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OJK IMPLEMENTS NEW REGULATION ON EQUITY CROWDFUNDING

Before 2020 ends, Indonesia Financial Authority (“**OJK**”) issued an OJK Regulation Number 57/POJK.04/2020 on Securities Offering Through Technology-Based Equity Crowdfunding Services (“**OJK Reg 57/2020**”) which came into effect immediately upon its enactment on 11 December 2020. OJK Reg 57/2020 revokes OJK Regulation Number 37/POJK.04/2018 (“**OJK Reg 37/2018**”) which previously serves as the primary OJK regulation regarding equity crowdfunding through shares offering.

OJK Reg 57/2020 was enacted for the purpose of expanding access to funding for small and medium sized enterprise and start-up company by way of conducting fundraising through crowdfunding services. The enactment of OJK Reg 57/2020 also serves as a realization from OJK of its vision to complement Indonesian government’s existing financial inclusion strategies by, among others, enabling contributive digital financial services that focus on empowering people and expanding financing to micro, small and medium-sized enterprises as contemplated under the Digital Finance Innovation and Road Map and Action 2020 – 2024 issued by OJK on August 2020.

Content and Implications

OJK Reg 57/2020 regulates securities offering conducted by issuer for the purpose of selling securities directly to the investor via an open electronic network system (“**Equity Crowdfunding Service**”). Pursuant to OJK Reg 57/2020, Equity Crowdfunding Service encompass offering of securities in the form of promissory notes, commercial paper, shares, bonds, evidence of indebtedness, participation units of collective investment contract, futures contracts related to securities, and all derivatives of securities. This is a notable extension from the previous OJK regulation wherein OJK Reg 37/2018 cater only to equity crowdfunding by way of shares offering. Despite stating that the regulation shall also be referred for the offering of equity-type securities other than shares, OJK Reg 37/2018 was largely focused on shares offering and thus provided little to no elaboration on equity crowdfunding through the offering of other equity-type securities which in turn proven to be ineffective and non-inclusive for small and medium-sized enterprises.

It is important to note that following the enactment of OJK Reg 57/2020, any legal entity providing, managing and operating an Equity Crowdfunding Service (“**Provider**”) who has obtained license as an equity crowdfunding provider pursuant to OJK Reg 37/2018 is required to expand its business activity by fulfilling requirements as stipulated under OJK Reg 57/2020 and submitting application to OJK at the latest one (1) year as of the enactment of OJK Reg 57/2020. Whilst provider who has yet to obtain license approval despite having submitted an application to OJK may opt to continue its application pursuant to OJK Reg 37/2018, provided that such provider will also be required to expand its business activity by fulfilling requirements as stipulated under OJK Reg 57/2020 and submitting application to OJK at the latest one (1) year as of the obtainment of license.

On another hand, any party registered on OJK’s digital financial innovation, who conducted business activity in the form of project funding or other similar business activity, intending to continue its business activity must submit licensing application pursuant to OJK Reg 57/2020 at the latest one (1) year as of the enactment of OJK Reg 57/2020. Such party is also prohibited to enter into new contract for project funding or other similar business activity prior to obtaining license. Should such party fail to submit licensing application within the time period as required, its business activity will be declared as unlicensed and non-supervised by OJK.

Notable Provisions

1. Provider

a. Requirements

In line with requirements of Provider as stipulated under OJK Reg 37/2018, pursuant to OJK Reg 57/2020, Provider shall be a legal entity in the form of a limited liability company or service-type cooperatives having minimum paid-up capital of Rp2,500,000,000 as of the submission of licensing with maximum foreign capital participation of forty nine percent (49%). OJK Reg 57/2020 also restates the requirement of a Provider to be in possession of human resources with expertise in the field of information technology as well as having the ability to conduct review over the issuers.

