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MINISTRY OF LAW AND HUMAN RIGHTS OF RI

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NATIONAL LAW DEVELOPMENT AGENCY *MINISTRY OF LAW AND HUMAN RIGHTS OF RI*

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FROM EDITOR'S DESK

Indonesian Law Journal (ILJ) – A journal was first published in 2012 as one of the scientific journals in law published by the National Law Development Agency – Ministry of Law and Human Rights of the Republic of Indonesia. The ILJ was launched in line with the function of the National Law Development Agency, which is developing and fostering national law in Indonesia.

ILJ is a peer-reviewed journal published in English and intended to disseminate scientific articles and analyze legal issues from academics, researchers, observers, practitioners, and all patrons in Indonesia. ILJ provides a forum for legal ideas to respond to legal problems in recent times. Since the last issue in this volume is still considered relevant, that is "The Dynamics and Development of Investment Law in The Digital Age," ILJ now publishes three articles, starting with the article of Kristianus Jimy Pratama, which raised the title related to "Regulatory Challenges in Digital Foreign Investment Through Securities Crowdfunding in Indonesia." In his article, the author explains the regulation of digital foreign investment through securities crowdfunding and the implications of protection and risk management through SCF in Indonesia.

The third article by Cahyoko Edi Tando and Muhammad Arief Adillah is "Legal Development in Technology Investment Metaverse: Case in Indonesia." In this article, the author explains the metaverse technology on the legal side. They found that regulation for the metaverse is inadequate and needs to be revised because it is abstract. Moreover, they recommend that Indonesia strengthen the legal basis for the metaverse technology.

The third article written by Cahyoko Edi Tando and Muhammad Arief Adillah is "Legal Development in Technology Investment Metavers: Case in Indonesia". In this article, the author explains technology matavers in legal side. Which they found regulation for metavers is low and need to develop because the metavers is abstract. And also found that Indonesia must be prepared for this metavers technology.

So, these are the entire articles published in the ILJ Volume 15 No. 2 of 2022. We are grateful to have excellent authors, Editorial team members, and Reviewers for their progressive contributions and excellence to the ILJ this edition. We wish that this fine collection of articles will encourage valuable resources for legal practitioners, readers, and researchers and stimulate further research into the vibrant area of law and social sciences to develop national law.

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REGULATORY CHALLENGES IN DIGITAL FOREIGN INVESTMENT THROUGH SECURITIES CROWDFUNDING IN INDONESIA

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ABSTRACT

In the securities crowdfunding scheme for digital investors, there are legal issues that become research problems, namely the extent to which regulatory arrangements, implications for protection and risk management are in Indonesia, so the purpose of this study is to explain the regulation of digital foreign investment through securities crowdfunding and the implications of protection and risk management. The research is structured with a normative legal research framework because it refers to the securities crowdfunding literature. The results of this study are that there are two groups of regulations governing digital foreign investment schemes through SCF in Indonesia and there are differences related to protection and risk management. The conclusion of this study is that the regulation of digital foreign investment through SCF in Indonesia is still limited and not yet comprehensive, so further research is needed to compare regulatory laws in several other countries related to securities crowdfunding.

Keywords : Digital Foreign Investment, Foreign Investor, Securities Crowdfunding

A. Introduction

Every legal subject in interacting and maintaining their relationship cannot be separated with the aim of achieving economic benefits. The embodiment can be seen in the economic activities carried out by one human being with another human being. One of the economic activities in question is investment activity or placement of funds. Investment activity or placement of funds in principle is an activity in which a person or group of people provides a certain amount of capital in the form of money or other forms of assets to other parties to be managed with the intention of receiving benefits from the provision of such capital in the future.[1] Therefore, the main purpose of conducting investment

1 Salim HS dan Budi Sutrisno, *Hukum Investasi di Indonesia* (Jakarta: PT. RajaGrafindo Persada, 2008), 32.

activities by investment providers is to receive profits from the paid-in capital along with a return on capital.

In this case, conventional investment activities are carried out with face-to-face meetings or the provision of capital through banking mechanisms accompanied by an investment agreement between the parties. The parties in question are generally divided into two main groups, namely investment activities carried out between countries and investment activities carried out by legal subjects which include individuals and legal entities. When referring to the national origin of the investment party, investment activities can be divided into two types, namely domestic investment activities and foreign investment activities. This is in line with the provisions of Article 1 paragraph (2) and number (3) of Law Number 25 of 2007 on Investment (hereinafter referred to as Law 25/2007) as amended by Law Number 11 of 2020 on Job Creation. (hereinafter referred to as Law 11/2020), which legally uses the terms domestic investment and foreign investment.

Foreign investment or also known as foreign investment activities is one of the alternative financings for various activities to ensure the investment climate and the economy in Indonesia apart from the existence of a loan or foreign fund assistance mechanism that is not oriented towards providing maximum benefits to the investment recipient.[2] In its development, foreign investment activities in Indonesia as well as conventional investment activities are also carried out between two different parties. For inter-state parties, investment agreements between the parties, which in this case are countries, are generally preceded by a bilateral investment treaty ("BIT") with the aim of providing legal certainty guarantees along with a clear legal interpretation to protect the parties, in particular the interests of investors. country of origin as well as domiciled as a means to secure investor funds to be deposited later.[3]

Referring to the provisions specifically in the provisions of Article 1 point (3) and Article 6 paragraph (1) of Law 25/2007, equal treatment of foreign investors is a guarantee provided by the state in the regulations. This is important because the role of the Government is considered strategic to be able to increase the confidence of potential investors, both in the context of being domiciled as a country or other parties affiliated through BIT or domiciled as legal subjects outside

2 Juliyani Purnama Ramli, "Foreign Investment Versus National Development," Business Law Review 1 (2016): 1.

3 Kate Miles, *The Origins of International Investment Law: Empire, Environment, and the Safeguarding of Capital* (Cambridge: Cambridge University Press, 2013), 115. Lihat juga: Nartnirun Junngam, "The Full Protection and Security Standard in International Investment Law: What and Who is Investment Fully? Protected and Secured From?," *American University Business Law Review* 7 (1) (2018): 4.

the country or other affiliated parties so that potential investors, especially potential foreign investors who wish to provide investment in Indonesia.[4] Therefore, if the risk of an investment activity can be reduced, it will be a good reference for potential investors to realize their investment plans.[5]

Observing this, the existence of foreign investment is especially related to digitalization in various aspects, including investment activities, encouraging the Government to be more responsive to encourage a conducive investment climate for all parties. Especially considering that investment activities in the digital era are no longer talking about the extent to which face-to-face meetings can be carried out, but how far the reach of an investment mechanism is used by the parties through digital channels, which is then called the digital investment model. The digital investment model that is commonly done today, even though it is accompanied by a high risk, is digital currency investment.[6] In the digital investment model, besides the digital currency investment above, there are also other alternatives which are generally referred to as crowdfunding, namely investment activities for an economic activity through a joint funding model by relying on a mutual cooperation mechanism.[7] Furthermore, one type of crowdfunding is the securities crowdfunding model.

The problem then is that the securities crowdfunding model is ultimately not only accessible to domestic investors, but also foreign investors or foreign investors. This then leads to two legal issues related to the above problems, namely to what extent is the regulation of foreign digital investment through securities crowdfunding in Indonesia? and to what extent are the implications of the protection and management of foreign digital investment legal risks through the securities crowdfunding model?. The objectives to be achieved from this research refer to the formulation of the problem above, there are two, namely to explain the extent to which the regulation of foreign digital investment through securities crowdfunding in Indonesia and to know the implications of protection and management of legal risks of foreign digital investment through the securities crowdfunding model in Indonesia.

4 Suradiyanto dan Made Warka, "Pembangunan Hukum Investasi Dalam Peningkatan Penanaman Modal di Indonesia," *DIH: Jurnal Ilmu Hukum* 11 (21) (2015): 26.

5 Raden Mas Try Ananto Djoko Wicaksono, "Analisis Perbandingan Hukum Penanaman Modal Asing Antara Indonesia Dengan Vietnam (Tinjauan Dari Undang-Undang No.25 Tahun 2007 Tentang Penanaman Modal dan Law No.67/2014/QH13 On Investment)," *Jurnal Al Azhar Indonesia Seri Ilmu Sosial* 2 (1) (2021): 8.

6 Muhammad Teguh Ernawan Azis, Rani Apriani, dan Muhammad Fuad Kamal, "Perlindungan Hukum Investasi Mata Uang Digital (*Cryptocurrency*)," *Supremasi: Jurnal Pemikiran, Penelitian Ilmu-Ilmu Sosial, Hukum, dan Pengajarannya* 16 (2) (2021): 267-268.

7 Iswi Hariyani, "Perlindungan Hukum Sistem *Donation Bases Crowdfunding* Pada Pendanaan Industri Kreatif di Indonesia," *Jurnal Legislasi Indonesia* 12 (4) (2015): 6.

In this study, it will be arranged with a systematic writing consisting of the introduction, research method, discussion, and closing sections. In the description of the discussion, two topics will be described, namely a description of the regulation of foreign digital investment through securities crowdfunding in Indonesia, as well as a description of the implications of protection and management of legal risks for foreign digital investment through securities crowdfunding. In the closing description, the conclusions of the two discussions in the discussion description and research suggestions will be described.

B. Research Method

This type of research is normative research that relies on secondary data through library research.[8] The secondary data referred to are primary legal materials and secondary legal materials. The primary legal material in this research is Law Number 25 of 2007 concerning Investment (hereinafter referred to as Law 25/2007) as amended by Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as Law 11/2020) and investment law regulations stipulated by the Financial Services Authority that have relevance, while the secondary legal materials of this research include relevant legal literature. This study uses a statutory approach and a conceptual approach. The approach to the legislation in question is that this research will refer to the relationship between legal issues and the rule of law that applies positively, while the conceptual approach will be used to formulate the ideal legal concept as the output of the solution to legal problems. The technique of drawing conclusions in this study will be carried out using a deductive method, namely from a general discussion to a spesific discussion.

