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ISBN 978-623-94803-7-0

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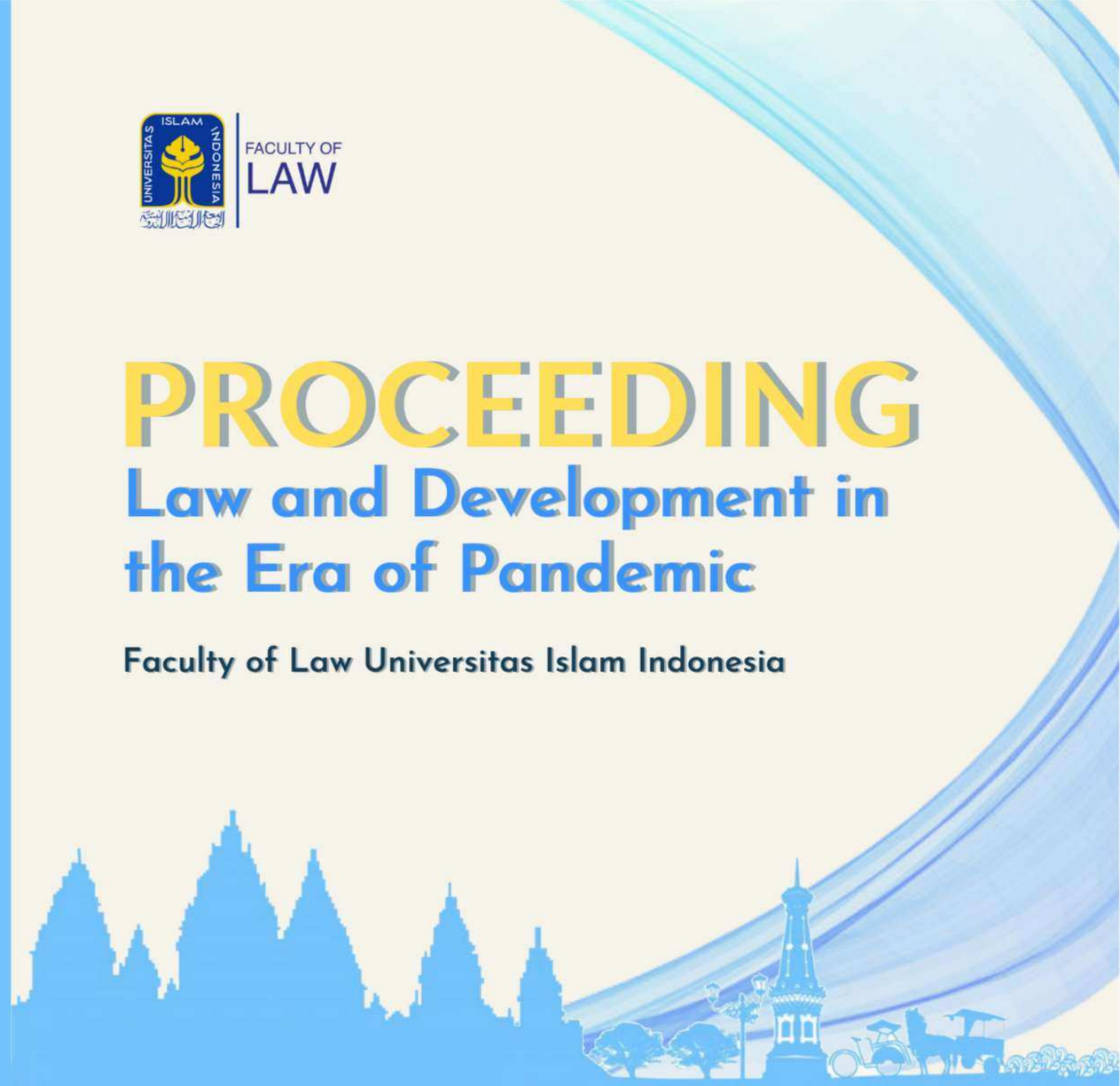
PROCEEDING INTERNATIONAL

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Law and Development in the Era of Pandemic

Faculty of Law Universitas Islam Indonesia



International Student Colloquium 2020

Published in July 2021

FH.UII PRESS

International Proceeding

Law and Development in the Era of Pandemic

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International Proceeding

Law and Development in the Era of Pandemic

Faculty of Law
Universitas Islam Indonesia,
Special Region of Yogyakarta, Indonesia