As also required in other financial technology service providers, a Provider must first be registered as an electronic system provider by the Ministry of Communication and Information prior to submitting licensing application. Following such registration, an equity crowdfunding service provider licensing application shall then be submitted to the Head of Capital Market Supervisor of OJK along with supporting documents as stipulated under Article 13 of OJK Reg 57/2020. OJK will provide approval or non-approval over such application within twenty (20) days as of the submission of complete licensing documents. An application shall be deemed to have been approved should OJK fails to provide its approval or non-approval within such time period. In addition, as also commonly required for other financial technology service providers, Provider must be registered as member of an association acknowledged by OJK.

b. Obligations

OJK Reg 57/2020 sets out several obligations for a Provider which can be sum up as follows:

No.	Obligations
1.	Conducting review over the issuer which at the minimum shall covers items as stipulated under Article 16 OJK Reg 57/2020. Such review shall also take into account credit information from credit information management agency.
2.	Uploading documents and/or information as submitted by the issuer to the Provider's website at the latest two (2) working days before the commencement of offering including any material amendments thereafter.
3.	Ensuring the implementation of securities offering through the Equity Crowdfunding Services until the fulfilment of the rights and obligations of users.
4.	Reporting violation committed by the issuer during the offering period as well as violation of issuer's obligation which directly correlates to the termination of offering period to the OJK.
5.	Facilitating improvement of education and literacy for the users and supporting any activities conducted for the purpose of increasing literacy and financial inclusion.
6.	Storing the documents and/or information submitted by the issuer for time period as required by the prevailing laws on corporate documents.
7.	Ensuring that any crowdfunding undertaken by each issuer does not exceed the prevailing limit.
8.	Providing online communication facility between the investor and issuer.
9.	Providing elaboration on risks which at minimum shall include business risk, investment risk, liquidity risk, failure of electronic system risk, lack of dividend distribution risk and/or risk of dilution of shares for shares offering, and risk of payment failure for debt-type securities or bonds offering.
10.	Ensuring that the investor has possessed a specific securities account to deposit securities and/or fund through the Equity Crowdfunding Service.
11.	Possessing a system to ensure that only investor who has provided confirmation regarding the fulfilment of investor requirement will be able to undertake any investment through the Equity Crowdfunding Service.
12.	Using Indonesian domain.
13.	Providing complaint handling services in accordance with OJK regulation on complaint service.

14.	Providing elaboration on fee and other expenses subjected to the users on the Provider's website.
15.	Possessing refund mechanism in the event where shares offering through Equity Crowdfunding Service is deemed to be null and void.
16.	Utilizing a proper office space which may be self-owned or based on lease.
17.	In case of sharia shares offering equity crowdfunding, conducting review over the issuer's (i) articles of association to ensure that the business activities and the business management of the issuer is conducted based on sharia principle; as well as (ii) shareholders meeting decision on appointment of sharia supervision board.
18.	In case of debt-type securities and/or bonds offering equity crowdfunding, (i) conducting review over the legality of the project which serves as the basis for the issuance of debt-type securities or bonds; (ii) ensuring that the issued bonds have received sharia compliant statement from a licensed sharia expert team or from sharia supervision board. In addition, in the event of debt-type securities or bonds offering, a Provider shall act as investor(s)' proxy to undertake administration, supervision and inspection as necessitated under Article 19 of OJK Reg 57/2020.
19.	Conducting reporting obligations as required under OJK Reg 57/2020.
20.	Organizing electronic system in a secure and reliable manner as well as ensuring that the operation of the electronic system is in accordance with the prevailing laws and regulations in the field of communication and information. Provider may enter into cooperation with and conducting data exchange with the provider of technology-based supporting service for the purpose of increasing the quality of its Equity Crowdfunding Service by giving due consideration to confidentiality requirement.
21.	Possessing a data center and disaster recovery center located in Indonesia.
22.	Observing requirements regarding data confidentiality as specified under Article 70 of OJK Reg 57/2020.
23.	Providing audit trail record over any activity in the electronic system of its Equity Crowdfunding Service.
24.	Implementing basic principle of users protection encompassing transparency, fair treatment, reliability, confidentiality and safety of data; as well as concise, expeditious, and affordable dispute settlement with user.
25.	Providing and/or delivering updated, accurate, honest, clear and non-misleading information regarding the Equity Crowdfunding Service in its website.
26.	Delivering information to its users regarding acceptance, postponement or rejection of any application of Equity Crowdfunding Service.