C. Discussions

1. Arrangement of Foreign Digital Investment Regulations through Securities Crowdfunding in Indonesia

The government of President Joko Widodo at least shows a high commitment to improving a healthy investment climate. This can be seen at least from the 434 regulations under the Presidential Regulation consisting of Ministerial Regulations, Director General Regulations, Regulations of the Head of the Investment Board and other regulations enacted to improve the investment climate which were later reaffirmed in the amendments to 79 laws in Law 11/2020 which compiled using the omnibus method. The omnibus method is

8 Sri Mamudji et al., *Metode Penelitian dan Penulisan Hukum* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005), 6.

used to solve complex legal problems in the investment sector in a comprehensive and faster way. This is also in line with the essence of legal reform in the investment sector, namely by simplifying investment regulations.

When referring to the provisions of Law 11/2020 which amend several provisions of Law 25/2007, the provisions of Article 12 paragraph (1) explain that all business fields are open to investment activities except for business fields that are closed to investment as regulated in the provisions of Article 12 paragraph (2). In this case, an understanding can be drawn that digital investment is not included in a closed business field, so it is classified as an open business field. The provisions of Article 25 paragraph (1) and Article 5 paragraph (2) of the a quo Law explain that foreign investment must be carried out by foreign investors through a limited liability company (hereinafter referred to as "PT") based on Indonesian law and domiciled in the territory of the Republic of Indonesia unless otherwise determined by law. Referring to the a quo provisions, it is clear that foreign investors in this case are individuals are prohibited unless it is done in a limited liability company mechanism.

So that it can be seen, individual foreign investors cannot legally make foreign investments. If the investment activities referred to are then observed carefully, the foreign investment regulated in these provisions will be included in the group of foreign direct investment (hereinafter referred to as "FDI"). This is confirmed by another model of foreign investment in Indonesia, namely foreign investment activities in the grouping of foreign indirect investment (hereinafter referred to as "FII"). The purpose of this FII is that foreign investment activities can also be carried out outside of what has been regulated in the provisions of Law 25/2007 which has been amended by Law 11/2020, one of which is done digitally.

Today it is undeniable that the term online trading is run by securities companies or brokers through an online network that can be accessed by parties who want to make investments without being limited to the region or nationality of the parties involved, and investors in this case are foreign investors. placing their assets in investment activities managed by securities companies or brokers. This affirmation is reflected in the investment regulations applied by the Financial Services Authority (hereinafter referred to as "OJK"), especially in crowdfunding regulations.

Conceptually, there are four types of crowdfunding, namely equity-based crowdfunding, lending-based crowdfunding, reward-based crowdfunding, and donation-based crowdfunding. Referring to regulatory developments in Indonesia, the term crowdfunding specifically equity based crowdfunding was first carefully

regulated by the regulator in the provisions of Financial Services Authority Regulation Number 37/POJK.04/2018 on Crowdfunding Services Through Information Technology-Based Share Offerings (Equity Crowdfunding). (hereinafter referred to as POJK 37/2018). The provisions of Article 1 number (1) of POJK 37/2018 explain that the definition of equity crowdfunding is the provision of share offering services carried out by issuers to sell shares directly to investors through an open electronic system network. Furthermore, in the provisions of Article 1 number (7) and Article 42 paragraph (3) of POJK 37/2018, an investor is a party that purchases the issuer's shares where the party in question is a legal entity and a party who has experience investing in the capital market as evidenced by ownership securities account for at least two years prior to the share offering.

Referring to the regulation, especially the phrase "party" in the provisions of Article 42 paragraph (3) above, investment regulations in the field of equity crowdfunding in Indonesia open up opportunities for individual foreign investors to be able to carry out foreign investment activities as long as they have fulfilled all the elements in these provisions. This was also adopted by other POJK provisions which revoke the provisions of POJK 37/2018, namely the Financial Services Authority Regulation Number 57/POJK.04/2020 on Securities Offerings Through Information Technology-Based Crowdfunding Services (hereinafter referred to as POJK 57/2020) as stipulated has been amended by the provisions of Financial Services Authority Regulation Number 16/POJK.04/2021 on Amendment to Financial Services Authority Regulation Number 57/POJK.04/2020 concerning Securities Offering Through Information Technology-Based Crowdfunding Services (hereinafter referred to as POJK 16/2021) . In the elucidation provisions of Article 15A paragraph (3) letter (a) POJK 16/2021 it is explained that the term equity crowdfunding is refined into securities crowdfunding.

The difference in the scope of equity crowdfunding and securities crowdfunding (hereinafter referred to as "SCF") is the differentiation of products that can be used as objects of investment activities, including foreign investment activities which include sukuk and sharia bonds. In the provisions of POJK 57/2020 and POJK 16/2021, it is also stated that the scope of investors in the context of SCF is the same as investors in terms of equity crowdfunding. The presence of SCF itself provides ease of capital or a source of financing for business actors and can also provide benefits for foreign investors. In principle, the party called the investor can provide his investment to the issuer who then issues proof of ownership of securities or other investment products as evidence that the investment has been

made by the investor. Therefore, the SCF is structured in such a way in terms of regulation to provide legal certainty and legal benefits for all parties involved in it.

In addition to the above regulations, there is the term crowdfunding as a mechanism that is regulated legally in the provisions of Article 24 paragraph 1 letter (b) of Law Number 3 of 2022 concerning the State Capital (hereinafter referred to as Law 3/2022) more specifically in the provisions of the attachment. II Law 3/2022. In this provision, one of the funding schemes for the State Capital (hereinafter referred to as "IKN") is a crowdfunding funding scheme as an alternative funding mechanism. This is also re-regulated in the provisions of Article 14 paragraph (6) letter (b) Government Regulation Number 17 of 2022 on Funding and Budget Management in the Framework of Preparation, Development, and Relocation of the State Capital and Administration of the Special Regional Government for the Capital of the Nusantara (hereinafter referred to as PP 17/2022), although it is not comprehensively regulated regarding the manager of the crowdfunding mechanism, it is the Investment Management Agency (hereinafter referred to as LPI) or other institutions. Thus, the current regulations set by the regulator in the field of SCF originating from foreign digital investments have not been regulated other than those regulated by the OJK.

The provisions of POJK 57/2020, POJK 16/2021 and Law 3/2022 contain the same weaknesses. The first weakness is that all of these regulations do not clearly define the scope of SCF in the regulation other than only classifying it into the equity crowdfunding section. The second weakness is that with the unregulated scope of SCF, the offering of SCF services also becomes weak in the legal protection of investors, including foreign investors. The third weakness of these regulations is that they do not explain the risks of using the securities crowdfunding model and if look it closely, the use of crowdfunding mechanisms in terms of physical or conventional objects has not been comprehensively regulated.

2. Implications of Protection and Management of Foreign Digital Investment Legal Risks Through Securities Crowdfunding

When referring to the discussion above, it can be grouped that there are two regulations governing the actualization of the use of SCF. The two regulations are Law 3/2022 and its derivative rules regarding the IKN funding scheme and the second is POJK 57/2020 and POJK 16/2021. Speaking in relation to the two regulations, of course, we will also talk about the protection and management of legal risks, especially those that investors in general and foreign investors in particular have to face and have

the potential to face. In the context of investment, legal protection is an absolute thing that is the right of every investor, including foreign investors who carry out investment activities through SCF. Therefore, it is necessary to describe the protection and management of legal risks from each of these regulatory groups as follows.

The first group of regulations is Law 3/2022 and its derivative rules. When linked to the protection and management of legal risks from the SCF model, which in this case is intended for IKN funding, it is possible for foreign investors to contribute a certain amount of capital in it and hope to get the benefits. The legal problem here in the current regulations is that it is not known exactly which institution has the authority to manage investments from the SCF financing source. If this is related to the existence of LPI, then the following are legal arguments that can arise because of it.

The existence of LPI itself has a legal basis based on Government Regulation Number 74 of 2020 on Investment Management Institutions (hereinafter referred to as PP 74/2020). Referring to the provisions of Article 1 number (2) of PP 74/2020, LPI itself is an institution that is given special authority (sui generis) in the context of managing Central Government investments. If then relate it to the existence of IKN development which is in the paradigm of building a new urban plan for national use, of course it is closely related to the management of Central Government investment. So in this case, the closest institution to manage foreign investment from its financing source in the form of SCF is LPI.

Regarding to LPI, legal protection and legal risk management from foreign funds deposited through the SCF scheme is the responsibility of LPI. This is confirmed in the provisions of Article 37 paragraph (2) that all paid-up capital to LPI is the responsibility of LPI. It is also emphasized that the provisions of Article 5 and Article 6 paragraph (1) explain that the authority of LPI to manage investment includes foreign investment. So that if the SCF scheme is carried out by empowering LPI, of course in terms of protection and management of legal risk, all assets or capital deposited by foreign investors are guaranteed by regulation.

In the second group of regulations, namely POJK 57/2020 and POJK 16/2021 related to the protection and management of legal risks, it is regulated in the provisions of Article 66 of POJK 57/2020. This provision explains that the legal risk has been mitigated by the regulator while data exchanging with the SCF. It should be underlined that this protection can only be carried out as long as the SCF organizers have the legal awareness to comply with all the rules set by the regulator. This is important because legal awareness will be able to establish legal compliance and have

implications for the legal protection of the parties, including the legal interests of foreign investors.

So in this case, if it is related to the possibility of SCF organizers not complying with the rules set by the regulator in this case the OJK, of course the above rules cannot be applied in protecting the legal interests of foreign investors. Therefore, the legal interests of foreign investors must be linked to Law 25/2007 which has been amended through the provisions of Law 11/2020 with the following arguments.

The argument referred to here is again referring to the provisions of Article 6 paragraph (1) of Law 25/2007 which explains that equal treatment for all investors is the responsibility of the Government and has been guaranteed through regulation. So in this case, even if the SCF scheme is entered into FII, of course the Government must also provide the same legal protection as what has been given to foreign investors under the FDI scheme, especially if it is a legal entity. The next problem arises when the foreign investor in question is an individual. This is important because the provisions of POJK 57/2020 and POJK 16/2021 even though they have provided opportunities for this, are not accompanied by adequate forms of legal protection.

