Legal aspect of capital market financing (through initial public offering) for micro, small, and middle scale business in Indonesia

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Abstract: One of the major power of a national economic activity is business activity. Any kind of business needs strong entrepreneur. In order to enlarge or expand its strong business, an entrepreneur shall be supported by a health financial asset. The financial necessity of a business can be provided from several sources, namely, conventional financing (banking or credit) and other sources including capital market financing. The capital market financing recently can be accessed only by big scale entrepreneur, i.e. through initial public offering. Prevailing legal and financial requirements (through Initial Public Offering) has made the access to obtain capital market financing is restricted for micro, small and middle scale entrepreneur in Indonesia. Accordingly, Otoritas Jasa Keuangan (Financial Services Authority) has created some programs to encourage such micro, small, and middle scale business to access the capital market financing. This article based on the research which used normative juridical approach that focuses on secondary data, such as regulations and literature. The purpose of this article is to describe the major legal issues of Initial Public Offering for micro, small, and middle scale business in Indonesia. Further, it will also describe the current legal barrier for such entrepreneur to conduct the Initial Public Offering.

Keyword: capital market, business law, financing, micro small business, Initial Public Offering

1. Introduction

As one of the largest population in the world, Indonesia is active in several development fields. Among those development fields, economic and law have become important issues. In the currently accepted concept, the law is used as a tool of development, including limited to the tools of economic development. Accordingly, an ideal development is attached by law and economics as a pair of development tools. As many in other developing countries, the business sector is also placed as one of the economic power. Thus, many regulations pay attention to the business activities.

In order to enlarge or expand its strong business, an entrepreneur or businessman shall be supported by a health financial asset. The financial necessity of a business can be provided from several resources. The conventional resource is commonly funded by banking through credit. Recently, the financing structure provides an alternative mechanism through capital market. Capital market is defined as activities related with public offering and stock trading, public company in relation to the issued stock, institution and professional related to the stock (Law No. 8 Year 1995). The businessman or entrepreneur mostly prefers to access the capital market funding for several backgrounds. The capital market provides less cost capital and diversification of fund resources. Additionally, capital market has its function in securities trading and restructuring the company. The capital market holds its strategic role as a financing resource for the business sector, including for micro, small, and middle scale business. On the other hand, the capital market also provides investment mechanism for the public, including for small and middle scale investor.
To access such capital market funding, a company (limited liability) conduct several corporate actions, including initial public offering. Although such mechanism is also addressed for micro, small, and middle scale of business (“UMKM”), however, the prevailed mechanism remains relatively unreachable. Accordingly, Otoritas Jasa Keuangan (Financial Services Authority) has created some programs to encourage such micro, small, and middle scale business to access the capital market financing. This article is intended to describe the major legal issues of Initial Public Offering (“IPO”) for micro, small, and middle scale business in Indonesia. Further, it will also describe the current legal barrier for such entrepreneurs to conduct the IPO.

2. Methodology

The specification of this writing is analytical description by using normative juridical approach to some references such as regulations and other references.

3. Findings

3.1. Major Legal Issues of IPO for Micro, Small and Middle Scale of Business (UMKM)

As mentioned earlier, the capital market provides its role as a source of funding and investment. To be able to access the funding from the capital market, a company issues securities in the form of shares (ownership) or debt with long-term period. Further, capital market has its function for investors to place their investment (fund) in several securities provided in the market. Accordingly, the flow of fund is clearly described in the capital market. Accordingly, in general, the securities (stocks) can be classified as equity securities and debt securities.

As one of the Financial Services Agency (“FSA”)/Otoritas Jasa Keuangan (“OJK”), the access of UMKM to the capital market funding shall be put as one of priority currently. The main program is to stipulate UMKM to conduct initial public offering of shares and goes as public. Public offering as defined in Law No. 8 Year of 1995 re: Capital Market is activity conducted by Issuer to sell Securities [stocks] to the public pursuant to the procedure stipulated in Law No. 8 Year of 1995 and other regulations. Public offering shall only be conducted by submitting Statement of Registration to the FAS/OJK and such Statement of Registration shall be effective. Theoretically, public offering or going public can be classified as educational and development process for whole public society[5].

FAS/OJK stipulates specific qualification for maximum capital of UMKM is at the amount of IDR 100,000,000,000.- (a hundred billion Rupiah) and the issued amount not exceeding IDR 40,000,000,00.- (forty billion Rupiah). Other procedure for regular public offering shall be applied in public offering for UMKM, unless specifically stated otherwise, as stipulated in Regulation IX.C.7 and IX.C.8. FAS/OJK has prepared the continuous and well-planned program for UMKM to be able to access the capital market, specifically, by conducting a public offering. Bursa Efek Indonesia/BEI (Indonesia Stock Exchange/IDX) in collaboration with FSA and KADIN creates UMKM business incubator and arranges several programs in preparing UMKM for conducting their initial public offering.

