04 / 2020 explains about ECF licensing and offers that are different from public offerings as stipulated in the Capital Market Law and the organizer must be registered as the Electronic System Organizer of the ministry that organizes government affairs in the field of communication and informatics. The list of ECF platforms that have obtained permission from the OJK in Indonesia include: 1) Santara / PT Santara Daya Inspiratama (KEP- 6 September 59 / D.04 / 2019 2019); 2) Bizhare / PT Investasi Digital Nusantara (KEP- 6 November 71 / D.04 / 2019 2019); and 3) Crowddana / PT Crowddana Teknologi Indonusa (KEP- 31 December 93 / D.04 / 2019 2019). In general, the three ECF platforms were established and formally endorsed at the end of the 2019 quarter and in 2020 the new name PT Numex Teknologi Indonesia was added in the decision of the OJK Board of Commissioners Member No. KEP-68 / D.04 / 2020⁸⁴ concerning the Granting of Service Provider Business Permits Equity Crowdfunding.⁸⁵

The latest POJK Regulation No. 57 / POJK.04 / 2020 regarding the disclosure principle only refers to the issuer's reports with a few additional

⁸³ Article 72 and Article 73 (1) POJK No. 57 / POJK.04 / 2020

⁸⁴ OJK, Announcement, PENG- / PM.2 / 2020 NUMBER <https://www.ojk.go.id/id/berita-dan-kaktif/penglikasi/Documents/PENG%20-%20PEMBERIAN%20IZIN%20USAHA%20EQUITY%20CROWDFUNDING%20PT%20NUMEX%20TEKNOLOGI%20INDONESIA.pdf> Accessed on 1 January 2021, 20.10 WIB.

⁸⁵ OJK, Daftar Platfrom Equity Crowdfunding Yang Telah Mendapatkan Ijin dari OJK, loc. cit., 2019.

details. Article 50 (1) annual report to the organizer no later than six months after the Issuer's financial year ends. Article 50 (2) requires the Organizer to load the Issuer's annual report on the Provider's website. Meanwhile, the submission of periodic reports every 3 (three) months, in March, June, September, and December to the Organizer. Changes to the regulations for the previous report were only 1 (one) time report, now it is 3 (three) times the annual report as well as the mid-year, annual, and incentive reports. Article 53 explains that the financial statements contained in the annual report as referred to in Article 50 paragraph (1) must use the lowest financial accounting standard for entities without public accountability.

5. *Equity Crowdfunding in United States of America*

Some developed countries like the United States and Britain are more focused on developing *Crowdfunding* types of *equity-based* and debt-based.⁸⁶ In the United States, this business is more popular and is chosen by most investors to get a profit or *return* on a project in the form of dividends or interest with certainty guaranteed by the disclosure principle and regulatory clarity. One of the guarantees that the public chooses the ECF business model is because it is related to the disclosure principle so that there is a guarantee of legal protection for investors regarding collections from the community.⁸⁷

ECF regulations in the United States are governed by *The JOBS Act of 2012* which aims to balance the fundamental legal principles of securities

⁸⁶ Dhoni Siamasyah Fadillah Akbar. *loc. cit.*, 2015

⁸⁷ Bismar Nasution, *loc. cit.*, 2001

with open crowd-raising requests. Another acronym *the JOBS act, Title III* is CROWDFUND Act or *Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012*. Title III defines how the ECF will be a platform for raising capital online while preventing fraud and unethical disclosure. *The JOBS Act* itself addresses the definitions of a) crowdfunding including issuers, intermediaries or providers, and investors; b) MSMEs or developing companies; c) Bid regulations; d) Limitation of company reporting.

Under *Section 302* of the JOBS Act adds a crowdfunding transactional exemption as § 4 (6) of the 1933 Act with the aggregate amount sold to all investors not to exceed \$ 1,000,000 over the 12 month period. Most crowdfunding projects have small target numbers, for example the popular Kickstarter site only had an average project during 2011 of around \$ 8,390.30. The following matters that must be provided by commission issuers, intermediaries and potential investors:

(A) [basic identifying information of issuer] (B) names of the directors and officers. . . and each person holding more than 20 percent of the shares of the issuer; (C) a description of the business of the issuer and the anticipated business plan. . . (D) a description of the financial condition of the issuer. . . (E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount; (F) the target offering amount, the deadline. . . and regular updates regarding the progress of the issuer in meeting the target offering amount; (G) the price to the public of the securities. . . [and] each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to respond to the commitment to purchase the securities; (H) a description of the ownership and capital structure of the issuer. . .⁸⁸

⁸⁸ JOBS Act, § 4A (b) (1).

Regarding the principle of spatial openness, the issuer or issuer is obliged to follow the rules according to paragraph (D) (i) by means of approach *sliding scale*, meaning that if there is a larger number of offers, it is mandatory to provide information, whereas when looking for small capital, the reporting is not necessary in its entirety. As an issuer currently attracting \$ 100,000 or less in capital, it is sufficient only to disclose its final completed year income tax return, if any, and the financial statements certified by the chief executive officer. Rule (D) (ii) states that if the target bid amount is between \$ 100,000 and \$ 500,000, the issuer must or must disclose financial statements reviewed by an independent public accountant in accordance with the standards and procedures established by *The Securities and Exchange Commission* (SEC). In addition, the elucidation in paragraph § 4A (b) (4) strongly requires issuers seeking capital of more than \$ 500,000 to involve public accountants and the principle of disclosure of the '*audited financial statement*' and reported annually.

According to § 4 (6) (B) The Organizer as an intermediary transaction, *intermediaries* must be registered with an independent regulatory organization to 'reduce the risk of fraud'. Meanwhile most of the requirements for crowdfunding intermediaries are in line with the role of *broker-dealers* elsewhere who are also tasked with educating investors to better understand the role of crowdfunding investing. The intermediaries that are allowed to host the ECF under Congress are known as 'funding portals'.

. . . any person acting as an intermediary in a transaction involving the

offer or sale of securities for the account of others, solely pursuant to section 4 (6) of the Securities Act of 1933 (15 USC 77d (6)), that does not— (A) offer investment advice or recommendations; (B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal; (C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal; (D) hold, manage, possess, or otherwise handle investor funds or securities; or (E) engage in such other activities as the Commission, by rule, determines appropriate.⁸⁹

Based on the rules in the JOBS Act, § 304 (a) (1) there are restrictions on the funding portal which serves to protect investors. Fund portals are prohibited from offering investment advice in subsection (A), which conforms to similar prohibitions on securities brokers, and (B) prohibits funding portals from actively promoting more profitable securities to investors, for example, by using aggressive call-to-action tactics (*aggressive solicitation tactics*). In addition, the ban on providing compensation to employees "commission" for selling securities in sub-section (C) destroys the incentive for portal employees to sell junk securities. Meanwhile, the prohibition on handling funds in paragraph (D) reduces the chance of fraud. Accordingly, the funding portal must be a member of a national securities association registered under section 15A, but also have limited exemptions from registration under section 15 (A) (1) of the 1934 Act and the SEC has authority on this exception.