Regarding the protection itself, it is regulated in the provisions of Article 72 of POJK 57/2020 which stipulates that the operator is obliged to apply the basic principles of user protection including investors in the form of transparency, fair treatment, reliability, confidentiality and data security, user dispute resolution in a simple, fast, and affordable cost. If the rules are examined in their entirety, it is not stated sufficiently in explaining the extent of the dispute resolution mechanism provided by the regulator other than those stipulated in the agreement between the operator and the user. This shows that the protection provided by the regulator through regulation is only adequate as long as investment activities are not accompanied by disputes. Therefore, the protection for foreign investors in the SCF scheme is still relatively weak to be able to provide a comprehensive dispute resolution.

D. Closing

Based on the explanation above, there are two conclusions. The first conclusion is that the regulation of foreign digital investment through SCF in Indonesia can currently be grouped into two regulatory groups, namely the Law 3/2022 group and its derivative rules and the regulatory group regulated by the OJK in the SCF sector. The first group has not clearly regulated the institution authorized to manage foreign investment through the crowdfunding mechanism, while the second group has already regulated the flow of placement to the management of foreign investment. The

second conclusion is that the protection and management of legal risk of foreign digital investment through SCF in the first regulatory group is still unclear in the existing regulations, while the management of legal risk of foreign digital investment in Indonesia with the SCF scheme has been regulated in the second group of regulations. It should be underlined that the legal protection in the second group of regulations is not sufficient because it has not clearly regulated a comprehensive settlement scheme for the parties other than the agreement between the parties.

The recommendation that can be given from this research is that the regulator needs to update the rules contained in the first group of regulations by first explaining the institution authorized to manage foreign investment funds or capital through the SCF scheme. In addition, the regulator can also update the second group of regulations by clarifying the dispute resolution scheme between the parties. So that with these recommendations, it can provide stricter legal certainty for the protection and management of legal risks for foreign investors who use the SCF scheme in Indonesia.

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REFORMING CRIMINAL IMPACTS IN THE LAW OF STATE FINANCE: LEGAL CERTAINTY FOR STATE-OWNED ENTERPRISE

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ABSTRACT

Nowadays government is encourage SOEs to carry out restructuring with the aim of making companies agile. Regulatory adjustments are also needed, especially in the field of understanding of state finances where there are different definitions in both state finance laws and corruption laws. State financial losses in the Corruption Law have an impact on conditions that are inversely proportional to what the government expects. This study uses the normative juridical method is to formulate legal norms in order to create legal certainty trough the questions What is a state financial? What legal reforms need to be made refers to government program to restucture SOEs? The authors found SEMA No. 10 of 2020 and some other verdicts are the fact of a paradigm shift regarding state finances in SOEs. Three elements according to legal system theory, this paradigm shift indicates a change in legal structure needs to be followed by a legal culture and legal substance.

Keywords: criminal policy, non-penal, state finance, SOEs

A. Introduction

With regard to state finances according to Law no. 31 of 1999 Jo. UU no. 20 of 2001 (Corruption Eradication Law), is clearly stated in Articles 2 verse (1) and Article 3. Loss of state finances is one of the elements that must be factually proven. This was confirmed through a decision of the Indonesia constitutional court Number 25/PUU-XIV/2016 dated September 8th 2016. Even the settlement of state financial losses in the Anti-Corruption Law is considered to only recognize criminal instruments (penal) as the only countermeasure by law enforcement officers. Article 4 of the Anti-Corruption Law states "…refunding state financial losses, does not eliminate criminals." This article clearly shows that non-penal measures are impossible, unless the suspect/defendant dies as referred to in Article 32, then a civil lawsuit can be taken.

Regardless of the historical and sociological background, the closure of non-penal efforts in the Anti-Corruption Law, academically this is worthy of criticism. Even when compared between corruption and other serious crimes or extraordinary crimes such as narcotics and terrorism, these two laws concerning

crimes can be said to be comprehensive (they contain "countermeasures" consisting of prevention, prosecution/ punishment, and recovery). This is different from the Anti-Corruption Law, which has no regulation regarding its prevention.

Criminal policy is widely viewed as an arrangement to regulate a behavior that is expected in society. The formulation of a criminal policy needs to go through a careful planning that starts from the formulation stage. Barda Nawawi revealed the need for the integration of criminal policies that are planned in the formulation stage at least three, namely: (i) actions to be criminalized, (ii) sanctions that can be imposed, and (iii) procedures or mechanisms in their enforcement. The values that live in society become the basis for determining an act to qualify as a crime (criminalization) which is believed to have been contained in the values of Pancasila which have been stated in the 1945 Constitution as a guarantee of its implementation.

Criminal policy was first popularized by criminologist GP Hoefnagels[1] in the 1960s placing criminal law (penal) as only one instrument of several other efforts that do not need to be prioritized in realizing social welfare and security, or referred to as 'nonpenal'. In short, non-penal efforts are described as prevention without punishment, even though the preventive measures are carried out through civil or administrative justice processes. Hoefnagels argues that the use of criminal law will only increase the level of crime so that it is not a solution to eradicate crime itself.

Efforts to provide legal certainty have been made, the Indonesia Attorney General Circular Letter No. B-113/F/ Fd.1/05/2010 dated 18 May 2010 (AGCL) which is seen as a breakthrough in preventing corruption crimes, is still being opposed even by its colleagues (law enforcement officials and other government agencies[2]) by putting forward the reason that AGCL has contrary to Article 4 of the Anti-Corruption Law. This phenomenon shows that there is no uniformity of thought in the settlement of state financial losses using non-penal efforts, although on the other hand, the President as the highest leader in eradicating corruption has called for prioritizing aspects of prevention rather than enforcement of criminal law, however, institutions led by the President are still there are pros and cons. The fact that the differences in views that occur between law enforcers and fellow government officials and stakeholders of State-Owned Enterprises (SOEs/

1 G. Peter Hoefnagels, *The Other Side Of Criminology: An Interbention Of The Concept of Crime (Revised edition of Beginselen van criminology)*, (Kluwer BV Deventer, Holand, 1973), p. 138.

2 See https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=2594:surat-edaran-kejaksaan-agung-celah-baru-bagi-koruptor&catid=111&Itemid=179, accessed on 14 July 2022, 22:34 WIB.

BUMN) certainly have an impact on the achievement of welfare which the SOEs sector continuously strives for. It has even become a long-term plan The government is continuously transforming SOEs to be agile, lean, and flexible.

Ontologically, the policy of overcoming crime is no longer intended only as a means to regulate order and security and legal certainty in society, but further how the legal effort functions as a means to achieve a maximum life. The view that the law can shape and change a situation in society has actually long been developed by Roscoe Pound with the famous theory "law as a tool of social engineering". On the basis of this approach and study of legal philosophy, the law or criminal policy that will be developed in order to overcome the financial losses of SOEs and its subsidiaries will still be based on ideological values, especially the state law of Pancasila. Criminal law policy is essentially an attempt to realize criminal laws and regulations to suit the circumstances of a certain time (*ius constitutum*) and the future (*ius constituendum*). Criminal law policy is identical with penal reform in a narrow sense, because as a criminal law system it consists of cultural, structure, and substantive law.

The concept of a legal state based on Pancasila has become the choice of the Indonesian state in running the government to achieve the national goals of welfare and security. This Pancasila based concept gives Indonesia special characteristics different from other Rule of Law or Rechstaat concepts. The concept of a rule of law according to Sri Soemantri contains four most important elements, namely: (i) that the government in carrying out its duties and obligations must be based on law or statutory regulations, (ii) there is a guarantee for the rights of the state's sovereign rights, (iv) there is supervision from judicial bodies. The four basic elements of the Rule of Law are maintained, however, the contents and implementation are manifestations of Pancasila values to realize social welfare and social defense which are concretized through legislation and also every decision/beschiking in all fields including the field of criminal law or also known as criminal policy.

Referring to the purpose of establishing a Indonesia SOEs is for the welfare of the people, therefore of course we need to analyze what is a loss to state finances? and how future arrangements will be linked to the SOEs restructuring plan. In Practice, after the strengthening of the decision to release PT Timah, Tbk (SOEs subsidiaries) based on the Supreme Court's decision dated Oct 14th 2022, in fact there has been a paradigm shift in law enforcement for criminal acts of corruption. This shift will be described in the chapter below. The judiciary's efforts to make clear the meaning of state finances through circulars have not provided strong legal certainty,

especially in the midst of the incessant implementation of the transformation of SOEs which has become a necessity. For this reason, a comprehensive integral law is needed whose contents clarify what state wealth is, especially wealth in SOEs and its subsidiaries. In this transition period, SOEs are expected to be able to respond proactively to this condition by formulating the settlement of the company's financial losses in accordance with their competence and professionalism.

B. Research method

This research uses the normative juridical method[3], which is a legal research to find legal rules, legal principles, or legal doctrines to answer legal issues to be studied[4]. In legal research, which is normative, it includes types of research on legal principles, legal systematics, vertical and horizontal synchronization of law, legal comparisons, and legal history[5]. Legal research that is juridical normative is supported by using a statue approach and a case approach. The statue approach is used because the focus of the research is on the regulation of the settlement of financial losses of SOEs and their subsidiaries, so that positive legal materials will be investigated regarding the regulation of state losses in SOEs and their subsidiaries.

C. Discussion

1. Current State Finance Arrangements

There are 3 laws and regulations in the field of state finance, which are a derivation of Article 33 of the 1945 Constitution, consisting of Law no. 17 of 2003 concerning State Finances (State Finance Law), Law Number 1 of 2004 concerning State Treasury (State Treasury Law), and Law Number 15 of 2006 concerning the Supreme Audit Agency (Badan Pemeriksa Keuangan Law). The arrangements which are derived from Article 33 of the 1945 Constitution above show that there is a mixed conception of state finances in a broad sense[6]. In the end, the three laws have become objects of examination in a judicial review with the issue of the intersection between public law and private law, where SOEs as a legal entity is in the form of a limited liability company whose operations and legal basis are considered to be included in the private sphere. Until the end, The petitioned

3 Peter Mahmud Marzuki, Penelitian Hukum, (Kencana Prenada Media, Jakarta 2011), p. 35.
4 Ibid.,
5 Ibid.,
6 Mega Mendung: Puslitbang Mahkamah Agung RI, 2010, p. 50. The first view looks at state finances in a narrow sense using the keyword APBN. The second view looks at state finances in a broad sense by looking at the dichotomy between the public and private sectors. This is only known by looking at who is the organizer of the economic activity concerned. If the organizer is the government, it includes the public sector with all the wealth and profits from these economic activities.

for judicial review was not granted by the Constitutional Court as stated in Verdict Number: 48/PUU-XI/2013 and Number: 62/PUU-XI/2013 dated 18 September 2014. In other words, the court has affirmed Article 2 letter g and letter i Constitutional State Finance Law, which means that state finances that are separated in SOEs/BUMN and BUMD/ Local Government Owned Enterprise remain state finances. The contents of the article in full are:

a. The right of the state to collect taxes, issue and circulate money, and make loans;
b. The state's obligation to carry out public service tasks for the state government and pay third party bills;
c. State revenue;
d. State spending;
e. Regional Receipt
f. Regional Expenditures;
g. State assets/regional assets managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated from state/regional companies;
h. The assets of other parties controlled by the government in the context of carrying out government duties and/ or public interests;
i. The wealth of other parties obtained by using the facilities provided by the government."