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FH UII PRESS

Publisher
FH UII Press

International Proceeding
Law and Development in the Era of Pandemic
ISBN: 978-6239-4803-7-0

© Faculty of Law, Universitas Islam Indonesia

Cover Design	:	Rahadian Diffaul Barraq Suwartono, S.H.
Layout Design	:	Rahadian Diffaul Barraq Suwartono, S.H.
Published	:	31 July 2021
Conference date	:	28 November 2020
Halaman	:	ix + 137
ISBN	:	**978-6239-4803-7-0**
Publisher	:	**FH UII Press** Tamansiswa Street 158 Yogyakarta, PO BOX. 1133 Phone: +62274-379178, e-mail: penerbitan.fh@uii.ac.id

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ISBN: 978-6239-4803-7-0

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Faculty of Law, Universitas Islam Indonesia (Yogyakarta)

Foreword

Assalamualaikum, wr., wb.,

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Wassalamualaikum wr. wb.

Editor in Chief,

Dodik Setiawan Nur Heriyanto, S.H., M.H., L.LM., Ph.D.

Achieving the Role of LPI (Investment Management Institution) as the State Investment Management Institution through the Job Creation Act

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Abstract

For the first time after 75 years of Proclamation of Indonesian Independence, the Indonesian government has started to establish Sovereign Wealth Funds (SWF) as an investment management institution, which serves as the state financial tool to represent or regulate public funds. These funds are intended for investment purposes into broad and diverse assets. This institution that oversees the financial activities is referred to as Lembaga Pengelola Investasi/Investment Management Institution (LPI). The establishment of investment management institution is commonplace in many countries, as is the case in Scandinavian countries, for example Norway. However, the Indonesian version of SWF has some considerable differences from that established by other countries overseas. Most of SWF overseas mainly serves as an institution to handle the investment of some of its foreign exchange for diverse assets as a way to allow the income from other investments to cover the declining income in the face of a risk resulting in the plummeted oil prices. In contrast to developed countries, which mainly rely their sources of investment from budget surpluses, Indonesia complies with the Russian SWF model known as the Russian Direct Investment Funds (RDIF), which derive its sources of investment from foreign exchange without limiting the investment opportunities for private investors in Indonesia.

Keywords: Investment Management Institutions, Sovereign Wealth Funds, Omnibus Law

Pemerintah telah membangun badan usaha pengelola investasi atau Sovereign Wealth Funds (SWF) yang nantinya menjadi alat finansial bagi negara untuk mewakili atau mengatur dana publik untuk keperluan investasi ke aset-aset yang luas dan beragam. Nantinya badan usaha yang akan menaungi kegiatan tersebut akan disebut sebagai Lembaga Pengelola Investasi (LPI), yang seluruhnya dimiliki oleh pemerintah. Di negara lain pembentukan badan usaha pengelola investasi sudah umum dilakukan, seperti halnya negara skandinavia, contohnya Norwegia. SWF yang dibentuk oleh pemerintah Indonesia agak berbeda dengan SWF yang didirikan oleh negara lain yang bertujuan menginvestasikan sebagian devisanya ke SWF untuk pada aset-aset diversifikasi sehingga apabila terjadi suatu resiko yang menyebabkan harga minyak turun maka pendapatan yang diperoleh dari investasi lain dapat menutupi penurunan pendapatan. Berbeda dengan negara maju yang sumber dana investasinya berasal dari negara-negara yang mengalami surplus penganggaran, Indonesia mencontoh model SWF dari negara Rusia yang bernama Russian Direct Investment Funds (RDIF) yang sumber dana investasinya berasal dari devisa negara sekaligus memberikan peluang bagi investor swasta untuk menginvestasikan dananya di Indonesia.

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1. INTRODUCTION

For the first time after 75 years of the Proclamation of Indonesian independence, the government of Indonesia established Sovereign Wealth Funds as an investment management institution to serve as the state financial tool to represent or regulate public funds for investment into broad and diverse assets. This is in accordance with the stipulation in Chapter X Central Government Investment article 154 paragraph (1) of Law Number 11 of 2020 concerning Job Creation which states: Central Government investment is carried out in order to increase investment and strengthen the economy to support strategic job creation policies.[1]

Meanwhile, Article 154 paragraph (3) of the Job Creation Law states that Central Government Investment is carried out by: (1) the Minister of Finance as the State General Treasurer, and; (2) Institutions that are given special authority (sui genesis). The establishment of an institution with a special authority is then regulated in Article 165, particularly in paragraph (1), which stipulates the establishment of an Investment Management Institution in the context of investment management. Furthermore, paragraph (2) states that the establishment of an Investment Management Institution is intended to increase and optimize the value of assets in the long term, in order to support sustainable development.[2] The business entity to oversee these activities will be referred to as the Investment Management Institution (LPI), which is wholly owned by the government.