The following will elucidate the major legal issues concerning IPO of UMKM. The first legal issue of UMKM’s IPO is UMKM as the issuer in IPO shall be in a form of a limited liability company. In 2012-2013, among 57 million units of UMKM[6], the number of legal entity is not more than 8000[7]. Due to this statistic, this is a homework for the government who is currently promoting UMKM to conduct an initial public offering. UMKM shall firstly adjust their legal entity as Limited Liability Company. To support this legal requirement, the government has issued Government Regulation Number 7 Year of 2016 re: Amendment of Authorized Capital for Limited Liability Company (“PP No. 7/2016). Under PP No. 7/2016, to simplify the ease of doing business for UMKM, the minimum authorized capital for UMKM is not strictly stipulated by the law, it depends on the amount as agreed by the shareholder. Accordingly, the issue of legal entity is eliminated by this supporting regulation.
Another legal issue faced is UMKM shall comply with all compulsory legal procedures of IPO. The procedure for conducting IPO is not a simple legal action. It is full of details and complex requirements. Commonly, an issuer (limited liability Company) is fully supported by a professional team who undertakes all compulsory of IPO. Such professional support needed for pre-IPO, IPO and post-IPO. Every issuer will need every detail of both legal and non-legal knowledge and assistance of IPO as it needs to maintain the legal and non-legal compulsory. As the consequences, such company shall allocates some professional fees as the part of the IPO expenses. In relation to the problems mentioned above, UMKM shall also place some professional fees due to the necessity of professional assistance if it plans to conduct IPO.

Further, UMKM shall also consider the stipulation of minimum net tangible asset provided by IDX. IDX requires the company to be listed in Papan Pengembangan (Development Board) to have at least IDR 5,000,000,000.- (five billion Rupiah) net tangible asset. Although the requirement for UMKM to establish limited Liability Company is lightened pursuant to PP No. 7/2016, the minimum of such net tangible asset somehow is still become the outstanding issue. Such requirement is understood as the basic financial capability of a company. The punctilious investor in a capital market absolutely will consider the asset of an issuer before taking any investment decision. Accordingly, only a well running UMKM will reach the completion of IPO.

The role of the business incubator is to resolve several issues faced by UMKM, which are but not limited to the major legal issues as described earlier. UMKM shall be given assistance and knowledge of how to prepare the IPO and comply with all prevailed requirements.

3.2. **Legal Barrier in Relation with IPO**

As mentioned earlier, the procedures and requirements to conduct IPO are absolutely not simple. However, due to complying with the ease of doing business principle, the authority has taken some policy in order to simplify the requirements of IPO and support UMKM in accessing the funding from the capital market.

Pursuant to the description above, it identifies some major legal issues that might be faced by UMKM. It also can be classified as legal barriers with some resolution. Such legal barrier, inter alia, is as follows:

a) The majority of UMKM is not Limited Liability Company, whereas, the initial requirement to conduct IPO is the company shall be a Limited Liability Company. Therefore, some regulations have been issued to resolve it and to encourage UMKM to establish its limited liability status.

b) Due to the complexity and details of legal requirements in conducting IPO, issuer/UMKM is in need to obtain professional assistance. Accordingly, issuer/UMKM shall place some professional fees in their expenses, which could highly reduce the income of IPO.

c) The requirements of net tangible assets for issuer remains a restriction for the majority of UMKM.

Such barriers are also identified by the government authority and they become the challenges to further stimulate UMKM to obtain the capital market funding.

The lack of access to enter the capital market funding for UMKM is caused by, inter alia:

a) Limited knowledge of the capital market as an alternative to long-term funding.
b) Amount of issued stock relatively is small.
c) Low on stock liquidity.
d) High operational cost in pre and post-issuance.
e) Legal entity of the company shall be in limited liability company form.
f) Lack of good corporate governance
4. Conclusion

Pursuant to the above description, it is concluded that the legal issues faced by UMKM to conduct IPO are, inter alia: 1) UMKM companies shall be in the form of Limited Liability Company; 2) UMKM needs professional assistance to conduct IPO which costs not little; and 3) UMKM is in need to maintain the required net tangible asset of the company which mostly can be maintained by running UMKM well. Several problems remain as barriers for UMKM, except for the requirement in establishing Limited Liability Company as stipulated in PP No. 7/2016. Moreover, the non-legal issues still become the barriers, such as the limited knowledge and plan, financial issue, and good corporate governance.

5. References

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