

The Urgency of Initial Coin Offering Regulations in Indonesia

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ABSTRACT

The purpose of carrying out this research is to find out the urgency of regulation of initial coin offerings or ICOs in Indonesia. This writing uses a normative method with an approach using statutory approaches, comparative approaches, and descriptive approaches. Legal materials used are primary, secondary, and tertiary obtained from literature studies. Then it will be analyzed systematically which is carried out by classifying legal materials to facilitate analysis and construction. In this regard, as well as paying attention to the development of crypto assets at this time, it is important for regulators to follow matters related to the development of digital assets. Therefore, further regulation of digital assets is needed in Indonesia, one of which is regarding ICO as a guide in organizing public offerings in the scope of digital assets in Indonesia based on ICO arrangements that have been carried out by America. This can be one of the best practice references in order to provide a regulatory umbrella as well as a technical guidance framework in the practice of ICOs in Indonesia

INTRODUCTION

Distributed Ledger Technology (DLT) or better known as blockchain has transformed the financial industry and is predicted to disrupt the business world, government and society. Blockchain is a technology that gave birth to cryptocurrencies (cryptocurrencies). This technology developed rapidly and created various other crypto assets, such as Non-Fungible Token (NFT), stablecoins , and Central Bank Digital Currency (CBDC). This technology is also the foundation of the third generation internet or Web3 (Horowitz, 2022). With blockchain technology , crypto assets can be created, recorded, transferred and stored in a decentralized manner, without the need for traditional financial intermediaries or central administrators . Crypto-assets have given rise to new intermediaries and service providers such as Crypto-Asset exchanges and wallet providers (OECD, 2022).

Globally, the total market capitalization of around 8,000 active crypto assets reached USD 2.9 trillion in November 2021. However, the value decreased to USD 1.1 trillion in August 2022, due to deteriorating macroeconomic conditions and various problems in the industry crypto (Biancotti, 2022). In mid-November 2022, the market capitalization value of crypto assets receded to only USD 833.26 billion due to the collapse of the second largest crypto exchange in the world, namely FTX (Coinmarketcap, 2022). In Indonesia, the growth of crypto assets is also very high. The average crypto asset transaction reaches IDR 71.6 trillion every month, with around 11.8 million users. However, in August 2022 crypto transactions fell to IDR 16.9 trillion from IDR 99.91 trillion in August last year (Koran Tempo, 2022).

Blockchain technology is currently still in the development stage and has many weaknesses. The two main criticisms of blockchain are energy use and its impact on the environment and greenhouse effect, and its use for illegal financial activities and criminal transactions, such as money laundering and terrorism financing. Consumer safety issues are also in the spotlight, because of the many cases of fraud (scam) and breaches (hack) on the blockchain network . In addition, crypto asset prices are very volatile, driven more by speculation than economic benefits, as well as operational risks due to the centralization of key services and other vulnerabilities in Distributed Ledger Technology (FSOC, 2022). For this reason, the use of blockchain technology and crypto assets must be regulated (Maume dkk, 2018)

However, regulation of crypto assets is not easy. The exponential pace of innovation and technological change is a challenge for regulators. So far the regulatory response has been ad-hoc, rhetorical, and segmented (Thomson Reuters, 2022). In addition to the absence of a mutually agreed standard definition, the global and borderless character of the digital world creates overlapping and even contradictory regulations. Not only between countries, differences of opinion regarding crypto assets also occur between institutions/regulators in many countries. In the United States, which is the mecca of the crypto industry, there is a heated debate over the regulation of crypto assets. The Securities and Exchange Commission (SEC) considers most crypto assets as securities/stocks, while the Commodity Futures Trading

Commission (CFTC) considers them as commodities, while the Ministry of Finance considers them as currency (Thomson Reuters, 2022)

The same thing also happened in Indonesia. The Ministry of Trade through the Commodity Futures Trading Regulatory Agency (Bappebti) regulates crypto as a commodity and can be traded. Meanwhile, Bank Indonesia (BI) and the Financial Services Authority (OJK) banned it as a means of payment and warned of the dangers of crypto as an investment asset. BI and OJK also feel the need to monitor crypto assets because they have the potential to disrupt financial stability. The ambiguous regulations and policies on crypto assets can create regulatory arbitrage, which has the potential to create uncertainty in doing business and investing in Indonesia. Besides being ambiguous, regulation of crypto assets in Indonesia is also not comprehensive, because many aspects are not regulated. Until now there are no regulations governing fundraising activities involving crypto assets, such as Initial Coin Offering (ICO) (Ridwan dkk, 2020)