Given that this is the first time for Indonesia to establish an investment management business entity, especially considering the huge amount of money disbursed by the government, it is important to compare the regulations stipulated in Law No. 11 of 2020 on Job Creation with related regulations in other countries, which have implemented Sovereign Wealth Funds (SWF).

2. PROBLEM FORMULATION

On the basis of the abovementioned, this research is written to discuss the following formulation of the problem: First, what is the difference between Investment Management Institutions in Indonesia and Sovereign Wealth Funds? Second, what is the legal basis and function of the Investment Management Institution in regulating the management of government funds?

3. RESEARCH METHODS

This is a literature review with a juridical normative approach and is a qualitative analytical descriptive research. Literature review is selected as the most appropriate research method considering that studies of Sovereign Wealth Funds can be carried out through tracing concepts, regulations, and implementations through primary legal materials in the form of laws and regulations, and secondary materials in the form of books, journals, news, and reports, official reports, and tertiary materials in the form of legal and language dictionaries.

[1] Law No. 11 of 2020 on Job Creation
[2] Law No. 11 of 2020 on Job Creation, article 165

4. RESULTS AND DISCUSION

a. Differences between Investment Management Institution and Sovereign Wealth Funds

Conceptually, Andrew Rozanov introduced the concept of Sovereign Wealth Funds (SWF) in 2005.[3] The International Monetary Fund (IMF) officially defines SWF as a special purpose investment fund or arrangement held by general governments for macroeconomic purposes, with a heterogeneous group of fiscal stabilization funds, savings funds, reserve investment companies, development funds, and pension reserve fund of non-obligatory explicit pension, all of which can be invested in foreign financial assets. Academically, the Sovereign Wealth Fund Institution (SWFI) defines SWF as an investment fund owned by the state or entity, generally generated from a balance of payments surplus, official foreign currency operations, private proceeds, fiscal surplus, and/or revenues from commodities. The IMF definition sees SWF as a brand-new type of financial management, which formally denotes the position of SWF in the modern international financial system.[4]

Historically, the formation of SWF can be traced back to 1953 through the establishment of the Kuwait Investment Authority (KIA), the first state-owned SWF created by the Kuwaiti government with the aim of investing surplus oil revenues and of reducing the country's dependence on limited resources.[5] Despite the frequent report and broadcast of SWFs in the media, and a growing number of academic publications addressing general public investment, there is no consistent concept to define and classify SWFs.[6] SWF Institute defines SWF as a state-owned investment fund or entity formed through the proceeds of privatization, government transfer payments, fiscal surplus, and/or revenue from natural resource extraction. This definition, however, seems to exclude foreign currency reserve assets held by monetary authorities for purposes of traditional balance of payments, or monetary policy of state-owned enterprises (SOEs) in the traditional sense.[7]

SWF is a state-owned investment fund consisting of financial assets, such as stocks, bonds, property, precious metals or other financial instruments that are invested globally. SWF can be managed by the central bank or ministry of finance, by way of accumulating funds in the management process of a country's banking system. This type of fund is usually allocated for major economic and fiscal interests. In addition, SWFs may only refer to state savings invested by various institutions for the purpose of return on investment, and may not have an important role in fiscal management. Nonetheless, in practice, SWFs are usually managed by certain institutions outside the

[3] Andrew Rozanov "Who Holds The Wealth Of Nations?", (2005), *State Street Global Advisors,* 1
[4] Cheng Yu, Li Yang, "Implications of Sovereign Wealth Funds on the Governance of the Middle East Region", (2017), *Asian Journal of Middle Eastern and Islamic Studies*, Vol. 11, No. 4, 65
[5] Alexandru Cosmin BUTEICĂ and Cătălin Emilian HUIDUMAC PETRESCU, "The Rise of Sovereign Wealth Funds: An Overview of The Challenges and Opportunities Ahead", (2017), *Hyperion International Journal of Econophysics & New Economy,* Vol.10 No. 1, 148
[6] Daniil Wagner, "Sovereign Wealth Funds: Investment Objectives and Asset Allocation Strategies", (2014), *Journal of Governance and Regulation*, Vol. 3, No. 2, 32
[7] Daniil Wagner, "Sovereign Wealth Funds: Investment Objectives and Asset Allocation Strategies", (2014), *Journal of Governance and Regulation*, Vol. 3, No. 2, 33