After the issuance of Verdict Number: 48/PUU-XI/2013 and Number: 62/PUU-XI/2013 dated September 18, 2014, it was reaffirmed that the assets of SOEs are state assets and are still the object of examination by the State Audit Board which is also the object of evidence in Article 2 and 3 Corruption Eradication Law. According to Djoko Sumaryanto[7], state financial losses are not state losses as in the corporate/commercial world, but rather a loss that occurs due to an act (against the law). The unlawful act is determined by other factors that cause state losses, namely the implementation of incorrect policies with the aim of enriching oneself, other people or corporations. Thus, unlawful acts in the criminal sense (*wederrechetlijkheid*) have special characteristics compared to unlawful acts in the civil sense (*onrechmatigedaad*) and state administration (*onrechtmatige overheidsdaad*).

Furthermore, it is interesting to note that the scope of SOEs is the consideration of the panel of judges of the Constitutional Court (MK) in 2019, in Verdict No. 01/PHPU-PRES/XVII/2019 dated 27 June 2019 the subject matter of the presidential election dispute, it is known that "***Anak Perusahaan BUMN bukan BUMN*** (a subsidiary of a SOEs is not a SOEs)". The Constitutional Court's decision is considered as strengthening the thinking on 5 (five) principles of the role of state control which does not only

7 Muhammad Djafar Saidi, Hukum Keuangan Negara (Jakarta: Raja Grafindo Persada, 2013), p. 109-110.

have to own and operate directly in managing state assets.

Judging from the capital, generally the capital of SOEs subsidiaries comes from BUMN/SOEs. In contrast to SOEs that have transformed into holdings, the form of the company remains Persero. SOEs -companies in the form of a limited liability company (Persero), whose capital has been converted into shares, most or all of which is placement capital sourced from the APBN. While the SOEs subsidiary has its capital sourced from the wealth of its parent company - SOEs. However, judging from the actual ownership of this SOEs subsidiary, it is still in the corridor of SOEs supervision, so that no principle of state control is violated.

The term subsidiary has been known and listed in the laws and regulations in Indonesia. The Limited Liability Company Law Number 1 of 1995 and Law Number 40 of 2007 as well as the Law Law Number 19 of 2003 concerning SOEs, mentions the term subsidiary in several articles. Elucidation of Article 29 of Law Number 1 of 1995 concerning Limited Liability Companies has provided an understanding of "subsidiaries" as seen from the composition of the share ownership structure and control over the running of the company. The following is the explanation of the article:

"… What is meant by a subsidiary is a company that has a special relationship with another company that occurs because:

a. more than 50% (fifty percent) of its shares are owned by the parent the company;
b. more than 50% (fifty percent) of the votes in the GMS are controlled by the parent company; and or
c. control over the running of the company, the appointment, and dismissal of the Board of Directors and Commissioners are strongly influenced by the parent company."

Actually, Law Number 40 of 2007 concerning Limited Liability Companies does not provide a complete understanding as described in Law Number 1 of 1995 concerning Limited Liability Companies, but only provides an explanation of the regulation of voting rights. Whereas in the SOEs Law, the term subsidiary is known in terms of its formation which is the authority of the Minister of SOEs who acts as the SOEs general meeting of shareholders (GMS). Thus, if you look at the subsidiary arrangements in the three laws, the three are in line, by providing an understanding of a subsidiary seen from the composition of the share structure and from the aspect of control over the company's operations.

In a number of other countries, the term holding actually has already been used. Companies that have transformed into holding companies are called holding companies or parent companies. M. Yahya Harahap is of the opinion that a parent or holding company is the creation of a company that is specially prepared

to hold shares of another company for investment purposes, either without or with real control. This term has been known for a long time in America and England. According to M. Yahya Harahap, what is regulated in sections 736 and 776 A 1989 of the British Act as well as the term in America regarding holding company actually has the same meaning as the Elucidation of Article 29 of Law no. 1 of 1995 as mentioned above[8].

The thought of Article 33 of the 1945 Constitution clearly states that the earth, water and natural resources contained in the earth are controlled by the State. The meaning of "controlled by the state" is a conception according to Bung Hatta:

The phrase "controlled by the state" in Article 33 of the 1945 Constitution of the Republic of Indonesia does not mean that the state itself becomes an entrepreneur, entrepreneur or ondernemer. However, the power of the state lies in the making of policies or regulations to smooth the way of the economy and prohibits the "sucking" by the investors of the weak.

In line with that, according to Emil Salim, complete control has 5 (five) roles referred to as state control, namely:

"The state controls the earth, water and natural resources contained in the earth and which are the main points for the prosperity of the people. In implementing this "right of control", it is necessary to maintain that the developing system does not lead to etatism. Therefore, the right to control by the state must be seen in the context of the implementation of the rights and obligations of the state as: (1) owner; (2) regulator; (3) planners; (4) implementer; (5) Supervisor. The ingredients of these five points with different weights can put the state in its position to control the natural environment so that the right to control can be exercised (1) by owning natural resources; (2) without owning natural resources, but showing the Controlling Rights through regulation, planning, and supervision. In the Pancasila economic system, the state does not need to own all natural resources, but can still control them through regulation, planning and supervision)". [9]

Strengthening thinking in the consideration of the Constitutional Court Decision No. 01/PHPU-PRES/XVII/2019 dated 27 June 2019, can be said to have been detailed by the Supreme Court through Circular Letter Number 10 of 2020. These two judicial institutions have the same view. In full SEMA No. 10 of 2020, the formulation of the criminal chamber number 4 which details is formulated in beshiking as follows:

8 M. Yahya Harahap, Hukum Perseroan Terbatas (Jakarta: Sinar Grafika, 2009), hlm. 51-52. Letezia Tobing, S.H., M.Kn., "Holding Company, Fungsi dan Pengaturannya", https://www.hukumonline.com/klinik/a/holding-company--fungsi-dan-pengaturannya-cl3562, diakses pada Selasa, 7 Juni 2022, pukul 21.49 WIB.

9 Dian Cahya Ningrum, Politik Hukum Pengaturan Privatisasi dalam Undang-Undang Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara. (Tesis, Pasca Sarjana Fakultas Hukum Universitas Indonesia, 2004), p. 28.

Losses that arise in BUMN/BUMD subsidiaries whose capital is not sourced from the APBN/APBD or capital participation from BUMN/BUMD and do not receive/use state facilities, are not included in state financial losses.

Based onthe formulation above, in terms of capital and facility receipts, then SEMA No. 10 of 2020, can be described as follows:

1. Losses incurred in subsidiaries of BUMN/BUMD whose capital is not sourced from the APBN/APBD or not equity participation from BUMN/BUMD

   And

2. Not receiving/using state facilities

Furthermore, SEMA No. 10 of 2020 has actually been confirmed through legal practice. The panel of judges at the Corruption Court at the Pangkal Pinang District Court through Verdict No. 1/Pid. Sus-TPK/2021/PN Pgp dated May 25, 2021 in the case of the defendant who is a stakeholder in PT Timah, Tbk as a subsidiary of SOEs -PT. Inalum (Persero) was released because the loss of PT Timah, Tbk was not included as an object of state financial loss. In consideration of the decision[10]. The basis for the consideration of the panel of judges has clearly relied on the decision of the Constitutional Court (MK) in the decision Number 01/PHPU-PRES/XVII/2019 dated 27 June 2019 and SEMA No. 10 of 2020, the panel of judges acquitted the defendant.

Thus, essentially there has been a paradigm shift, especially by the judiciary in looking at SOEs and state financial losses in SOEs. When compared to the past (about more than 10 years ago), the Corruption Court at the Bandung District Court through No. 77/Pid.Sus/TPK/2011/PN.Bdg dated February 13, 2012 still assesses the deposits of PT Elnusa, Tbk (a subsidiary of PT Pertamina (Persero)) as state assets. However in the clarification, one of public prosecutors, Prof. Asep Nana Mulyana[11] said, it is proven that the corruption case is caused, the prosecutor has proven the existence of bribery.

The clarification conveyed by him actually shows that there is consideration of guilty mind (*mens rea*) as a strong reason for the prosecutor to process this case trough a criminal court. This understanding of law enforcement officers makes us believe that the SOE's -company's financial losses are not only brought to the criminal court. This further strengthens the legal theory, there is no crime without mistakes and guilty mind, in Ducth it calls *Geen straf zonder schuld, ohne schuld keine strafe*[12].

The author will provide one more case example to show that malicious intent/ guilty mind is an important element to

10 See Pangkal Pinang Corruption Court Verdict No. 1/Pid.Sus-TPK/2021/PN Pgp dated May 25, 2022 p.364.
11 Asep Nana Mulyana on Talkshow and Book Launching "Potret Business Judgment Rule Pertanggungjawaban Pengelolaan BUMN, Borobudur Hotel, Jakarta, November, 2nd, 2022
12 Moeljatno, Asas-Asas Hukum Pidana, Jakarta:.PT Rineka Cipta, 2002, p 57.

resolve a SOE's loss through a corruption trial. In Indonesia, we have heard of two decisions on comparable cases in the field of financial investment carried out by SOE subsidiaries. Company of Pension Fund Pupuk Kaltim was aquitted because the judge did not see any guilty mind as evidenced (no criminal acts: fraud/ gratification) Supreme Court Verdict No.1101 K/Pid.Sus/2020 dated June 8th 2020. Different form the Company of Pertamina Pension which was convicted because the prosecutor was able to prove the fraud (Supreme Court Verdict No. 2088 K/Pid. Sus/2018 dated October 30th, 2018).