The rules against investor protection are also contained in investment restrictions set by Congress under exception § 4 (6). If the investor's net worth

⁸⁹ JOBS Act, § 304 (a) (1)

or annual income is less than \$ 100,000, the investor should not invest an amount greater than \$ 2,000 or 5% of his or her annual income. If the investor's net worth or annual income is equal to or more than \$ 100,000, the investor may invest no more than \$ 100,000 or 10% of his annual income or net worth. Section 4A (e) limits the resale of securities sold under a crowdfunding exemption, albeit narrowly, to a period of one year, during which the investor can sell the securities back to the issuer, accredited investor, family member, or as part of a registered offering. The SEC may further limit the resale of these securities, although statutory restrictions that are limited to resale allow a secondary market to emerge for crowdfunding securities that are more than one year old.

Title I of the JOBS Act gave rise to the new term *Emerging Growth Companies* (EGC) or a developing or start-up company that requires an issuer with a total annual gross revenue of less than \$ 1,000,000,000. As for the benefits or benefits provided to a growing company.⁹⁰ First, the EGC is exempt from certain executive salary disclosure requirements under the 1934 *Act* and the *Investor Protection and Securities Reform Act*, 2010. Second, the EGC is exempt from a number of accounting requirements, including having to present (no more than) 2 years of audit in its IPO registration statement; exceptions from "selected financial data" reporting; wholesaler or exception *wholesale* to the audit of internal control; and exemptions from mandatory

⁹⁰ Thomas Martin, *The JOBS act of 2012: Balancing fundamental securities law principles with the demands of the crowd*. 2012, p 12. Available at SSRN 2040953.

audit firm rotation. Third, classification as EGC means that EGC enjoys loose rules regarding open communication with investors as long as a qualified institutional buyer or institutional investor is accredited.

Title IV of the *JOBS Act* outlines the exceptions to *small issues* that were expanded under section 3 (b) of the 1933 Act. Under Regulation A & D, previously for part 3 (b) offerings, the exemption was limited to the bid amount of \$ 5,000,000 per 12 month, whereas in *Title IV* it was \$ 50,000,000 tenfold. Securities sold under this exemption may be offered and sold to the public, and are not restricted. This means that securities can be resold to anyone at any time. The only limitations include the requirement that the issuer submit annually audited financial statements, and comply with other requirements to be decided by the SEC, including providing bid statements to potential investors.⁹¹ The reporting threshold (*threshold*) companies to the SEC rose from \$ 1,000,000 to \$ 10,000,000.⁹² Thus, the class size of listed equity securities is increased from 750 to 2,000 or 500 people, depending on whether they are accredited or not.

The most essential part of the provisions of the *JOBS Act's* rules relates to investor protection (§ 302) ranging from crowdfunding platform providers, SEC provisions as either a broker or 'funding portal', and guarantees to potential investors to understand the risks and benefits of investing. Price disclosure is another important component of investor protection that should

⁹¹ *JOBS Act*, § 3 (b) (2) (F) - (G)

⁹² *JOBS Act*, § 12 (g) (1) (A)

be considered during the regulatory process. This rule was made because in anticipation of novice investors who have a tendency to not pay attention to the share offering price when accessing portals *crowdfunding* especially the general limit for each project is effectively \$ 500,000.

Protection of investors is generally guaranteed directly by the state through the SEC to protect investors and the ECF cycle. The SEC adopted *Regulation Crowdfunding* in 2015, which allows individuals to invest in securities-based transactions subject to certain investment restrictions. Issuers are limited in the amount of money they can raise and must meet certain disclosure requirements about their business and securities offerings. The SEC also adopted amendments to Rule A to allow small companies to offer and sell securities of up to \$ 50 million over a 12 month period without complying with all applicable requirements for listed securities.⁹³ Therefore, the disclosure principle follows the rules *Form C* regarding *Disclosure by Issuers* which divides several reporting rules in detail.⁹⁴

First, for an issuer with a bid of \$ 107,000 or less, the issuer's financial statements and certain information from the issuer's federal income tax returns are both certified by the chief executive officer.⁹⁵ However, if the issuer's financial statements are available that have been reviewed or audited

⁹³ CFA Institute, *Crowdfunding and Related Regulations for Smaller Companies*, <https://www.cfainstitute.org/en/advocacy/issues/crowdfunding-regulations-smaller-companies>, accessed on 3 January 2021

⁹⁴ US Securities and Exchange Commission, *Regulation Crowdfunding: A Small Entity Compliance Guide for Issuers, 2020* in <https://www.sec.gov/info/smallbus/secg/rccomplianceguide-051316.htm#3>, accessed on 3 January 2021

⁹⁵ SEC., *loc. cit.*,

by a public accountant independent of the issuer, the issuer must provide such financial reports and do not need to include the information reported. Second, the issuer offers more than \$ 107,000 but not more than \$ 535.00 then the financial statements are reviewed by a public accountant that is independent of the issuer. However, if the issuer's financial reports are available and have been audited by a public accountant independent of the issuer, the issuer must provide such financial reports and do not need to include reviewed financial reports. Finally, an issuer that offers more than \$ 535,000 has its reporting regulations reviewed by a public accountant independent of the issuer, unless a financial report from the issuer has been audited by an independent auditor is available.

C. General Review of Investor Protection

Investor protection is a general term that refers to legal protection provided by a state whose function is to prevent *prohibits* and penalties (*sanctions*).⁹⁶ The form of legal protection in business economic activities, especially the capital market, involves many parties, especially issuers, investors, organizers and institutions that support capital market activities. Another definition is also contained in each securities regulation as a policy tool that ensures strong investor protection and is in line with stock market developments.⁹⁷ Initially, investor protection was inspired by the existence of securities regulations in response to

⁹⁶ Rafael La Porta, *Investor Protection and Corporate Governance*, *Journal of Financial Economics*, no. 58, (1999): 9.

⁹⁷ La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2006). What works in securities laws? *Journal of Finance*, 61.1–32.

financial crises, accounting scandals, corporate governance issues, and financial innovations.⁹⁸ For example, the Congress of the United States (US) *The Securities Act* of 1933 and the *Exchange Act* of 1934 in response to the stock market crash of 1929 and the effects of *The Great Depression*. The regulation was intended to reduce the imbalance of information between securities issuers and investors, complementing the state-level laws and regulations in effect at that time. Similar actions were taken in other developed countries, especially during the emergence of the financial crisis in 2008.

Securities regulations, especially protection of investors, in response to the problem of investment security guarantees, especially when the emergence of the ECF depicts financial innovation for small entrepreneurs and the general public.⁹⁹ The Internet provides an opportunity to link relatively low supply and become a viable alternative to external finance for startups in countries that permit general public demand without issuing expensive prospectuses.¹⁰⁰ Hornuf and Schwienbacher's (2017) research on investor protection and ECF regulation shows that the differences in securities laws in different countries vary depending on the minimum issue size requiring compliance with the prospectus where registration requirements define the responsibilities and obligations of management in relation to disclosure principles. (cf. Table 2.2).