ISBN: 978-6239-4803-7-0
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central bank or ministry of finance, because the central bank or ministry of finance generally put more emphasis on the management of foreign exchange reserves.[8]

Stephen Jen, Managing Director and Chief Currency Economist of Morgan Stanley, revealed that there has been an overlap of function between SWF and several similar funds, such as official foreign reserves and sovereign pension funds. Therefore, in his view, it is best to define SWF based on its characteristics, as listed in the followings:[9]

a. Sovereign: the fund is wholly owned by the state.
b. High foreign currency exposure: most of these funds are in the form of assets denominated in foreign currencies.
c. No explicit liabilities: the funds are not generated from debt financing.
d. High risk tolerance: SWF has a higher risk tolerance in investment decision making.
e. Long investment horizon: investments made by SWF have a fairly long holding period because they are part of the strategic policy of the country that owns the funds.

SWF is a heterogeneous group of institutional investments that may generate different policy objectives. In general, there are five main types of SWFs as in the followings:

a. Stabilization fund: Its primary purpose is to protect the government budget and the economy from commodity price volatility. Its investment and liquidity management horizon focuses on implementing countercyclical fiscal policies to smooth out the boom/bust cycle. That said, it tends to invest primarily in highly liquid assets, such as fixed income securities;
b. Savings fund: It plays an important role in achieving intergenerational equity and protecting the rights of future generations to utilize non-renewable economic resources through the conversion of these assets into a diversified asset portfolio and reducing the effects of the Dutch disease. Its investment mandates target a high risk return profile, and thereby allocating high portfolio shares to equities;
c. A reserve investment company: Its assets are often counted as reserve assets, and are founded to increase the rate of return on international reserves. It focuses its investment strategy on higher returns with a high allocation in equity and alternative investments;
d. Development funds: It plays an important role in financing socio-economic projects or promoting industrial policies that can increase a country's output growth potential;
e. A contingent pension reserve fund: It is established to meet identified future outflows relating to contingent pension-related liabilities on the government's balance sheet. Generally, it invests in equities and other investments to offset rising retirement costs.[10]

[8] Ambarwati, "Sovereign Wealth Funds (SWFs): Kapitalisme Baru oleh Negara?", (2011), *Majalah Ilmiah Ekonomika*, Vol. 14, No. 2, 72
[9] Ambarwati, "Sovereign Wealth Funds (SWFs): Kapitalisme Baru oleh Negara?", (2011), *Majalah Ilmiah Ekonomika*, Vol. 14, No. 2, 73
[10] Osama El Baz, "The Role of Sovereign Wealth Funds in Promoting the External Stability of the Home Economy", (2018), *Scholedge International Journal of Management& Development*, Vol. 05, Issue 09, 96

In general, the objectives of Sovereign Wealth Funds are as follows:[11]

a. To protect and stabilize the budget and economy from excess volatility caused by the appreciation of the domestic currency;
b. To diversify the economy from previously relying on the export of non-renewable commodities to higher value-added sectors, such as manufacturing and services;
c. To generate higher returns than foreign exchange reserves because it is more risk tolerant than foreign reserves;
d. To help the monetary authorities eliminate unwanted liquidity including the effect of a trade surplus on the strengthening of the domestic currency;
e. To increase savings for future generations as a way to better prepare them to meet tomorrow's challenges by turning today's wealth of non-renewable resources into renewable financial assets;
f. To fund social and economic development including infrastructure, both the physical (such as roads and rail networks) and non-physical aspects (such as education and health);
g. To serve as a political economy strategy, especially through investment in government bonds, important institutions and companies, which play a considerable role in the economy of the target country.

SWF is clearly proven to effectively improve a country's economy. Over the last twenty years, there has been a sharp rise in the function of SWF, in both the total amount of funds and the total amount of assets under its management (Asset Under Management/AUM). As of April 2017, there were 79 SWF managing assets estimated to cost around US$7.31 trillion (Sovereign Wealth Fund Institute Rankings, 2017). The ten largest SWFs are reported to manage assets at approximately US$5.54 trillion, which represents around 75 percent of the total AUM of SWFs. This fact serves as the driving force for Indonesian government to immediately complete and ratify its SWF for further operation in Indonesia.