Referring to the consideration of the judges who rely on guilty mind, such as the PT Timah, Tbk, PT Elnusa, Tbk, and Pension Fund Case, it is estimated that there will be quite a big paradigm shift due to the SEMA No. 10 of 2020. In the future, the accuracy of law enforcement in responding to a case whether it is resolved trough a corruption court or an ordinary criminal court, it's not enough to just consider the guilty mind, but still have to pay attention at the status of the company whether it is SOEs or not. This condition is actually a dilemma condition where the transformation of SOEs has not been followed by clear alignment of regulations. Moreover, our corruption law has not accommodated gratituities in the private sector and the law is still prioritizing imprisonment.

2. SOEs Transformation as a Government Program

The transformation of SOEs into holding and subholding is an old government policy since the 1970s. This holding concept requires every SOEs to look for its own form that is expected by the SOEs through restructuring and business development in each of its subsidiaries. The National Medium-Term Government Development Plan for the period 2019-2024 as stated in the Minister of SOEs Regulation Number PER-8/MBU/08/2020 concerning the Strategic Plan of the Ministry of SOEs for 2020-2024. In the future until 2024, there will be a restructuring of at least 9 sectors, namely:

1. Pharmaceutical SOEs,
2. Insurance SOEs,
3. Survey Services SOEs,
4. Food Industry SOEs,
5. Manufacturing Industry SOEs,
6. Defense Industry SOEs,
7. Media Industry SOEs,
8. Port Services SOEs,
9. Transportation and Tourism Services SOEs.

PT Pertamina (Persero), one of the SOEs oil and gas sector which has just finished carrying out a complete restructuring starting in September 2021. To be able to achieve the goals of the government program, PT Pertamina (Persero) has set 7 (seven) targets, namely[13]:

13 In the original text it is stated (i) Lean, agile and efficient organization, (ii) Operational excellence, increased

i. The formation of an organization that is focused, Lean, agile and efficient.
ii. Increased competitiveness through Operational excellence, increased competitiveness and best-in-class capabilities within the industry.
iii. Acceleration of current and new businesses.
iv. Increased flexibility in partnership and financing
v. Organizational renewal, work culture, mindset, talent, and transparency (Rejuvenated organization, talent, culture, and mindset in line with world-class energy company).
vi. Complying with the national energy agenda as energy security and an agent of national development (Fulfilling nation-building mandate to reach national energy sovereignty)

Paying attention to 6 (six) achievement targets including increasing competitiveness through operational excellence, increased competitiveness and best in class capabilities within industry, acceleration of business development both in terms of existing and new, as well as some improvement in partnerships of course through the making of the right and fast business decisions. However, if it is related to the condition that there are still fears / doubts from SOEs stakeholders in making decisions, it would not be an exaggeration for the legal sector to also contribute to creating signs. Even the thought of strengthening the paradigm shift into a norm through legal reform in order to create legal certainty that is in line with government programs, especially for SOEs as a driving force for the economy to realize social justice.

3. Comprehensive Integral Law Update

Criminal law policy is identical with penal reform in a narrow sense, because as a legal system, there are three known criminal acts consisting of cultural, structure, and substantive (although there are those who interpret Friedman's theory mentioning 4, legal impact[14]). The law is part of the legal substance, the renewal of criminal law, in addition to updating the legislation also includes the renewal of basic ideas and knowledge of criminal law.The paradigm of the judiciary (MK Decision Number 01/PHPU-PRES/XVII/2019 and SEMA No. 10 of 2020) that is currently happening is considered to have touched the basic idea of both the basic idea of SOEs development and the basic idea in the field of criminal law.

In criminal law, the application of crime is the final instrument (known as

competitiveness and best-in-class capabilities within industry, (iii) Acceleration of current and new businesses, (iv) Flexibility in partnership and financing, (v) Rejuvenated organization, talent, culture, and mindset in line with world-class energy company, (vi) Fulfilling nation-building mandate to reach national energy sovereignty,https://www.jccp.or.jp/international/conference/docs/LP2-4_RiniWidiastuti-Indonesia.pdf,accessed on July 15, 2022, at 11.30 WIB.

14 Ahmad Ali, Menguak Tabir Hukum, Ghalia, Bogor, 2008, P. 97.

the "*ultimum remedium*") that needs to be re-examined, so that these two sectors become a linear proposition and are in line with legal principles.[15] Judging from the legal structure, the existence of the judicial institution paradigm shows that the legal structure was first present but has not been followed by adequate legal substance. To create a legal culture that is certain, the legal substance needs to be a priority for reform.

However, reform of criminal law, especially the Anti-Corruption Law, is still considered difficult to implement at this time. The occurrence of pros and cons in the community in terms of implementing non-penal efforts - criminal acts of corruption need to be dealt with. Through increasing the confidence of law enforcers to be humanists and realizing legal certainty through policies. Even though it is only a policy (*beshickking*), legal culture can still be formed due to legal impact, so that in the future it will show significant results in reducing contradictions in society.

This effort can be started from the SOEs environment itself. It is necessary to proactively collaborate with law enforcement and SOEs stakeholders to strengthen SOEs internal rules/ guidelines in the framework of preventing corruption. The Indonesian Attorney General's Office is one of the law enforcers who has complete prevention and security functions and duties (Deputy of Attorney General for Civil and State Administration (JAM Datun), Intelligence (JAM Intel), and Special Crimes (JAM Pidsus)) compared to peer agencies. others, are expected to be able to take a role in realizing legal certainty in the midst of the government's efforts to restore and improve the economy through the SOEs sector.

Law as a tool of social engineering need to be embodied not only law as law but also including policies. This is in line with the thought of W. Friedman which states, Legal Substance is called a substantial system that determines whether or not the law can be implemented. Substance also means the products produced by people who are in the legal system which includes the decisions they make, the new rules they make.

Social change through policies that are able to reach the smallest social groups (BUMN/SOEs organizations) must begin immediately. The initial step is carried out by mapping the internal rules in SOEs companies, it is an urgent thing to do, especially since there are already many SOEs that are transforming and will transform, of course, they require acceleration and security by adequate regulations. The output of the mapping results is addressed quickly oriented

15 The legal system, including laws and regulations that are built without legal principles, will only be a pile of laws. Legal principles provide the required direction. In the days to come, the problems and areas to be regulated are bound to increase. So when the law or legislation is developed, the legal principle provides guidance on how and in which direction the system will be developed.

to operational excellence, increased competitiveness and best in *class capabilities within industry,*Acceleration of business development both existing and new/future as well as increasing partnerships that can be embodied in the internal regulations of SOEs and their subsidiaries has become a necessity as a form of adaptive attitude to world demands.

Moreover, still in the social environment of SOEs organizations, mapping and updating of regulations ideally also covers the regulation of the field of internal financial supervision in SOEs and its subsidiaries. This paradigm change (legal culture) needs to be understood thoroughly in order to realize the harmony of mind and the same spirit to achieve the goal of SOEs transformation to prosper the Indonesian people. Internal control units, both the legal function and the financial auditor function, which can be referred to as legal culture need to be harmonized based on their respective competencies.

Looking at the criminal justice process, in fact there is no function that has absolute authority, the prosecution process to the implementation of court decisions is analogous to a clockwork system that works in one direction in a stable and constant rhythm. Thus, this system can be understood and imitated by the SOEs internal supervisory unit, both the legal function and the financial auditor, in responding to a finding and determining the resolution mechanism, which is oriented towards efficiency and effectiveness, not just a penal effort.

D. Closing

Based on the discussion above, it is known that there is a paradigm shift by the judiciary which is seen as a (legal culture) which is linear with the demands of economic development through the SOEs sector to realize social justice for all Indonesian people. This change needs to be followed in the subsystem of legal culture and legal substance. In completing this system, it is necessary to have a pro-active role and support for law enforcement officials through policies and direct assistance to SOEs stakeholders. The Indonesia Attorney General's Office and other law enforcers are expected to further strengthen non-penal efforts through their respective functions and authorities. The great authority that exists in law enforcement officials is expected to be able to be at the forefront of guarding legal reform that realizes social welfare and social defense. Moreover, this writing is author contribution (sensing)[16] and responding (responding) to the dynamics of legal developments, especially corruption related to the accountability

16 Sensing dan respond are two components of the requirements to make an organization agile in an organization. Rick Dove, "Response Ability: The Language, Structure, and Culture of the Agile Enterprise", Information System, Volume 7, (Maret 2001), p. 35-50. Lihat juga Rick Dove, Response Ability: The Language, Structure, and Culture of the Agile Enterprise (New York: John Wiley & Sons, Inc., 2001), p. 30-87.

and management of SOEs, are expected to produce a reference that will enrich the treasures of knowledge or legal knowledge in line with changing times which require SOEs to move more agilely, adaptively, innovatively, and responsive so as to be able to compete in the international world.

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D. Court Decision and Policies

Putusan Mahkamah Agung RI No. 3790 K/Pid. Sus/2022 tanggal 2 Agustus 2022 Jo. Pengadilan Negeri Pangkal Pinang No.1/Pid.Sus-TPK/2021/PN Pgp tanggal25 Mei 2021.