⁹⁸ Lars Hornuf, Armin Schwienbacher, loc. cit., 2017.

⁹⁹ Gerrit KC Ahlers, Douglas Cumming, Christina Günther, Denis Schweizer. Loc. cit. 2015.

¹⁰⁰ Lars Hornuf, Matthias Schmitt, "Success and Failure in Equity Crowdfunding," *CESifo DICE Report* 14, no. 2 (2016): 16–22.

Table 2.2

Regulation of ECF disclosure principles in several countries¹⁰¹

	Reform	Maximum issue w / o prospectus	Maximum amount sold to investor	Regulation of gatekeeper	Disclosure requirements	Investor education
Austria	Aternativfinanzierungsgesetz (AltFG) 2015, previous reform of the Kapitalmarktgesetz in 2013	EUR 5,000,000 (previously € 250,000, before that EUR 100,000)	Single issuer limits 10% of net investable financial assets or twice the monthly net income; max. EUR 5000 in case the investor has a net income of EUR 2500 or less	Trade authority or security regulator can authorize platform	Minimum information disclosure regarding the issuer and financial instrument for issues larger than EUR 250,000 (stocks and bonds) and EUR 1,500,000 (other investments) information disclosure requirements (eg. annual statements) required for issues up to EUR 5,000,000 simplified prospectus	
Belgium	Loi du 25 avril 2014 portant des dispositions diverses, published at the official journal Moniteur Belge on 7 May 2014 nr. 36946	EUR 300,000 if no investor can invest more than EUR 1000; otherwise, EUR 100,000	Single issuer limit EUR 1000 for issues between EUR 100,000 and EUR 300,000; no single issuer limit for issues below EUR 100,000			
France	Ordonnance nr. 2014–559 of 30 May 2014; Decret d'Application nr. 2014– 1053 of 16 September 2014	EUR 1,000,000 (previously EUR 100,000)		Securities regulator authorizes the platform	Obligation of the issuers to supply simplified documentation to the investors, but not subject to approval by the securities regulator	Investors must undergo a test that determines their risk profile, the results of which must be in line with the risks involved in equity crowdfunding
Germany	Kleinanlegerschutzgesetz 2015	EUR 2,500,000 (previously EUR 100,000)	Single issuer limit EUR 1000 of investor does not want to provide personal	Trade authority authorizes the platform	Small information leaflet	

¹⁰¹ Lars Hornuf and Armin Schwenbacher, *Op. Cit.*, 581–582.

	Reform	Maximum issue w / o prospectus	Maximum amount sold to investor	Regulation of gatekeeper	Disclosure requirements	Investor education
			information); otherwise, twice the monthly net income; max. EUR 10,000			
Italy	Decreto Legge n. 179/2012 and Decreto Legge n. 33/2015	EUR 5,000,000 (previously EUR 100,000) *				
UK	PS14 / 4 2014	EUR 5,000,000 (previously EUR 5,000,000)	Aggregate limit of 10% of net investable financial assets	Securities regulator authorizes platform		Retail clients need to seek financial advice
USA	JOBS act (Title III) 2012	USD 1,000,000 (previously USD 0)	Aggregate limit of USD 2000 to USD 100,000 annually depending on the income and net wealth	Securities regulator authorizes funding portal or brokerdealer	If the overall amount of the issue is \$ 100,000 or less, issuers must provide the most recent income tax returns and financial statements, which must be certified by the principal executive officer. For issues of more than \$ 100,000 but less than \$ 500,000, financial state must be provided and reviewed by a public accountant, who should be independent from the issuer. must use professional standards and procedures for the review. for issues of more than \$ 500,000, the issuer must provide audited financial statements.	Funding portal or brokerdealer needs to provide disclosures, including disclosures related to risks and other investor education materials.
<p>* Only innovative startups and innovative SME's eligible: [a] the incorporation and business operations of the firm should have taken effect no more than 48 months ago; [b] the management is located in Italy, and the main business activities take place there; [c] the annual turnover in the second year of business as stated in the last accounts does not exceed € 5,000,000; business activities of the firm take place in Italy; [d] the firm does not and did not make payouts to shareholders using previous corporate profits; [e] the sole or main purpose of the firm is to develop, produce, and sell innovative products or services with a high-technological</p>						

	Reform	Maximum issue w / o prospectus	Maximum amount sold to investor	Regulation of gatekeeper	Disclosure requirements	Investor education
	value; [f] the firm was not established as part of a merger, de-merger, or sale of a corporation or corporate entity; and; [g] the firm fulfills at least one of the following conditions: (1) the firm invests at least 15% of the greater of the annual production costs or the production value in R&D; (2) one-third of the employees, who have obtained a PhD, are enrolled in a university PhD program or two-thirds of the employees have obtained an academic degree or have worked for more than 3 years in a private or public research institution; or (3) the firm owns a patent on an industrial, biotech or electronic semiconductor innovation or owns the right on a software, which is registered in the public software register, related to the purpose of the corporation. Article [a] does not apply to innovative SME's. However, they need to provide an audited balance sheet to investors.					

The explanation regarding investor protection focuses more on the rules used to protect investors from fraud by fictitious companies. The explanation of investor protection needs to be approached with an argumentative approach about '*buyer beware*' or 'cautious buyers', meaning that investors do not just rely on the existing rules of the ECF in a country but also have sensitivity and knowledge of the ECF.¹⁰² First, buyers should not assume and make risky or unrealistic bets when investing in a particular company. Second, investor protection is guaranteed in accordance with the clarity and disclosure principle from the company to investors regarding the description and value of investments in ongoing projects. In addition, periodic disclosure of financial reports will determine the extent to which legal protection guarantees can run. The importance of investor protection is also contained in the rules of the SEC (the United States) or OJK (Indonesia) as a financial supervisory institution that seeks to promote market stability and minimize systemic risk. This supervisory agency is in charge of ensuring capital adequacy, monitoring security assurance, risk management practices, and company health.

¹⁰² Thomas Martin, Op. Cit., 18

D. General Review of Equity Crowdfunding in an Islamic Perspective

The Financial Services Authority (OJK) has granted permits and encourages the issuance of *sukuk* using the fintech platform Equity Crowd Funding (ECF) since 2020. This policy is an effort to facilitate access to funding for halal MSMEs players through the Islamic capital market in order to increase the halal value chain. As for the offer of access to funding for MSMEs through the ECF with a capitalization of business value below Rp. 10 billion.¹⁰³

Capital market in Islamic perspective is better known as a capital market that applies the principles or what is known as the Islamic capital market. The Islamic capital market prohibits all economic actions that have elements of usury, gambling, free speculation, and so on.¹⁰⁴ This principle is what distinguishes the Islamic capital market from conventional capital markets. In Indonesia, the establishment of many capital market instruments in the form of Islamic stocks and bonds has emerged, one of which is the DSN-MUI Fatwa No. 40 / DSN-MUI / X / 2003 concerning the mechanism of the Islamic capital market.¹⁰⁵ Sharia securities include regulations in the capital market by requiring company managers and their issuance to comply with sharia principles in accordance with Islamic sharia teachings according to the DSN-MUI through fatwas.