27.	Ensuring that any electronic document provided to users is using easily understood phrases, terms and sentence in Indonesian language.
28.	Bearing due responsibility over any damages suffered by its users due to mistake and/or negligence of its directors, employees and/or other parties engaging in work relationship with the Provider.
29.	Implementing anti-money laundering (AML) and combating the financing of terrorism (CFT) in financial sector program against the users in accordance with the prevailing laws and regulations in the field of the implementation of AML/CFT.

c. Prohibitions

OJK Reg 57/2020 also imposes a number of prohibitions to the Provider, among others:

No.	Prohibitions
1.	Conducting any business activity other than Equity Crowdfunding Service, with the exception for (i) conducting business activity as a provider of technology-based financial services after obtaining license from OJK; and (ii) conducting business activity in the field of capital market which can be undertaken by such Provider pursuant to the prevailing capital market laws and regulations.
2.	Having any affiliation with issuer.
3.	Providing any financial assistance/funding to the investor to be used for investing in issuer's securities offered through the Equity Crowdfunding Service.
4.	Providing consultation and/or recommendation to the investor and/or prospective investor to invest in the issuers.
5.	Giving presents or compensations to the party who provide information regarding potential investors.
6.	Receiving and/or depositing investor's fund.
7.	Providing preferential treatment to some users.
8.	Publishing incorrect information regarding the organized Equity Crowdfunding Service.
9.	Offering Equity Crowdfunding Service to users and/or general public through private communication without approval from the user.
10.	Subjecting users to any type of fees for complaint submission.
11.	Providing any data and/or information regarding users and/or potential users to third party in any way whatsoever.

2. Issuer

Under OJK Reg 57/2020 issuer is defined as an Indonesian business entity which may be established in the form of legal entity or non-legal entity who issue securities through an Equity Crowdfunding Service. This is a notable amendment from OJK Reg 37/2018 which previously defined issuer only as an Indonesian legal entity in the form of limited liability company who offers shares through a provider.

OJK Reg 57/2020 sets out several requirements for an issuer which can be sum up as follows:

No.	Requirements
1.	Issuer is not a business entity directly or indirectly controlled by a business group or conglomerates.
2.	Issuer is not a listed company or subsidiary of a listed company.
3.	Issuer is not a business entity having net asset of more than 10 billion Rupiah, not including land and building.
4.	Issuer shall submit documents and/or information as required under Article 47 of OJK Reg 57/2020 to the Provider.
5.	Issuer shall fulfil reporting obligation as required under OJK Reg 57 2020 among others are (i) annual report at the latest six (6) months after the end of fiscal year; (ii) periodic quarterly report; and (iii) incidental report in the event of any material occurrence or information which may affect the business sustainability or the payment ability of the issuer.
6.	In the event the issued securities are in the form of shares, issuer must register the shares ownership of the investors in the shareholder registration.

3. Investor

OJK Reg 57/2020 imposes several requirements to investor purchasing securities through an Equity Crowdfunding Service which can be sum up as follows:

No.	Requirements
1.	Possess a securities account in a custodian bank specifically used for depositing securities and/or fund through an Equity Crowdfunding Service for each Provider.
2.	Possess the ability to purchase issuer's securities.
3.	Investor with annual income of less than or amounting to 500 million Rupiah, may purchase securities through Equity Crowdfunding Service amounting to five percent (5%)

<p>of income annually whilst investor with annual income of more than 500 million Rupiah, may purchase securities through Equity Crowdfunding Service amounting to ten percent (10%) of income annually. These restrictions do not apply in the event where investor is a legal entity, or a party having experience in capital market investment as proven by possession of securities account at least two (2) years prior to the securities offering.</p>
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4. Implementation of Equity Crowdfunding Service

In line with provisions under OJK Reg 37/2018, offering of securities by issuer through an Equity Crowdfunding Service shall not constitute as a public offering as contemplated under capital market laws, provided that (i) such securities offering is conducted through a Provider which has obtained a license from OJK; (ii) securities offering is conducted for maximum time period of twelve (12) months; and (iii) the total amount of fund raised from such securities offering shall not exceed ten billion Rupiah, unless stipulated otherwise by OJK.

Pursuant to OJK Reg 57/2020, types of securities that can be offered through an Equity Crowdfunding Service encompass (i) equity-type security, which may be in the form of shares or other equity-type securities which shall be converted into shares; (ii) debt-type securities; or (iii) sharia-compliant bonds/Sukuk, as well as other as may be stipulated by OJK in the future.