Pengadilan Tipikor pada Pengadilan Negeri Bandung No. 77/Pid.Sus/TPK/2011/PN.Bdg tanggal 13 Februari 2012

Putusan Mahkamah Agung No. 2088 K/Pid.Sus/2018 tanggal 30 Oktober 2018

Putusan Mahkamah Agung No. 1101 K/Pid.Sus/2020 tanggal 8 Juni 2020

Putusan Mahkamah Konstitusi No. 25/PUU-XIV/2016 tanggal 8 September 2016

Putusan Mahkamah Konstitusi No. 01/PHPU-PRES/XVII/2019 tanggal 27 Juni 2019 Surat Edaran Mahkamah Agung Nomor 10 Tahun 2020 tentang Pemberlakuan

Rumusan HasilRapat Pleno Kamar Tahun 2020 sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan

Surat Edaran Jaksa Agung No. B-113/F/Fd.1/05/2010 tanggal 18 Mei 2010

E. Statutes

Undang-Undang Dasar Negara Republik Indonesia 1945 UU No. 31 Tahun 1999 Jo. UU No. 20 Tahun 2001

UU No. 17 Tahun 2003 tentang Keuangan Negara

Peraturan Menteri BUMN Nomor PER-8/MBU/08/2020 tentang Rencana Strategis Kementerian BUMN Tahun 2020-2024

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LEGAL DEVELOPMENT IN TECHNOLOGY INVESTMENT METAVERSE: CASE IN INDONESIA

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ABSTRACT

Technology metaverse can help all aspects of lives, but people must be aware, of limited information and literacy have negative impact. So, there is a need for socialization about the metaverse. This research is Systematic Literature Review approach, apart from that this research will analyze how the legal side is to invest in metaverse technology and future legal projections to this metaverse technology sector. The results are regulation for metaverse is low and need developed because the metaverse is abstract. Situation in Indonesia, the development of law towards metaverse is still in parliament and is still in the form of a bill. Second research question, a review of legal projections in the future by parliament to make policy and support for the metaverse technology for provide guarantees. Indonesia must be prepared for this metaverse of technology because in the future the world will change adaptation is needed without compromising.

Keywords : Law, Metaverse Technology, Policy, Protection

A. Introduction

The world is experiencing rapid development with the presence of virtual technology or virtual worlds that are used for communication, economic, social, educational, tourism or other business purposes.[1] The development of virtual technology requires the right explicit software to be used, which is called virtual reality (VR), while the world that is in it is the metaverse, so called because almost every internal display line has adopted 4 (four) dimensions with standards that have almost the same or resemblance to nature even though it is still in the digital world.[2]

This is also reinforced by the results of Cepi Riyana's research,[3] that the

1 (Jamil, 2018; Musril et al., 2020; Saurik, Purwanto, & Hadikusuma, 2019)
2 Blake J. Harris and Palmer Luckey, Future History: Oculus, Facebook, and the Revolution Wiping Out Virtual Reality, first edition. (Dey St., 2019).
3 Cepi Riyana, "The Influence of the Use of Virtual Reality Media on Students' Analytical Ability in Learning

existence of this metaverse certainly has an impact, if it leads to positive things it will provide benefits for its users, if it is used negatively then only losses can be obtained from using VR, so that not a few VR users will spend their productive time every day just to carry out transaction activities on the world of the metaverse regardless of its social environment. This causes VR users to lose socialization in their environment and do not care about the conditions in their environment.[4]

Juridically, the existence of technology in the form of a metaverse in Indonesia is still minimal and does not yet have a valid legal umbrella to accommodate this, in a seminar held by one of the private tertiary institutions in Indonesia.[5] The essence of this seminar is related to intellectual property in the perspective of Islamic law. The result of the seminar is that the existence of the metaverse world is still unclear, because until now there is no urgency for the existence of the metaverse. In Indonesia, something that is not clear even though it has economic value is forbidden, but more than that is the importance of prioritizing education and socialization to the Ministry regarding this matter.

On the other hand, currently it is increasing in terms of investment coming into the country, especially in technological developments in the metaverse field, in the current development of investment in technology, according to a website on one of the campuses, quoting from the Site of Temasek, Google and Bain & Co in 2019 which stated that there was at least an increase of up to 49% for the economy, especially in Indonesia with an economic value of USD 130 billion until 2025.[6] Of course, these are the two sides of a coin that will intersect with urgency and also legal protections that are not ready when dealing with the metaverse.[7]

A little explanation that at least the technology base is still the key in the development of a country and colliding with the economy will create a different cultural mechanism to capture this, so that economic actors will be more active in promoting efforts, increasing sales, innovation in repair services, even to lower

Natural Sciences Class VII of Junior High School," Edutcehnologia 2, no. 2 (2018): 36–38; Monita Eva and Rahmah Jassica, "The Impact of Using Technology and Virtual Exhibitions on Local Art Communities During the Pandemic," Journal of ATRAT 10, no. 1 (2022): 9–18.

4 N. Vehteva, A. Nazarova, and E. Surkova, "Virtual Reality Negative Impact Analysis and Modeling," in International Conference on Automation and Energy, vol. 2096, 2021, 1–8; Raymond Lavoie et al., "Virtual Experiences Real Consequences: Potential Negative Emotional Consequences of Virtual Reality Gameplay," Virtual Reality 25, no. 1 (2021): 69–81, https://doi.org/10.1007/s10055-020-00440-y; Muhamad Ngafifi, "Technological Progress and Human Life Patterns in a Socio-Cultural Perspective," Journal of Educational Development: Foundations and Applications 2, no. 1 (2014): 33–47.

5 Bandung Islamic University

6 UII, "Economic Growth and Digital Investment in Indonesia in a Legal Perspective," Indonesian Islamic University, last modified 2021, accessed 15 August 2022, https://law.uii.ac.id/blog/2021/07/08/permbuh - digital-economy-and-investment-in-indonesia-in-a-legal-perspective/.

7 Richard J Gilbert, Critical Innovation: Competition Policy for a High-Tech Economy (MIT Press, 2020).

prices. only to attract buyers.[8] However, here the researcher tries to look at it from a regulatory standpoint in Indonesia, which currently for technological developments, in particular, still refers to the ITE Law (*Information and Electronic Transactions*) Number 11 of 2008,[9] which was amended into Law Number 19 of 2016, before clearly discussing the conditions of this metaverse trend, in addition to regulations from the Ministerial Regulation (*Peraturan Menteri*) of the Ministry of Information and Informatics Number 20 of 2016 concerning Protection of Personnel data in electronic systems and Government Regulation Number 82 of 2012 which discusses in general about electronic systems and transactions which until now still have weaknesses in their use, especially from the user side and also data-based decisions which will later be interrelated between users and data security users.[10]

In addition, based on a report prepared to present the government's performance plans for 2018 related to technology, it still discusses the downstream process and the focus is not on developing advanced technology but still on simple technology.[11]This is of course a challenge in the application of laws related to the existence of this metaverse, at least there is a real socialization action for everyone so that actions that lead to abuse and safety in activities in the metaverse world are still not optimal.[12]

Therefore, given the need for a policy or legal protection for the existence of this metaverse on the grounds that later there will be guarantees and an important role from the government as well as providing guidelines for metaverse users to be more law-abiding when accessing it. Considering that other countries have started investing their finances in metaverse technology, such as in Japan which is a model for countries in the Asian Region, where Japan is already at the 5.0 technology development in 2020, and the focus of its development lies in providing solutions to problems in society with the help of advanced robots for an unlimited time.[13]

8 Hunter Muller, Major Shifts in IT Leadership: How CIOs Harness the Power of Technology for Strategic Business Growth in a Customer-Centered Economy (Wiley, 2015).

9 Abeba N. Turi, Technology for Modern Digital Entrepreneurship: Understanding Emerging Technologies at the Edge of the Web 3.0 Economy (Apress, 2020).

10 (Kominfo RI, 2016)

11 Coordinating Ministry for Human Development and Culture of the Republic of Indonesia, Presidential Regulation of the Republic of Indonesia Number 79 of 2017 Concerning the 2018 Government Work Plan (RKP), 2018, https://jdih.kemenkopmk.go.id/sites/default/files/2019- 01/Perpres 79 ATTACHMENT TO THE 2018 RKP PRESIDENTIAL REGULATION.pdf.

12 Li Jiaxin and Gao Gongjing, "Socializing in the Metaverse: Innovation and Challenges of Interpersonal Communication," in Proceedings of the 8th International Conference 2022 on Humanities and Social Sciences Research (ICHSSR 2022), vol. 664, 2022, 2128–2131.

13 Sin Nosuke Suzuki et al., "Virtual Experiments in the Metaverse and Their Application to Collaborative Projects: Frameworks and Their Significance," in 24th International Conference on Information Systems & Knowledge-Based Engineering and Intelligence, vol. 176, 2020, 2125–2132.

Apart from that, the development of metaverse technology from the technology giant Facebook is also mushrooming. It is known that in 2021 Facebook will invest (USD) 10 million to fund the development of this metaverse and it is hoped that by 2026 there will already be around 30% of organizations in the world that will follow the development of this metaverse.[14]

Meanwhile, Indonesia itself is currently not interested in the development of the metaverse world and currently Indonesian technology is still in the stage of simple technology and the Indonesian government only focuses on problems that appear on the surface and has not touched any of them root of the problem and referring to research from Fajri, Zahira and Rahayu, stated that limited human resources are the reason why Metaverse has not developed widely in Indonesia, so that large investment funds are needed in metaverse, especially in the field of education related to technology and technological development.[15]

Seeing the development of world technology that is very advanced, of course, this is one of the indications towards a world with easy access, especially in advances in the field of technology. Indonesia, of course, has to look at this as a potential in advancing, for example, in the economic, social and other fields. But of course, looking at the current legal umbrella in Indonesia, it is still very limited in metaverse technology investment. Of course, it is very unfortunate by all parties. Therefore, researchers in this article will discuss further about the condition of the law protection, especially in the development of metaverse technology investment in Indonesia.

Through the research in this article, researchers will focus more on analyzing the legal side related to Indonesia's investment in the metaverse technology, through this analysis, of course, also future legal projections. The development of the digital world, especially in this metaverse, must be a concern for Indonesia, which currently has not shown maximum results. It is therefore important for researchers to raise and study laws related to this metaverse technology.

It aims to provide recommendations and suggestions to stakeholders or future researchers to be able to further develop the metaverse, especially from a legal perspective in Indonesia, which currently has not been properly accommodated regarding the existence of the metaverse. The implementation of this research will also explain the research questions that will be raised in this research. In this article, the research questions are: (1) What is the condition of the legal side of investment in the technology sector of

14 Louis Rosenberg, "Regulation of the Metaverse : A Roadmap Regulation of the Metaverse : A Roadmap," in 6th International Conference on Virtual Simulation and Augmented Reality (ICVARS 2022) (Brisbane, Australia, 2022), 1–11.

15 Fitri Nur Fajri, Safira Nur Zahira, and Amalia Risti Rahayu, "The Influence of Science and Technology, Length of Education on Achievement of Indonesia's Human Development Index in 2018-2020," Economic Dynamics 13, no. 2 (2022): 271–279, https://ejournal.unisba.ac.id/index.php/dinami_onomi/article/view/9634.

the metaverse? (2) What are the future legal projections regarding investment in the metaverse sector?