¹⁰³Lida Puspaningtyas, *Kebijakan penerbitan sukuk melalui ECF selesai akhir tahun*. <https://republika.co.id/berita/ekonomi/syariah-ekonomi/qjzgd6370/keb-tahun>, accessed on 14 January 2020.

¹⁰⁴ Anna Nurlita, "Investasi di pasar modal syariah dalam kajian Islam". *Kutubkhanah*, Vol. 17, No. 1, (2015): 1–20.

¹⁰⁵ Ulfah Nur Afyah, Moch Mahbub Analisis, "Fatwa DSN-MUI NO. 40/DSN-MUI/X/2003 Tentang Pasar Modal Dan Pedoman Umum Penerapan Prinsip Syarian Di Bidang Pasar Modal". *Al-Muamalat*, Vol. 6, No. 1, (2019): 83–98.

In general, the provisions of the Islamic capital market follow the rules and fatwas related to the sale of sharia securities according to the DSN MUI Fatwa No.40 / DSNMUI / X / 2003 concerning the Capital Market which includes Sharia Shares, Sharia Bonds, Sharia Mutual Funds, Asset Backed Securities Collective Investment Contract (KIK EBA) Sharia, and other securities in accordance with sharia principles.¹⁰⁶ Regarding the reporting of the disclosure principle of buying and selling securities, MUI explained that transparent information can be obtained through information from companies and from Bapepam (now OJK). The capital market Sharia principles aim to fulfill the principles of fairness, openness and prudence during the transaction process in the capital market so that it can support a fair market mechanism system and the supervision and law enforcement by the capital market authority can be carried out effectively.

The application of the Islamic crowdfunding concept, including the ECF, is possible as long as it does not conflict with the law and upholds the values of sharia and general rules that apply.¹⁰⁷ One of the foundations of the *crowdfunding* sharia is based on the verse in Surah Al-Maidah [5], paragraph 2, concerning help each other in good deeds:

¹⁰⁶ Fadilla Fadilla. "Pasar Modal Syariah dan Konvensional". *Islamic Banking: Jurnal Pemikiran Dan Pengembangan Perbankan Syariah*, Vol. 3, No. 2, (2018): 45–56.

¹⁰⁷ Anisah Novitarani. "Analisis Crowdfunding Syariah Berdasarkan Prinsip Syariah Compliance serta Implementasinya dalam Produk Perbankan Syariah". *Al-Manahij: Journal of Islamic Law Studies*, Vol. 12, No. 2, (2018): 251.

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ﴿٢﴾

means:

And please-help another in (do) goodness and piety, and don't help in committing sins and transgressions. And fear Allah, Allah His punishment is very heavy [al-Mâidah / 5: 2].

While the capital market activities and crowdfunding must be detached from the process of buying and selling that contains usury as Surah Ar-Rum: 39:

وَمَا آتَيْتُم مِّن رِّبَا لِّيَرْبُوَ فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُوا عِنْدَ اللَّهِ وَمَا آتَيْتُم مِّن زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَٰئِكَ هُمُ الْمُضْعِفُونَ ﴿٣٩﴾

means:

And something usury (addition) that you give so that human property will increase, it will not increase in the sight of Allah. And what you give in the form of zakat that you mean to get the pleasure of Allah, then these are the people who multiply (their reward) [Surah Ar-Rum / 30: 39].

The development of the Islamic capital market in Indonesia is found in the Jakarta Islamic Index (JII) which accommodates at least 30 of the best stocks according to the principles of Islamic law.¹⁰⁸ Sharia stock index sales require

¹⁰⁸ IDX, *Indonesian Sharia Stock Index*, 2021, <https://www.idx.co.id/idx-syariah/indeks-saham-syariah/> Accessed on 10 January 2021, 08.00 WIB.

companies not to contradict Islamic law when doing business such as gambling (*maysir*), uncertainty (*gharar*), usury, and trading haram goods and / or businesses to produce / distribute goods / services that are harmful in nature.

Article 18, No. 57 / POJK.04 / 2020 describes sukuk as sharia securities in the form of certificates or proof of ownership of the same value and represents an inseparable or indivisible part (*syuyu'*), of the underlying assets¹⁰⁹. In the process of issuing Sukuk, Providers are required to ensure that the issued Sukuk has obtained a sharia compliance statement from a sharia expert team who has a capital market sharia expert license. Sharia compliance (*sharia compliance*) as following the MUI DSN Fatwa Number 117 / DSN-MUI / II2018,¹¹⁰ its function is a preventive supervisory task and is an important element in the management and operation of Islamic banks, capital markets, Islamic insurance, sharia pawnshops, and sharia financial institutions non-bank (Islamic financial services cooperative), including Islamic crowdfunding.

¹⁰⁹ POJK Article 18, No. 57 / POJK.04 / 2020

¹¹⁰ Anisah Novitarani, *Op. cit.*, 253.

CHAPTER III
THE COMPARISON OF DISCLOSURE PRINCIPLES EQUITY
CROWDFUNDING BETWEEN INDONESIA AND THE UNITED STATES
OF AMERICA

**A. The Regulation of Disclosure Principles Equity Crowdfunding
implementation in Indonesia**

In general, related to investment *crowdfunding* or *Equity Crowdfunding* in Indonesia, it has been regulated in various predetermined laws and regulations. First, it is based on OJK Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services; OJK Regulation No. 13 / POJK.02 / 2018 concerning Digital Financial Innovation in the Financial Services Sector, and OJK Regulation No. 37 / POJK.04 / 2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings (*Equity Crowdfunding*). During the development of *Equity Crowdfunding* in Indonesia, various regulations regarding services through technology-based stock offerings have been regulated in OJK regulations regarding types of crowdfunding, including: i) *peer to peer lending* (P2P Lending) as an information technology-based lending and borrowing service based on POJK No. 77 / POJK.01 / 2016. ii) *equity crowdfunding* as a service through an information technology-based share offering based on POJK No. 37 / POJK.04 / 2018 and updated to appear POJK No. 57 / POJK.04 / 2020.

According to the Indonesian Joint Funding Fintech Association (AFPI) as an organization and association of *P2P Lending* or Technology Financial Online

Funding in Indonesia, which is officially licensed at the OJK, many platforms have been used as a place for the funding and loan process. In addition, there are rules *P2P Lending* based on Article 6 paragraph (2) POJK No. 77 / POJK.01 / 2016, regarding the maximum limit of total loan disbursement of not more than 2 billion Rupiah. Thus, they must meet the specific requirements of these regulations. Unlike *P2P Lending*, *ECF* based crowdfunding services are new to both the implementation and issuance of regulations from OJK. The OJK has made regulations similar to the capital market with simpler implementation process supporting institutions, capital orientation, objectives, and scope of investors. The subject receiving capital is referred to as the Issuer. This is as stipulated in Article 1 point 5 POJK No. 57 / POJK.04 / 2020 concerning Crowdfunding Services for Crowdfunding Service Providers, here in after referred to as the Operator, is an Indonesian legal entity that provides, manages and operates Crowdfunding Services.