ICO is also known as a token offering (Harnoy, 2022) Tokens consist of payments tokens, utility tokens, and security tokens (Deloitte, 2022) In addition, the Securities Exchange Commission (SEC) Which domiciled as body independent originate from government America is given primary responsibility for conducting surveillance of implementation regulation in the field trading effect, Also has arrange about ICOs by using the Howey Test to analyze whether a digital asset is A contract investment And is A offer And sale on asset digital is transaction effect (Maume, 2018) Then, according to law UNI Europe there is three condition so that asset digital can acknowledged as effect that is transferability, negotiability, and standardization (Zongo, 2018)

LITERATURE REVIEW

According to Regulation Body Supervisor Trading Futures Commodity Number 8 Year 2021 about Guidelines Administration Trading Market Physique Asset crypto on the Futures Exchange in Chapter 1 Article 2 Paragraph 3 which reads about the provisions that arranged in regulation Bappebti Not yet show arrangement about offer prime asset crypto or ICO (Investor.id, 2021) According Mochtar Kusumaatmadja, law is a collection of rules and principles that have a function in regulating life public. Law the needed as tool equalization support in distributing rights and obligations to society. Without law, people will easily abuse their rights and obligations For oppress person others (Ridwan, 2020). In the event of a regulatory vacuum, implementation ICOs Which the more Lots done will Also potentially happening abuse, This legal concept by Mochtar Kusumaatmadja must also be applied in formation law For arrange activity trading asset digital in Indonesia. In this regard, as well as paying attention to crypto developments assets at this time, it is important for regulators to follow matters related to developments asset digital (Achilles dkk, 2018). By Because That, needed arrangement digital asset more carry on in Indonesia Which Wrong only one about ICOs as guidelines in organizing public offerings in the scope of digital assets in Indonesia.

METHODOLOGY

This study uses a type of normative legal method which provides an explanation of the urgency of regulation of initial coin offerings which begins with finding legal norms, principles and legal doctrines to provide answers to the challenges that will be faced. This study uses a descriptive legal approach that describes the urgency of regulation of initial coin offerings in Indonesia. The data sources used in this study are primary sources and secondary sources. The primary sources for this research are obtained from laws and jurisprudence. While the secondary data of this study consisted of books, journals, legal dictionaries and so on.

RESULT AND DISCUSSION

In accordance with Regulation Body Supervisor Trading Futures Commodity Number 8 of 2021 concerning Guidelines for Trading Market Physique Asset crypto in Exchange Futures on Chapter 1 Chapter 2 Paragraph 3 Which reads about regulation Which arranged in regulation Bappebti No addressed For ICOs. The meaning of the ISO Token is something that has an important position in filling the intended legal vacuum. Based on this rule, it is known that basically ICO has several types and characteristics that differ from one another. Therefore it is stated that it is important to have further policy regulation on ICO practices in Indonesia (Naingolan dkk, 2021)

With regard to the implementation of ICO in Indonesia, the existing provisions do not yet exist arrangement in a manner Specific about activity ICOs, However based on study - study earlier say that draft Which owned by practice ICOs tend has similarities with fundraising activities or IPO as a form of generally. Importance arrangement advanced from ICOs Also directed by organization international market capital, *Financial Stability boards* (FSB) And *International Organization Of Securities Commission* (IOSCO) as an organization engaged in field market capital recommend so that regulators start arrange about *cryptocurrencies* (Sykes, 2018). Matter This seen in agenda G-20 And G7. FSB push effective implementation of high-level recommendations on policy, oversight and regulations relating to *stablecoins* globally, as well as express needs to raise public awareness about *cryptocurrencies*. The G-20 countries did agreement in terms of the need for regulatory and supervisory frameworks related to this crypto asset because it has developed quite rapidly so that it can be It is feared that this will lead to economic instability in global financial markets as well as domestically. If many violations of transactions are found and there are omission will There is indication Indonesia known as country Which not enough care to investors. Even though the arrangements have not been made comprehensively, but in depth in practice in Indonesia, ICO still needs to have regulation based on principles legal certainty (Mariana, 2022)