Equity-type securities or Sukuk offered through the Equity Crowdfunding Service must fulfil the following requirement:

- a. issued in Indonesian Rupiah;
- b. possess a certain project which serves as the basis of the issuance of such debt-type securities or Sukuk;
- c. non- tradeable;
- d. maturity period shall not exceed two (2) years;
- e. may be paid in full in advance, provided that approval from majority of debt-type securities/ Sukuk holder attending the general meeting has been obtained;
- f. payment of principal amount, interest, profit sharing, margin, rewards, or yields, conducted periodically or on maturity date;
- g. must have obtained sharia compliant statement, in case of Sukuk issuance.

It also important to note that, OJK Reg 57/2020 determines limitation for crowdfunding conducted through Equity Crowdfunding Service wherein crowdfunding conducted by each issuer must not exceed 10 billion Rupiah or other amount as may be otherwise determined by OJK with maximum offering period of forty-five (45) days each in a span of twelve (12) months.

5. Equity Crowdfunding Service Agreement (“Service Agreement”)

- a. Service Agreement between Provider and Issuer

Service Agreement entered into by and between a Provider and an issuer may be made in the form of notarial deed or an electronic document which at minimum shall encompass the following points: (i) agreement number;

(ii) date of agreement; (iii) identity of the parties; (iv) provisions on the rights and obligations of the parties; (v) time period or termination of agreement; (vi) the amount of intended crowdfunding and the offered securities; (vii) minimum amount of fund, if any; (viii) fee and commission; (ix) provisions on fine; (x) dispute resolution mechanism; and (xi) settlement mechanism in the event where Provider is unable to continue its service.

In addition to the above, in the event where the offered equity-type securities are in the form of shares, such Service Agreement should also impose prohibitions to the issuer to conduct shares offering in another Equity Crowdfunding Service. Whilst in the event where the offered equity-type securities are in the form of debt-type securities or Sukuk, such Service Agreement should also stipulates (i) rights and obligations of the Provider in its capacity as investor's proxy; (ii) principal amount, maturity date, and interest, profit-sharing, margin or rewards; (iii) security, if any; (iv) failure of issuer in fulfilling obligation regarding sharia compliance, for issuance of Sukuk; (v) buyback of debt-type securities or Sukuk; (vi) utilization of fund; (vii) negligence of issuer; (viii) provisions on periodical offering, if applicable; and (ix) prohibitions to the issuer to conduct another debt-type securities or Sukuk offering before fulfilling all of its obligations under the previous crowdfunding, except such previous crowdfunding is conducted by periodical offering.

b. Service Agreement between Provider in its Capacity as Investor's Proxy and Issuer

Service Agreement entered into by and between a Provider in its Capacity as Investor's Proxy and an issuer may be made in the form of notarial deed or an electronic document which at minimum shall encompass the following points: (i) agreement number; (ii) date of agreement; (iii) identity of the parties; (iv) provisions on the rights and obligations of the parties; (v) principal amount, maturity date, and interest, profit-sharing, margin or rewards; (vi) security, if any; (vii) failure of issuer in fulfilling obligation regarding sharia compliance, for issuance of Sukuk; (viii) early repayment; (ix) utilization of fund; (x) negligence of issuer; (xi) general meeting of debt-type securities or Sukuk holder; and (xii) prohibitions to the issuer to conduct another debt-type securities or Sukuk offering before fulfilling all of its obligations under the previous crowdfunding, except such previous crowdfunding is conducted by periodical offering. Such Service Agreement shall be uploaded to the provider's website at the latest two (2) days prior to the commencement of the offering period.

c. Service Agreement between Provider and Investor

Service Agreement between Provider and Investor may be made in a form of a standard agreement and shall be deemed binding upon approval from the investor. In the event where the offered equity-type securities are in the form of shares, such Service Agreement may stipulate provisions regarding granting of power from the investor to the Provider to represent investor as the shareholders of the issuer, including in the issuer's general meeting of shareholders and for the purpose of execution of deed as well as other documents as may be relevant. Whereas should the offered securities are in the form of debt-type securities or Sukuk, the Service Agreement shall also include provisions regarding granting of power from the investor to the Provider to represent investor's interest as holder of debt-type securities or Sukuk.

6. Sanctions

Violators as well as any party causing violations to the provisions under OJK Reg 57/2020 may be imposed with administrative sanctions in the form of:

- a. written warnings;
- b. fine;
- c. limitation of business activity;
- d. suspension of business activity
- e. revocation of business license;
- f. annulment of approval; and/or
- g. annulment of registration.