In accordance with the provisions of Article 33 POJK No. 57 / POJK.04 / 2020 that the issuer is in *Equity Crowdfunding* with the condition that the maximum share value offered by the Issuer via ECF is IDR 10,000,000,000.00 (ten billion rupiah) and Article 33 paragraph 1 of the POJK also states that this value can be offered in 1 (one) bid or more.

Certainty regarding the performance of the Provider is determined during the share offering period as stated in Article 35 No. 57 POJK.04 / 2020, namely a maximum of 45 (forty) days and according to Article 36 No. 57 / POJK.04 / 2020 during the share offering period, issuers are prohibited from canceling their share

offerings until the end of the share offering period. In addition, based on Article 56 Paragraph 3, an investor as a party who purchases Issuer shares through an *equity crowdfunding platform* must be a legal subject who has the ability and income of up to 500 million Rupiah per year, to be able to buy ECF shares at most 5% of their total income per year. Moreover, investors should earn more than 500 million Rupiah per year and can buy shares of at most 10% of their total income per year.

Article 58 POJK No. 57 / POJK.04 / 2020 regulates legal protection for investors whereby they can cancel their share purchase plan through *equity crowdfunding* sites within 48 hours after purchasing shares and prior to settlement of the transaction through the Operator. In addition, the regulatory updates in Article 72 and Article 73 (1) POJK No. 57 / POJK.04 / 2020 as explained "Providers are required to apply the basic principles of user protection in the form of: a. transparency; b. fair treatment; c. reliability; d. data confidentiality and security; and e. User dispute resolution is simple, fast, and affordable ". "Providers are required to provide and / or convey the latest information regarding Crowdfunding Services which is accurate, honest, clear and not misleading".¹¹¹

Article 5 and Article 6 No. 57 / POJK.04 / 2020 explains about ECF licensing and offers that are different from public offerings as regulated in the Capital Market Law and the organizers must be registered as the Electronic System Operator of the ministry that organizes government affairs in the field of communication and informatics. The list of ECF platforms that have received permission from the OJK in Indonesia include: 1) Santara / PT Santara Daya Inspiratama (KEP- 6 September

¹¹¹ POJK No. 57 / POJK.04 / 2020, Article 72 and Article 73 (1)

59 / D.04 / 2019 2019); 2) Bizhare / PT Investasi Digital Nusantara (KEP- 6 November 71 / D.04 / 2019 2019); and 3) Crowddana / PT Crowddana Teknologi Indonusa (KEP- 31 December 93 / D.04 / 2019 2019). In general, the three ECF platforms were established and formally endorsed at the end of the 2019 quarter.

Additionally, in 2020, the new name PT Numex Teknologi Indonesia was added in the decision of the OJK Board of Commissioners Member No. KEP-68 / D.04 / 2020¹¹² concerning the Granting of Service Provider Business Permits Equity Crowdfunding.¹¹³

The latest POJK Regulation No. 57 / POJK.04 / 2020 regarding the disclosure principle only refers to the issuer's reports with a few additional details. Article 50 (1) annual report to the operator no later than six months after the Issuer's financial year ends. Article 50 (2) requires the Operator to post the Issuer's annual report on the Operator's website. Meanwhile, the submission of periodic reports is conducted every 3 (three) months, in March, June, September and December to the Operator. Changes to the regulations for the previous report was only reported 1 (one) time, now it is 3 (three) times in the the annual report as well as the mid-year, annual, and incentive reports. Article 53 explains that the financial statements contained in the

¹¹² OJK, Announcement, PENG- / PM.2 / 2020 NUMBER <https://www.ojk.go.id/id/berita-dan-kaktif/penglikasi/Documents/PENG%20-%20PEMBERIAN%20IZIN%20USAHA%20EQUITY%20CROWDFUNDING%20PT%20NUMEX%20TEKNOLOGI%20INDONESIA.pdf> Accessed on 1 January 2021, 20.10 WIB.

¹¹³ OJK, *Daftar Platfrom Equity Crowdfunding Yang Telah Mendapatkan Ijin dari OJK, 2019* in <https://ojk.go.id/id/berita-dan-kaktif/publikasi/Documen%20Daftar%20ts/Pages/Daftar-Platform-Equity-Crowdfunding-who-Has-Received-Permit-from-OJK-Per-31-December-2019/Register%20Platfrom%20ECF%20yang%20telah%20berizin%20per%2031%20Desember%202019.pdf> accessed on October 2020, 20.10 WIB.

annual report as referred to in Article 50 paragraph (1) must use the lowest financial accounting standard for entities without public accountability.

B. The Regulation of Disclosure Principles Equity Crowdfunding implementation in United States of America

In the United States, this business is more popular and is chosen by most investors to get a profit or *return* on a project in the form of dividends or interest with certain guarantees of the disclosure principle and clarity of the regulation . One of the guarantees that the public chooses the ECF business model is because it is related to the disclosure principle so that there is a guarantee of legal protection for investors related to community gathering.¹¹⁴

ECF regulations in the United States are governed by *The JOBS Act of 2012* which aims to balance the fundamental legal principles of securities with open crowd-raising requests. Another acronym of *the JOBS act, Title III* is CROWDFUND Act or *Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012*. Title III defines how the ECF will be a platform for raising capital online while preventing fraud and unethical disclosure. *The JOBS Act* itself addresses the definitions of a) crowdfunding including issuers, intermediaries or providers, and investors; b) MSMEs or developing companies; c) Bid regulations; d) Limitation of company reporting.

Section 302 of the JOBS Act adds a crowdfunding transactional exemption as § 4 (6) of the 1933 Act with the aggregate amount sold to all investors not to exceed

¹¹⁴ Bismar Nasution, loc. cit. 2001

\$ 1,000,000 over a 12 months period. Most crowdfunding projects have small target numbers, for example the popular Kickstarter site only had an average project during 2011 of around \$ 8,390.30. As for the things that must be provided by commission issuers, intermediaries and potential investors.¹¹⁵

Regarding the principle of spatial openness, the issuer or issuer is obliged to follow the rules according to paragraph (D) (i) by means of *sliding scale* approach, meaning that if there is a larger number of offers, it is mandatory to provide information, whereas when looking for small capital, the reporting is not necessary in whole. As an issuer currently attracting \$ 100,000 or less in capital, it is sufficient only to disclose its income tax returns for the most recent completed year, if any, and the financial statements certified by the chief executive officer. Rule (D) (ii) states that if the target bid amount is between \$ 100,000 and \$ 500,000, the issuer must or must disclose financial statements reviewed by an independent public accountant in accordance with standards and procedures established by *The Securities and Exchange Commission* (SEC). In addition, the elucidation in paragraph § 4A (b) (4) strongly requires issuers seeking capital of more than \$ 500,000 to involve public accountants and the principle of disclosure of the '*audited financial statement*' and reported annually.