According to CoFTRA, crypto assets are included in the type of commodity has an intangible nature with a digital form by utilizing cryptographic technology, DLT technology information network, to set up formation of new units, verify transactions and perform transaction security without the interference of other parties. Next, tokens One from that's all type asset crypto Which made from coin as derivative products (Sabry, 2021)

ICOs is form collection fund Which originate from Money the general public in general for the development of certain projects on *cryptocurrencies*. By Because That, ICOs known as IPO from world crypto transactions. This ICO mechanism is usually issued by *start-up bitcoins* For do experiment certain on project Which they do. related with explanation about provision ICOs Which explained previously only had status as a possible alternative as reference For formulate framework law existence ICOs in Indonesia. On the side other remember a number of study previously explain that ICOs own If there is a similarity to the IPO, then it is possible to have a mechanism Which similar. As for IPO has arranged in Indonesia And on Chapter 1 number 15 UUNo. 8 Year 1995 about Market Capital. related implementation mechanism *go public* There are several stages that must be fulfilled, namely (Maume, 2018):

1. Fulfillment Condition which fulfilled adapt with type effect Which will published on moment IPO either form share, bond, or sukuk.
2. Preparation, on stages this will held a number of stages Which includes:
 - a. Election Team Internals Company will form team internal, in order to expedite and make the IPO process successful, especially in submission of documents and information required by the Institution And Profession Support Market Capital.
 - b. Do appointment on Guarantor Emission Effect, Institution And Profession Supporting Underwriters, Market Supporting Institutions & Professions Capital Which has own experience as need needed in preparation for IPO to assist the company in IPO process.
 - c. Undertake internal restructuring which some of these may include capital discussion which aims to provide opportunities to the company to obtain optimal financing.
 - d. Fulfil condition IDX and FSA, confirmed that company has fulfill the requirements to become a public company regulated by OJK and IDX, so that the series of IPO stages can run smoothly, and comply with applicable regulations
 - e. Determining the IPO Structure, attention can be paid to the structure IPO and potential dilution of shares from *jiks owners* do public offering of shares.
 - f. Conducting Extraordinary General Meeting of Shareholders (EGMS), The meeting was held with the aim of obtaining approval he did IPO from shareholders.
 - g. Complete Documentation Document Which required on requirements and submitted to IDX, FSA, And KSEI

3. Preparation

After the preparation stage is completed and the documents have been completed as well submitted to IDX, FSA, And KSEI, process will continues on delivery application for registration of securities to IDX and registration statement to OJK. On stage This besides do application recording company must attach document condition Which covers between other projection finance, profile companies, financial reports and others (Adhami, 2018).

IDX will later conduct a document review, mini exposure, and if required will conduct an *on-site* visit. Companies also need to submit an application for registration of securities for safekeeping collectively (*scriptless*) at the Indonesian Central Securities Depository (KSEI) as well deliver statement registration along document supporters Which required to OJK For do offer general with attach prospectus. OJK will submit the Pre-Effective letter and permission for the publication then the Company can publish concise prospectus generally referred to in newspapers or do offer beginning (*bookbuilding*) as well *public expose* (Moxoto dkk, 2021).

After company do delivery information Which related with price offer general effect And openness information other, if study by OJK has finished, so will rise Letter Effective Which issued by OJK. Because of this, the company can do publication repair or addition information prospectus in a manner concise through letter news as well as provide prospectus for public or candidate buyereffect, Then done offer general or *Initial Public Offers*. After conducting a public offering, the company will list its securities on the IDX (Zongo, 2018).

Besides being able to pay attention to the mechanisms that already exist in the IPO, you can also referred to the ICO mechanism carried out by the ICO. As for ICO mechanisms that can be used as a reference in general include (Sykes dkk, 2018):

- a. Done by company Which established in Indonesia, in matter This For facilitating supervision so that it can be good for the company in question located in Indonesia.
- b. As already understood the purpose of ICO is to raise funds for fund the project and provide new crypto tokens in return, matter Which need done company is submit statement registration with accompanied *whitepaper* For get agreement from authority Which authorized before offer. Document the help investors to understand the concepts and future business plans in a comprehensive manner comprehensive. In this way, they gain that understanding it is better to make an investment based on *the underlying asset* based on fact. *Whitepapers* Also can made with addition *roadmap* projects to increase investor confidence. In order to pull investors, *The whitepaper* generally contains:
 1. Project Which will done by company
 2. How the project can be executed
 3. Load objective project
 4. Give Information material form member Which will responsible responsible for the project
 5. The amount of funds needed
 6. Matter other Which related with distribution right And obligation each party owned by the company and investors
- c. Make *smart contract* , contract This on basically is program computer or protocol transaction Which automate And streamline process transaction when all condition Which has determined fulfilled. *Smart*