B. Research Method

Research Method uses a systematic literature review (SLR) approach. The SLR method in this article has 3 steps, including the following, [16] : the *First*, using keywords "law" and "metaverse technology investment" to find some articles that are relevant to answer research question that has been determined.[17] The *second* step is the elimination of articles, for relevan articles to use and can answer research question with rules are as follows: (1) elimination articles if not use English as an internationally recognized language and the United Nations, (2) elimination articles if from book sections, review book, book chapter, or result articles from conference proceedings, (3) elimination articles if use same methods from this article, and (4) the last elimination articles if not published in 2010-2020.[18]

Third step, will be the stages of counting articles and grouping them according to the theme and relevance in answering the predetermined research question, and the number or result that is more dominant then he will be the one who will be appointed to answering the research question because much research has been done. Furthermore, the database that will be used in this study using the Taylor and Francis Group Database (*see figure 1*), which has a good reputation in publishing international scientific journals and recognized by international academics if the journal is indexed in this database. The other reason using this database because only this database can find some article and relevant to answer research question.[19] After that, keywords will be used to limit the articles found and reduce confusion in the later discussion, which is only related to law and the metaverse so, relevant for the analysis.[20]

C. Discussions

1. Scarcity Articles

After doing a search for articles, the following researchers present below in the form of a table regarding the results of the study, as follows:

Table 1. Article Search Resulth

Database	Step 1	Step 2	Step 3	Results
Taylor and Francis Group	14	10	6	6
Total				6

Source: researcher data

16 Jianfeng Wen et al., "Systematic Literature Review of Machine Learning Based Software Development Effort Estimation Models," Information and Software Technology 54 (2012): 41–59.
17 David Denyer and David Tranfield, "Producing a Systematic Review," in The SAGE Handbook of Organizational Research Methods, 2009, 671–689.
18 Sara Efrat Efron and Ruth Ravid, Writing the Literature Review : A Practical Guide (The Guilford Press, 2019).
19 Jose L. Galvan and Galvan Melisa, Writing Literature Reviews: A Guide for Students of the Social and Behavioral Sciences, 7th ed. (Taylor and Francis, 2017).
20 Diana Ridley, The Literature Review Step-by-Step Guide for Student, ed. Katie Metzler, 2nd ed. (London: SAGE Publication Ltd, 2012).

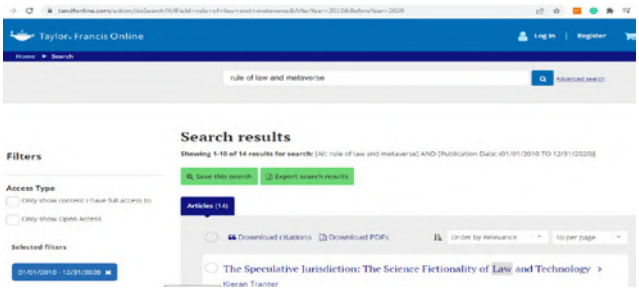

Figure 1: Search article view

Based on the results of the article search above, it can be seen that using the Taylor and Francis Group database has produced at least 6 (six) articles that have been discussed according to keywords and have been filtered by researchers. In the first step with keywords and year limits found only 14 (fourteen) international scientific journal articles. In contrast, in the second step it was found that there were at least 10 articles that were worthy of entering the next stage. The last step only 6 articles that could be used to answer the two-research question, in the next process the researcher not only emphasized the discussion on Those 6 articles alone, then researcher will combine them with other articles that are worthy of being used as reference material in compiling this article.

2. Problematic Implementation of The Metaverse Law

The first research question will discuss the legal review related to investment in technology, especially the metaverse, by using keyword limits and year limits. The following is the discussion below:

Table 2. The first research question

Overview	Short explanation	Author	Results
limited legal implementation in metaverse technology Metaverse.	all activities in the metaverse must immediately carry out guidelines for use and also procedures for operation, therefore the law governing this must be issued immediately.	21, 22, 23, 24.	4
The metaverse world is not bound by the laws that exist in the real world. The laws governing the metaverse will follow the development of the times very briefly so that the law is only one of the complements in the metaverse. 25, 26, 2			

Source : researcher data

Through (table 2) above, it can be analyzed as related to law and the metaverse so far it is still unclear and not many countries in the world are willing to apply favorable laws in the real world to be applied to this metaverse later.

21 Kieran Tranter, *The Law and Technology Enterprise: Uncovering the Template to Legal Scholarship on Technology*, *Law, Innovation and Technology*, vol. 3, 2011.

22 Clare Chambers-Jones, "Virtual World Financial Crime: Legally Flawed," *Law and Financial Markets Review* 7, no. 1 (2013): 48–56.jurisdictional and sovereignty issues of the internet and virtual worlds, it becomes even harder to regulate. Undoubtedly financial crime, via the internet (cyber financial crime

23 Craig Newbery-Jones, "Ethical Experiments with the D-Pad: Exploring the Potential of Video Games as a Phenomenological Tool for Experiential Legal Education," Law Teacher 50, no. 1 (2016): 61–81.

24 Kieran Tranter, "The Speculative Jurisdiction: The Science Fictionality of Law and Technology," Griffith Law Review 20, no. 4 (2011): 817–850.

25 Chip Stewart, "Do Androids Dream of Electric Free Speech? Visions of the Future of Copyright, Privacy and the First Amendment in Science Fiction," *Communication Law and Policy* 19, no. 4 (2014): 433–463.

26 Litska Strikwerda, "Should Virtual Cybercrime Be Regulated by Means of Criminal Law? A Philosophical, Legal-Economic, Pragmatic and Constitutional Dimension," *Information and Communications Technology Law* 23, no. 1 (2014): 31–60.

According to Tranter,[27]many benefits will arise from activities in this metaverse world but on the other hand there needs to be clear legal action and strong references because the negative impacts of this metaverse are numerous because the virtual world will have no boundaries that can prevent it.

In Indonesia itself the law that regulates related to this metaverse still uses and refers to Law Number 11 of 2008 that this rule was created as an effort to regulate cyber law or telematics law which internationally can be taken as its essence related to the use of information and communication technology which is widely used without limits for certain purposes and digitized.

Meanwhile, in Indonesia until 2021 digitization refers to the research results of Nurdany and Prajasari,[28] that digital technology in Indonesia is still of an old pattern, namely the shift from conventional to digital which only focuses on one side, namely the economy. So that widespread utilization has not been seen for other sectors, for example for supporters in the world of education, the world of health, integrated management, public services, telecommunications or even transportation.[29] According to Strikwerda, states that life in the virtual world of the metaverse is only as a new ecosystem combined with technology on the basis of a specific purpose. So, if the utilization of this metaverse can be implemented in total, of course it can increase the global competitiveness of a country against other countries.[30]

In addition, the current use of the metaverse has not been fully utilized to its full potential, the law will be floating and will not be able to fully provide guarantees when something happens in the metaverse, only users can stop their activities when they feel it is enough and no other party can control the activities of these users. Refers to Chambers-Jones,[31] that the law will not work when something happens without evidence and the metaverse applies abstract concepts and in this case, there is a need for the term digital security applied in the metaverse.

In addition, researchers see that Indonesia has great potential because of data in 2016 alone the use of technology in Indonesia has reached 132 million people and is predicted to increase in

27 Tranter, The Law and Technology Enterprise: Uncovering the Template to Legal Scholarship on Technology, vol. 3, p. .

28 Achmad Nurdany and Anniza Citra Prajasari, "Digitalization in Indonesian Cooperatives: Is It Necessary?," Journal of Developing Economies 5, no. 2 (2020): 120–131.

29 M. Claudia Tom Dieck and Timothy Jung, Augmented Reality and Virtual Reality: The Power of AR and VR for Business, 1st ed. (Springer International Publishing, 2019).

30 Strikwerda, "Should Virtual Cybercrime Be Regulated by Means of Criminal Law? A Philosophical, Legal-Economic, Pragmatic and Constitutional Dimension."

31 Chambers-Jones, "Virtual World Financial Crime: Legally Flawed."jurisdictional and sovereignty issues of the internet and virtual worlds, it becomes even harder to regulate. Undoubtedly financial crime, via the internet (cyber financial crime

the following years.[32]while the potential for economic growth from these superior activities has reached 27 billion US dollars just for 2018 alone. Thus, making Indonesia one of the developed countries in this sector for the Southeast Asian Region.[33]

On the other hand, through the Draft Omnibus Law (RUU OL) in Indonesia, which is currently still in the discussion stage in parliament, it is hoped that it will become a momentum for sustainability for the level of digitalization of technology, especially the metaverse for technological progress in Indonesia. This was also explained by Ulya and Mulyarri that the momentum of the Omnibus Law can be used as a reconstruction related to convergence based on technology law in Indonesia, which has so far been of an old pattern.[34]

The technological condition in the metaverse is very complex, this is not only technical in the metaverse, which must use the avatar feature to provide a reality of life in it and also users to feel real life in the virtual world.[35] It is also crucial to pay attention to fellow metaverse users, there is no binding law and transparent information about this metaverse. Of course, it will be very detrimental if it is not handled properly. Refers to Andrea Vanina Arias,[36] that negative actions will often occur in the virtual world and will adapt to conditions, it can be said that if the technology becomes more sophisticated then negative cases such as fraud, illicit trade, and even illegal transactions will also evolve to be able to match the system that has been created.[37]However, if it is felt that the problem of law is very difficult to apply to this metaverse world, research from Newberry-Jones,[38] provide a simulation of the mini concept of the existence of the metaverse, for example from the education sector or learning methods that can certainly accommodate users bound by the standard rules and regulations of formal education in the real world. In addition, the existence of a mini metaverse project in a small scope will also have a big impact if it can be managed properly for its users and other

32 Berry A. Harahap et al., Financial Technology Developments Related to Central Bank Digital Currency (CBDC) on Monetary and Macroeconomic Policy Transmission, Bank Indonesia, vol. 2, 2017.

33 Google and Temasek, E-Conomy SEA 2018 Southeast Asia's Internet Economy Hit Inflection Point (Singapore, 2018).

34 Nurul Ula Ulya and Fazal Akmal Musyarri, "Omnibus Law Concerning Information and Communication Technology Regulations for the Reconstruction of Technology-Legal Convergence," Rechts Vinding Journal: National Law Development Media 9, no. 1 (2020): 53.