According to § 4 (6) (B) The Operator as an intermediary of the transaction or *intermediaries* must be registered with an independent regulatory organization to 'reduce the risk of fraud'. While most of the requirements for crowdfunding intermediaries are in line with the role of *broker-dealers* elsewhere who are also

¹¹⁵ JOBS Act, § 4A (b) (1).

tasked with educating investors to better understand the role of crowdfunding investments. The intermediaries that are allowed to host the ECF under Congress are known as 'funding portals'.¹¹⁶ Based on the rules in the JOBS Act, § 304 (a) (1) there are restrictions on the funding portal which serves to protect investors. Fund portals are prohibited from offering investment advice in subsection (A), which corresponds to similar prohibitions on securities brokers, and (B) prohibits funding portals from actively promoting more profitable securities to investors, for example, by using aggressive call-to-action tactics (*aggressive solicitation tactics*). In addition, the prohibition on providing compensation to employees or also called as commission for selling securities in sub-section (C) destroys the incentive for portal employees to sell junk securities. Meanwhile, the prohibition on handling funds in paragraph (D) reduces the chance of fraud. Accordingly, the funding portal must be a member of a national securities association registered under section 15A, but also have limited exemptions from registration under section 15 (A) (1) of the 1934 Act and the SEC has authority on this exception.

The rules against investor protection are also contained in investment restrictions set by Congress under exception § 4 (6). If the investor's net worth or annual income is less than \$ 100,000, then the investor should not invest an amount greater than \$ 2,000 or 5% of his or her annual income. If the investor's net worth or annual income is equal to or more than \$ 100,000, the investor may invest no more than \$ 100,000 or 10% of his or her annual income or net worth. Section 4A (e) limits the resale of securities sold under a crowdfunding exemption, albeit

¹¹⁶ JOBS Act, § 304 (a) (1)

narrowly, to a period of one year, during which the investor can sell the securities back to the issuer, accredited investor, family member, or as part of a registered offering. The SEC may further limit the resale of these securities, although statutory restrictions that are limited to resale allow a secondary market to emerge for crowdfunding securities that are more than one year old.

The most essential part of the provisions of the JOBS Acts rules relates to investor protection (§ 302) ranging from crowdfunding platform providers, SEC provisions as either a broker or 'funding portal', and guarantees to potential investors in order to understand the risks and benefits of investing. Price disclosure is another important component of investor protection that should be considered during the regulatory process. This rule was made because in anticipation of novice investors who have a tendency to not pay attention to the share offering price when accessing portals, *crowdfunding* especially the general limit for each project is effectively \$ 500,000.

The publication of the explanation regarding the bid documents provided to investors is very clear that the instructions are also contained in the *Crowdfunding Regulation: A Small Entity Compliance Guide for Issuers* states that the Instructions for Form C indicate the information that must be disclosed by the issuer, including: information about officers, directors and owners. 20 percent or more of issuers; a description of the issuer's business and use of the proceeds from the offer; the price of the security to the public or the method for determining the price, the target bid amount and the deadline for reaching the target bid amount, whether the issuer will

accept investment in excess of the target bid amount; certain related party transactions; and discussion of the issuer's financial condition and reports.

Protection of investors is generally guaranteed directly by the state through the SEC to protect investors and the ECF cycle. The SEC adopted *Regulation Crowdfunding* in 2015, which allows individuals to invest in securities-based transactions subject to certain investment restrictions. Issuers are limited in the amount of money they can raise and must meet certain disclosure requirements about their business and securities offerings. Therefore, the disclosure principle follows the rules *Form C on Disclosure by Issuers*, which divides several reporting rules in detail.¹¹⁷

C. The Similarities in the Implementation of Equity Crowdfunding between Indonesia and the United States and the reasons for differences in the Disclosure Principle Regulation between Indonesia and the United States

**Table 3.1
The Similarities points Equity Crowdfunding between the United States and Indonesia**

Points of Similarities	The United States and Indonesia
The Purpose	They have the same aim which is to provide alternative funding for small, medium, and startup business actors

¹¹⁷ US Securities and Exchange Commission, *Regulation Crowdfunding: A Small Entity Compliance Guide for Issuers, 2020 in <https://www.sec.gov/info/smallbus/secg/rccomplianceguide-051316.htm> # 3*, accessed on 3 January 2021

Points of Similarities	The United States and Indonesia
	to obtain funds by simplifying the procedure for offering securities from the capital market.
Investor requirements	<p>The United States and Indonesian Investor requirements both provide certain conditions for investors who want to buy shares on the ECF Platform, for the United States itself is regulated in JOBS Act Title III § 4 (6) which states if the investor's net worth or annual income is less than \$ 100,000 , the investor may not invest an amount which is greater than \$ 2,000 or 5% of his annual income. If the investor's net worth or annual income is equal to or more than \$ 100,000, the investor may invest no more than \$ 100,000 or 10% of his or her annual income or net worth.¹¹⁸ For Indonesia itself, it is explained in POJK No. 57 / POJK.04 / 2020 Article 56 Paragraph 3 an investor as a party who purchases Issuer shares through an <i>equity crowdfunding platform</i> must be a legal subject who has the ability and income of up to 500 million Rupiah per year Thus, it is able to buy ECF shares at most 5% of the total income per year and investors who earn more than 500 million Rupiah per</p>

¹¹⁸ Ibid JOBS Act Title III § 4 (6)

Points of Similarities	The United States and Indonesia
	year can buy shares at most 10% of their total income per year. ¹¹⁹

The emergence of a rule is inseparable from the factors that require the regulation of such a rule, including the regulation of the disclosure principle in the implementation of Equity Crowdfunding. Hornuf and Schwienbacher's (2017) research on investor protection and ECF regulation shows that the differences in securities laws in different countries very depending on the minimum issuance size that requires compliance with the prospectus where registration requirements define the responsibilities and obligations of management in relation to disclosure principles. The United States has paid great attention to regulating the disclosure principle in investment management because it has historical reasons, namely the fall of the stock market in 1929 and the impact of the *Great Depression*. The regulation of the disclosure principle was intended to reduce the imbalance of information between securities issuers and investors complementing the state-level laws and regulations in effect at that time. Similar actions were taken in other developed countries, especially during the emergence of the financial crisis in 2008.¹²⁰

Securities regulations, especially protection of investors, became a response to the problem of investment security guarantees, especially when the emergence

¹¹⁹ POJK No. 57 / POJK.04 / 2020, Article 56 paragraph 3

¹²⁰ Gerrit KC Ahlers, Douglas Cumming, Christina Günther, Denis Schweizer. Loc. lit. 2015.

of the ECF depicts financial innovation for small entrepreneurs and the general public. The internet opens up opportunities to link relatively low supply and become a financial alternative. External finance that is feasible for start-up companies in countries that permit general public demand without issuing expensive prospectuses is the reason for the United States to apply certain conditions that are adjusted to the amount of supply.¹²¹

Meanwhile, in Indonesia itself, Equity Crowdfunding is relatively new, even when there is an ECF platform, Santara. Santara itself has only been running for two months, around September 2018, having to deal with the OJK regarding its business practices. The site must be closed and entered into the internet positive until it has a registered certificate.¹²² So that, POJK No. 37 / POJK.04 / 2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings was issued. Further, a new regulation has been issued, namely POJK Number 57 / POJK.04 / 2020. However, it is unfortunate that there are no significant changes in the new rules regarding the disclosure principle, the urgency of issuing new regulations is only due to the lack of enthusiasts to use Equity Crowdfunding itself and the new rules are expected to involve users, including investors. This is very unfortunate when the disclosure principle and investor protection are not given more attention.