contracts belong to type contract Which formed by system electronics that execute contracts between issuers and investors in ICO practice. In this regard, *smart contracts* can be called as A contract electronic because belong as agreement agreement Which made between para party Which done with intermediary something system electronic. Contract This can do execution on clause the said agreement automatically (*self-executing*). clause that referred to can be related to *force majeure clauses*, payments, guarantees or replacement goods, delivery, nor class Which limitresponsibility of the parties (Mariana dkk, 2022)

As in Indonesia, although this document is relatively new, However has acknowledged position something contract electronic Which in carry out Electronic Transactions based on article 18 paragraph (1) of Law no. 11 of 2008 concerning Information and Electronic Transactions. Therefore, can classified that status law Which attached on *smart contract* in practice ICO in Indonesia is a legitimate activity and legal, if in matter *smart contract* concerned has fulfil condition contract And condition legitimate in something agreement Which based on bychapter 1320 Civil Code Authority do analysis company related And do *appraisal* stage price coin, Which Wrong only one through method AHP ashas been regulated in the provisions of CoFTRA (Achilles dkk, 2018).

4. Digital wallet, an account can be born that functions to facilitate place storage temporary Money investors from results collection fundin ICO practice. This should be transparent, namely every transaction reporting must be carried out clearly and periodically to the relevant authorities in terms of preventing the occurrence of crimes by the parties involved irresponsible, or in other forms of *scam*.
5. If the project is successful, the contract will be declared final and The promised crypto tokens will be distributed to investors. If fund Which collected No Enough For carry out project, fund thewill returned to investors. Offer only can done through an approved ICO Portal and can only be offered to types investors certain Which fulfil condition, qualification, And limitation as determined by the authorities.
6. Company Also must fulfil a number of obligation, like give plan business And report finance Which audited, And disclose material information

Based on description on, important emphasized with do separation account For storage fund is as Wrong One step preventive Which candone to protect investors. With regard to dispute resolution, Arrangements can also be made relating to civil settlement mechanisms with through mediation, Body Arbitration, enough court country in accordance with agreement of the parties to the agreement.

With regard to the relevance of ICO arrangements in Indonesia, it can also be noted regarding with period time And limitation collection fund in practice ICOs. In this case, the authority should make arrangements regarding the amount of the limit the total funds that can be raised by the ICO issuing company as well as the restrictions time maximum collection fund ICOs can going on as has applied by SEC. In matter if activity ICOs the No can reach fund Which has determined after period time Which has determined, so company Which issuing an ICO must make a return of the funds it earns to the participants investors, because it was acknowledged that the ICO was not successful (Sabry, 2021)

No less important to create a deterrent effect on perpetrators, the provisions of sanctions should also be accommodated. The authorities mentioned above are deemed necessary to also provide penalty administrative as well as criminal on violation or follow criminal Which Possible happen in ICO activities, accompanied by ordinance mechanism for imposing sanctions meant (Maume dan Fromberger, 2018)

By Because description the on, will felt very unfortunate if impact positive from benefit development technology financial form asset digital rather used as means cunning Which done by party Which No responsible answer or even follow crime. By Because reasons meant, needed something provision comprehensive Which each other harmonious And systematic with hope can the creation of legal certainty for the community to continue to obtain benefits that originate from innovation technology financial the. In matter This, still with do anticipation For avoid everything risks that may occur (Sabry, 2021)

CONCLUSION AND RECOMMENDATION

Arrangement digital asset in Indonesia moment This has accommodated by a number of regulations issued by various institutions such as Bank Indonesia, CoFTRA, nor OJK. ICOs tight relation with asset crito. Provision about asset crypto the is at under arrangement And supervision CoFTRA, However about practice ICOs so far At this time, Indonesia does not yet have special arrangements, so there is a vacancy law the make prone to emergence risk in practice ICOs like risk law nor risk Which related with technology other, by therefore very possible practice ICOs the abused as means in do follow crime.

FURTHER SDTUDY

This research still has limitations, so further research needs to be carried out regarding the topic The Urgency of Initial Coin Offering Regulations in order to perfect this research and increase insight for readers

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