35 Avatar Adi Da Samraj, The Aletheon: The Divine Avataric Self-Revelation of His Divine Presence (BookBaby, 2021).

36 Andrea Vanina Arias, "Life, Liberty and the Pursuit of Swords and Armor: Regulating the Theft of Virtual Goods," Criminal Law e-Journal 57, no. 1301 (2008).

37 Angela Adrian, "Beyond Griefing: Virtual Crime," Computer Law and Security Review 26, no. 6 (2010): 640–648, http://dx.doi.org/10.1016/j.clsr.2010.09.003.

38 Newbery-Jones, "Ethical Experiments with the D-Pad: Exploring the Potential of Video Games as a Phenomenological Tool for Experiential Legal Education."

interested parties.[39]

Many factors have caused the delay in the implementation of laws related to metaverse technology investment in Indonesia, one of which is the overlapping of existing laws in Indonesia where there are around 7,621 ministerial regulations, then there are around 765 presidential regulations and 452 government regulations. only for the 2014-2018 period, which of course will result in disharmony of legal products.[40] So that with the existence of the rules from the Omnibus Law which are currently still in the draft stage in the parliament, of course it will provide convenience for all who are the subject of the law.

The presence of the Omnibus Law is also very useful in this metaverse technology including user data protection, law for violators who abuse this technology, access domains in the metaverse world, effective for law revisions related to Information and Communication Technology, policy directions in implementing public policies, integration law and ease in implementing licensing for the use of the metaverse concept.[41]

Indonesia, the discussion on the first research question does not yet have laws governing investment in this metaverse technology sector, while the laws that are highly relevant to these conditions are still at the stage of drafting a law in Parliament. The importance of the law governing this metaverse greatly affects its users who have been using digital technology without adequate supervision and regulation so that the impact will be analyzed according to existing rules without looking into and looking deeper into the causes and effects that have occurred.

3. Policy for Metaverse in Future

The second research question will discuss legal projections related to investment in the field of law, especially the metaverse in the future, based on the results of the search for scientific journal articles using the database, there are at least some projections that must be signed in implementing the metaverse, although currently the metaverse has not shown any indications. There is a threat to internal social life in society. Here's the presentation in the form of a table below:

39 Marko Orel, Collaboration Potential in Virtual Reality (VR) Office Space: Transforming the Workplace of Tomorrow (Springer, 2022).

40 Supriyadi Supriyadi and Andi Intan Purnamasari, "The Idea of Using the Omnibus Law Method in Forming Regional Regulations," Scientific Journal of Legal Policy 15, no. 2 (2021): 257.

41 Ulya and Musyarri, "Omnibus Law Concerning Information and Communication Technology Regulations for the Reconstruction of Technology Law Convergence."

Table 3. The second research question

Projection	Short explanation	Author	Results
Opportunity to create policies regarding the metaverse.	The existence of technology must be an opportunity for all countries in the future, cooperation with other agencies as well as making laws with the legislative council must be followed up immediately so that the law becomes one of the umbrellas in the implementation.	42, 43, 44, 45	4
Internet security law	Security by institutions connected to real-world security, working together to ward off crime.	46, 47	2

Source : researcher data

Based on (table 3) above, it can be seen that the metaverse is an opportunity that can be used as part of the agenda in planning a policy. The policy in question is the rules that must be given to users when playing in the metaverse.[42] According to several academics, policy making will not be optimal if it is only based on assumptions, therefore action is also needed in the form of a road map in the course of making policies related to the metaverse.[43] Based on research results from Rosenberg in 2022, there are at least a number of requirements put forward to provide safety and comfort in using the metaverse.[44]

Another research from Gadalla in 2013 that cyberspace will offer all extraordinary conveniences. Thus, the public will voluntarily participate and join this virtual world, however, even though there will be coercive policies, there will be gaps for people to get into it.[45]Although the existence of the metaverse is for some people one of the abstract worlds. But slowly and surely, in the future there will be certain parties who take advantage of the metaverse for the progress of a nation, speed and wide access regardless of certain limitations will make people in the future able to adapt well to this advanced technology.

Then, government actors as one of the parties that can provide a sense of security to the public must be able to capture and must be able to create public trust in the security of the system in the form of policies that indirectly have a significant impact on this metaverse world later. According to Tranter in 2011,[46] it is also specifically stated that the law must regulate all aspects of life including abstract life, namely the metaverse, certain policies that are made must be relevant to the conditions of a technologically literate society and if it has not reached that stage it is necessary

42 Ben Chester Cheong, "Avatars in the Metaverse: Potential Problems and Legal Fixes," A Review of International Cybersecurity Law (2022): 1–28.
43 Rosenberg, "Metaverse Rules : Roadmap Metaverse Rules : Roadmap."
44 Tranter, Law and Technology Firms: Revealing Templates for Law Scholarships on Technology, vol. 3, p. .
45 Eman Gadalla, Kathy Keeling, and Ibrahim Abosag, "Metaverse-Retail Service Quality: A Future Framework for Retail Service Quality in the 3D Internet," Journal of Marketing Management 29, no. 13–14 (2013): 37–41.
46 Chambers-Jones, "Virtual World Financial Crime: Legally Flawed."

to socialize good technological activities and their utilization which makes a positive contribution, for example in the Education sector which provides convenience in the new learning era so that adaptation to the world 4.0 which is able to collaborate between Education and the world of digitalization will be very useful in the process of supporting learning.[47]

So those future projections related to policies that lead to technology investment law in the metaverse field must be able to provide security and a sense of comfort for users of this metaverse, the features of metaverse conditions must be able to make users adapt quickly. In Indonesia, the policy projection is still in the draft law (RUU) stage. Policies in Indonesia regarding the metaverse are still very limited, for example at the licensing stage which already uses one single submission, of course it needs improvement so that the existing database must be in one place for the safety of its users.[48]

The urgency of this metaverse policy is also related to the security side of its users, several opinions, one of which is from LIPI (Indonesian Institute of Sciences) explains that society in general will try to go against the law and not be bound by the law because there is still a culture that is usually contrary to state law, there is still weak supervision of perpetrators of violations and also acts against the law. given by law enforcement officials is still not optimal and does not provide a deterrent effect to violators.[49]

Then from the prevention side of cybercrime, money laundering cases, human trafficking, virtual attacks that threaten the safety of its users, all of which have not been a priority in Indonesia until now.[50]Therefore, the use of the metaverse must be limited and users must be properly selected for filtering purposes before joining this metaverse world.[51] Conducting emotional analysis on metaverse users requires emotional intelligence from users of this sophisticated technology so that if there are problems using the metaverse, they can take quick and appropriate decision-making actions.[52] Restrictions on available products in the metaverse

47 Ikhwan Akbar Endarto and Martadi, "Analysis of Potential Implementation of Metaverse in Interactive Educational Media," Barik Journal 4, no. 1 (2022): 37–51, https://ejournal.unesa.ac.id/index.php/JDKV/.

48 Suryati Suryati, Ramanata Disurya, and Layang Sardana, "Legal Review of the Omnibus Law on the Job Creation Law," Simbur Cahaya 28, no. 2 (2021): 97–111, http://journal.fh.unsri.ac.id/index.php/simburcahaya/article/view/902.

49 LIPI.

50 Safari Kasiyanto and Mustafa R. Kilinc, "Legal Conundrums of the Metaverse," Journal of Central Banking Law and Institutions 1, no. 2 (2022): 299–322.

51 Eman Gadalla, Kathy Keeling, and Ibrahim Abosag, "Metaverse-Retail Service Quality: A Future Framework for Retail Service Quality in the 3D Internet," Journal of Marketing Management 29, no. 13–14 (2013): 37–41.

52 Carlos Bermejo Fernandez and Pan Hui, Life, the Metaverse and Everything: An Overview of Privacy, Ethics and Governance in the Metaverse, 2022.

world. Of course, the products offered in the metaverse world will be very large, of course, restrictions and supervision are needed. Personal use needs to be limited, the use of an account as a substitute for the metaverse must be the user concerned and is not allowed for other people who use it, because it is feared that negative actions may occur.[53]

Some of the points presented above are the procedures for using the metaverse which currently can still be revised considering the current condition of the policies governing the metaverse are not yet available, at least when there are policies in the form of laws and government regulations related to this it is necessary to pay attention to some of the points that have been conveyed and analyzed above. In addition, the conditions in Indonesia which are currently developing rapidly must immediately receive follow-up from the government, in this case the Ministry of Information and Communication (*Kominfo Republik Indonesia*) tasked with preventing any negative impacts that could occur with the presence of this metaverse.

Given that the existence of the metaverse occurs in the digital world without any boundaries and space in its arrangements and this is where the role of the government is, in line with the mandate of the 1945 Constitution which obliges the government to protect its citizens from any threats including the context of this article is the virtual world that must prioritize progress in the field of technology, so that in the future Indonesia's policy direction can adapt to the times that are currently developing rapidly from time to time.

D. Closing

This section, after searching articles through databases and scientific analysis in the form of journals which are carried out systematically, there are at least 2 points that can be given in line with the existing research question. The first research question, regarding legal studies related to technology investment related to the metaverse, especially in Indonesia is currently still in the discussion stage in parliament, where in the stage of the Draft Law which is called the Omnibus Law which is expected to be able to guide all laws which are in discussion there are several problems including overlapping laws in Indonesia and later this bill can be an option for legal improvements and of course future projections regarding the metaverse can be accommodated properly. The next results of the analysis state that legal studies related to this metaverse technology are still in the draft stage in parliament, but researchers are also making guidelines that can be used as a reference when dealing with this metaverse. Given that this metaverse is

53 Stewart, "Is Android Dreaming of E-Free Speech? Visions of the Future of Copyright, Privacy and the First Amendment in Science Fiction."

a virtual world, there will be no limitations in terms of space and time and its users are very free to carry out all activities in it, so it is important to have direct guidelines that must be obeyed. The hope of future researchers is that the limitations in research are only simple research methods but still pay attention to and refer to established SLR methods, besides that the legal context of the metaverse in Indonesia is still limited and previous research has not shown effective results.

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