¹²¹ Lars Hornuf, Matthias Schmitt, loc. cit. 2016

¹²² <https://dailysocial.id/post/platform-equity-crowdfunding-santara> accessed on 18 January 2021, 04.00 PM.

D. The Comparison of Disclosure Principles Equity Crowdfunding

Regulation between Indonesia and United States of America

This section explains the orientation of setting the disclosure principle in the implementation of *Equity Crowdfunding* between Indonesia and the United States. The comparative inventory is presented in the form of a table which aims to confirm the achievement of transparency and avoid the risk of loss of information and fraud due to the lack of information. The table below explains several points, including the legal basis, supervisory institutions, prospectuses, minimum limits on the number of offers for fundraising, issuer financial reports, supporting professions, and investor protection.

Table 4.2
The Comparison of the United States and Indonesia ECF Disclosure Regulation

Points of Comparison	The United States	Indonesia
Legal Basis for	The JOBS Title III Act of 2012, described in detail in the publication of Regulation Crowdfunding: A Small Entity Compliance Guide for Issuers	POJK No. 57 / POJK.04 / 2020
Supervisory Agency	Securities and Exchange Commission	Financial Services Authority

Points of Comparison	The United States	Indonesia
Prospectus / Bid Documents	<p>Instructions for Form C indicate the information that must be disclosed by issuers, including:</p> <ol style="list-style-type: none"> 1. information about officers, directors and owners of 20 percent or more of the issuer; 2. a description of the issuer's business and use of the proceeds from the offer; 3. the price of the security to the public or the method for determine the price, the amount 	<p>It does not specifically explain the contents of the prospectus itself. However, It only explains the documents / information that must be submitted by the issuer to the organizer. It does not explain that the prospectus itself must be updated according to the actual condition of the issuer.¹²⁵</p>

¹²⁵ POJK No. 57 / POJK.04 / 2020, Article 16 paragraph 1.

Points of Comparison	The United States	Indonesia
	<p>4. target bid and the deadline for reaching the target bid amount,</p> <p>5. an explanation of whether the issuer will accept an investment exceeding the target bid amount;</p> <p>6. certain related party transactions; and</p> <p>7. Discussion on the financial condition and financial statements of the issuer.¹²³</p> <p>The prospectus / bid document is made in very</p>	


¹²³ US Securities and Exchange Commission, *Regulation Crowdfunding: A Small Entity Compliance Guide for Issuers, 2020* in <https://www.sec.gov/info/smallbus/secg/rccomplianceguide-051316.htm#3> , accessed on 3 January 2021

Points of Comparison	The United States	Indonesia
	strict manner because it must be reported continuously and openly by applying the realdisclosure principle ¹²⁴	
Minimum limit of Fundraising Offer Amount	In the United States of America, the minimum amount of the Fund Offer is divided into 3 (three): First, Less than \$ 107,000 Second, more than \$ 107,000 but not more than \$ 535.00 Third, more than \$ 535,000	IDR 10,000,000,000.00 (Ten Billion Rupiah) ¹²⁶
Financial Report Issuer Financial	Report is reported annually and if there is a change, it is obliged to notify the	There are Annual Reports ¹²⁷ and Incidental Report. Incidental report

¹²⁴ Elif Härkönen. “Crowdfunding and the Small Offering Exemption in European and US Prospectus Regulation: Striking a Balance Between Investor Protection and Access to Capital ?,” *European Company and Financial Law Review* 14, no. 1 (2017): 137.

¹²⁶ Ibid., Article 33 paragraph 1.

¹²⁷ Ibid, Article 50 paragraph 1.

Points of Comparison	The United States	Indonesia
	<p>organizer and the agency that supervises</p> 	<p>must be submitted if the Issuer has events or information material that may affect the Issuer's business continuity or the Issuer's ability to make a refund.¹²⁸</p> <p>And if the Issuer no longer meets the criteria for net assets as the Issuer, it is allowed to make reports on the lowest financial accounting standards for entities without public accountability.</p>
<p>Supporting Independent Third Party</p>	<p>The affirmation regarding the involvement of the supporting profession, namely the independent Public Accountant, is clearly stated in the</p>	<p>In the new POJK, there is absolutely no mention of an independent supporting profession to audit the documents / information provided both for documents</p>

¹²⁸ Ibid, Article 52 paragraph 1.

Points of Comparison	The United States	Indonesia
	<p>regulations, which are under the following conditions:</p> <p>for an issuer with an offer of \$ 107,000 or less, the issuer's financial statements and certain information from the issuer's federal income tax return are both certified by the chief executive¹²⁹. However, if the issuer's financial statements are available, which have been reviewed or audited by an independent public accountant of the issuer, then the issuer must provide such financial statements and do not need to enter the</p>	<p>before and after the offer, the POJK only states that the report must be made by an accountant, it becomes a question whether the accountant is an internal accountant or an independent public accountant.</p>

¹²⁹ SEC., *Loc. cit.*,

Points of Comparison	The United States	Indonesia
	<p>reported information. The issuer offers more than \$ 107,000 but not more than \$ 535.00 then Financial reports are reviewed by a public accountant who is independent from the issuer. However, if the issuer's financial reports are available and have been audited by an independent public accountant of the issuer, the issuer must provide such financial reports and does not need to include reviewed financial reports. And finally, for issuers that offer more than \$ 535,000, their reporting regulations are reviewed by an independent public</p>	

Points of Comparison	The United States	Indonesia
	<p>accountant of the issuer, unless a financial report from the issuer has been audited by an independent auditor is available.</p>	
Investor Protection	<p>The most essential aspect of the provisions of the JOBS Act Title III regulation relates to investor protection (§ 302) starting from crowdfunding platform providers, SEC provisions as either a broker or 'funding portal', and guarantees to potential investors to understand the risks and benefits of investment. Price disclosure is another important component of investor protection that</p>	<p>Rules regarding Investor protection are regulated in article 72 POJK ECF which reads: Operators are required to apply the Basic principle of User protection in the form of:</p> <ul style="list-style-type: none"> a. transparency; b. fair treatment; c. reliability; d. data confidentiality and security; and user dispute resolution in a simple, fast, and affordable cost. Article 73 POJK ECF paragraph (1)

Points of Comparison	The United States	Indonesia
	<p>should be considered during the regulatory process. This rule was made because in anticipation of novice investors who have a tendency to not pay attention to the share offering price when accessing portals, <i>crowdfunding</i> especially the general limit for each project is effectively \$ 500,000. and of course in a direct audit by an independent public accountant so that accuracy, correctness, and transparency have been achieved coupled with direct supervision by the SEC so that they do not</p>	<p>states that Providers are required to provide and / or convey the latest information regarding Crowdfunding Services that is accurate, honest, clear, and not misleading. Of course, this will not be achieved if either the financial statements or documents prior to bidding are not made properly or the accountability, correctness of data, and risk that is caused by the issuer cannot be clearly reviewed.</p>

Points of Comparison	The United States	Indonesia
	leave the matter directly to the Organizer.	
Legal consequences	<p>Bad Actor Disqualification:</p> <p>a) Covered persons: issuers are required to conduct a factual inquiry to determine such as being convicted of, or subject to court or administrative sanctions for, securities fraud or other violations of specified law.</p> <p>b) Disqualifying Events such as: certain criminal convictions; certain court injunctions and restraining orders; certain final orders of</p>	<p>The sanctions given to the party causing the violation will be imposed by the OJK.</p> <p>Administrative sanctions are in the form of: a) written warnings, b) fines, namely the obligation to pay a certain amount of money, c) restrictions on business activities, d) suspension of business activities, e) revocation of business licenses, f) cancellation of approval and / or g) cancellation of registration. (POJK 57/2020 Article 85 Paragraph 2-4)</p>

Points of Comparison	The United States	Indonesia
	<p>certain state and federal regulators; - Certain SEC disciplinary orders; Suspension or expulsion from membership in a self-regulatory organization (SRO).</p> <p>For example, a court injunction that was issued within the last five years or a regulatory order that was issued within the last ten years. (503 Regulation of Crowdfunding).</p>	

Based on the above comparisons, the ECF in Indonesia is still very weak in terms of disclosure principle regulation both in terms of document preparation or information as well as financial reports. However, in the United States, the ECF is very developed in the formulation of regulations, especially in terms of the

distribution of specifications for the number of issuers' offers and investor protection in terms of the principle of specific and periodic disclosure.

E. The Implications of Disclosure Principle Regulation of Equity Crowdfunding for Organizer (Platform) and Investors

There are some implications of ECF disclosure regulation for organizers and investors in general in both Indonesia and the United States of America. Those are:

1. The disclosure principle regulation as a medium that connects issuers, organizers, investors and supervisory agencies.
2. The disclosure principle provides assurance against fraud and misinformation in the ECF cycle.
3. The disclosure principle provides clear information for investors and educates the society as potential investors about the advantages and risks of the ECF.
4. The disclosure principle can give birth to an inclusive, transparent economy.
5. The disclosure principle can ensure transparency of both parties, fairness in investment and test reliability / professionalism.

Thus, the disclosure principle is an essential part of the development of the *ECF* financial system. This is because the development of the digital era requires *fintech* to be more open and transparent, so the goal of the ECF is to act as a liaison between startups and the public as potential investors. This means that the ECF does not only talk about capitalization of capital but also considers social aspects.

CHAPTER IV

CONCLUSION

A. Conclusion

In conclusion, the lack of regulations related to the disclosure principle in Indonesia is certainly not enough to guarantee legal certainty and investor protection unlike the disclosure principle regulated in the capital market in accordance with Government regulations. It is different from regulations in the United States that regulate the minimum limit for the amount of crowdfunding offers and the obligation to use independent third parties such as public accountants in making financial statements or documents audits that have a direct relationship with investors so that the information obtained is truthful and can be accounted for in transparency.

B. Suggestions

The researcher realizes that in Indonesia, the development of Equity Crowdfunding requires further studies on aspects of the disclosure principles which must state an independent supporting profession and provide a minimum limit for the amount of Crowdfunding offers with certain requirements based on the amount of offers as in the United States which is Indonesia can harmonizing these rules. In addition, the Equity Crowdfunding study also needs to be viewed from a non-legal scientific point of view such as from an economic, social, community and cultural perspective. For example, when EFC Indonesia uses the classification of offering minimum limit, the regulation should be reviewed by non-legal experts, such as

social and economic experts to overview the classification of offering minimum limit based on standard economic development in Indonesia.



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APPENDIX



SURAT KETERANGAN BEBAS PLAGIASI

No. : 0040/Perpus/20/H/II/2021

Bismillaahirrahmaanirrahaim

Yang bertanda tangan di bawah ini:

Nama : **Ngatini, A.Md.**
NIK : **931002119**
Jabatan : **Kepala Divisi Perpustakaan Fakultas Hukum UII**

Dengan ini menerangkan bahwa :

Nama : Syarifah Zahra Al-haddar
No Mahasiswa : 17410053
Fakultas/Prodi : Hukum
Judul karya ilmiah : THE REGULATION OF DISCLOSURE PRINCIPLE IN EQUITY CROWDFUNDING (A COMPARATIVE STUDY BETWEEN INDONESIA AND UNITED STATES OF AMERICA)

Karya ilmiah yang bersangkutan di atas telah melalui proses uji deteksi plagiasi dengan hasil **18.%**
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a.n. Dekan
u.b. Ka. Divisi Perpustakaan

Ngatini, A.Md.

UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA
FAKULTAS HUKUM

THE REGULATION OF DISCLOSURE PRINCIPLE IN EQUITY CROWDFUNDING (A COMPARATIVE STUDY BETWEEN INDONESIA AND UNITED STATES OF AMERICA)

by 17410053 Syarifah Zahra Al-haddar

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**THE REGULATION OF DISCLOSURE PRINCIPLE IN EQUITY
CROWDFUNDING (A COMPARATIVE STUDY BETWEEN INDONESIA
AND UNITED STATES OF AMERICA)**

A BACHELOR DEGREE THESIS



بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

by:

SYARIFAH ZAHRA AL-HADDAR

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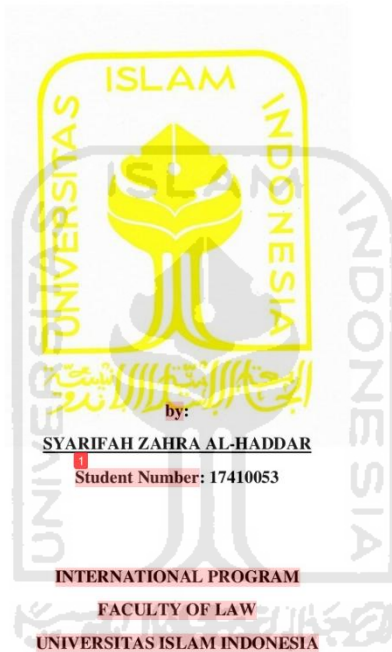
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UNIVERSITAS ISLAM INDONESIA

2021

**THE REGULATION OF DISCLOSURE PRINCIPLE IN EQUITY
CROWDFUNDING (A COMPARATIVE STUDY BETWEEN INDONESIA
AND UNITED STATES OF AMERICA)
A BACHELOR DEGREE THESIS**

**Present as Partial Fullfilment of the Requirements to Obtai the Bachelor
Degree at the Faculty of Law, Universitas Islam Indonesia, Yogyakarta**



2021

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