Nonetheless, Indonesian government is reported to establish an SWF with some different characteristics from that established by other countries. The SWF established by some major countries mainly aims to invest some of their foreign exchange for diversified assets as a way to allow the income obtained from other investments to cover the declining income in the face of a risk that generates the plummeted oil prices. Indonesian Investment Management Institution has slightly different characters from the Sovereign Wealth Funds (SWF) in developed countries considering that in general SWFs are classified into 2 (two) types: those established to maximize the country revenues, and those imitating the Russian Direct Investment Funds (RDIF). While the first type collects the funds from foreign exchange, the second type collects its funds from private investors.

There have been some finalization efforts to realize the establishment of Sovereign Wealth Funds as an investment management institution in Indonesia. It is clear that the Indonesian government is more inclined to the Russian model of

[11] "Sovereign Wealth Fund: Definisi, Sumber Dana, Tujuan, Top-10 < *https://cerdasco.com/sovereign-wealth-funds/* > accessed 13 November 2020

ISBN: 978-6239-4803-7-0
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Sovereign Wealth Funds, namely the Russian Direct Investment Fund (RDIF). This model is selected because it is deemed as a more suitable model of investment management institution because it allows the collection of funds from private investors, in addition to foreign exchange reserves.[12] RDIF is a Russian sovereign wealth fund model founded in 2011 by the Russian government to invest the funds in some leading corporations from high-growth sectors of the Russian economy. Its investment mandate is to co-invest with the world's largest institutional investors—direct investment funds, sovereign wealth funds, and leading corporations.

SWF is generally formed by countries with budget, trade and current account surpluses. Meanwhile, as is known, Indonesia is still classified as a country with all aspects of fiscal deficit. The fiscal deficit is projected to swell by more than 5% of GDP this year, and the current account deficit (CAD) will also generate a deficit of 2% of GDP. The establishment cost of the LPI as the Indonesian SWF is taken from the State Budget, and probably from prospective investors, especially foreign investors who are likely to support the establishment of this SWF.[13]

Considering that the source of funding for SWF establishment is not entirely from the Indonesian government, it is necessary to maintain the autonomy of LPI from any political intervention or certain conflicts of interest. LPI must also be established on a strong regulatory framework, model and governance, clear mandate, and professional management. In addition, it is crucial to carefully consider the asset allocation strategy according to appropriate needs and to minimize unwanted risks, such as corruption.[14]

b. Legal Basis and Functions of Investment Management Institutions in Regulating the Management of Government Funds

The Investment Management Institution (LPI) is a state-owned SWF institution with a special task of investment management. The Job Creation Act stipulates the initial capital of LPI at around IDR 15 trillion. LPI obtains its capital in the form of state property; state receivables from State-Owned Enterprises (BUMN), or limited liability companies; and/or state-owned shares in BUMN or limited liability companies. The formation of LPI will later be supervised by the Ministry of Finance, Ministry of SOEs, and professionals. This institution is also directly held liable to the president.[15]

In its operation, LPI can manage the funds from foreign investors, for example the investment from SWF Qatar in Indonesia. LPI is tasked with the management of these funds to build infrastructure, such as toll roads. LPI can also perform securitization of infrastructure projects, such as toll roads. The securities of this

[12] Hari Widowati, "Sovereign Wealth Funds Indonesia Tiru Model Rusia, Apa Keunggulannya?" < *https://katadata.co.id/hariwidowati/finansial/5e9a495cab01d/sovereign-wealth-fund-indonesia-tiru-model-russia-apa-keunggulannya* > accessed 13 November 2020

[13] Tirta Citradi, "RI Mau Bikin SWF, Begini Contoh Praktik di Banyak Negara" < *https://www.cnbcindonesia.com/market/20200929112757-17-190245/ri-mau-bikin-swf-begini-contoh-praktik-di-banyak-negara* > accessed 13 November 2020

[14] Ibid

[15] Luky Maulana Firmansyah, "Pemerintah Dirikan SWF untuk Genjot Investasi" < https://lokadata.id/artikel/pemerintah-dirikan-swf-untuk-genjot-investasi > accessed 13 November 2020

management can be sold to public to fund the construction of new toll roads.[16] The Investment Management Institution (LPI) has a different function from to the Investment Coordinating Board (BKPM). While BKPM only has the authority to take care of regulations and the investment climate, LPI manages direct funds. LPI is allowed to finance the needs to build infrastructure projects from the funds raised.[17]

The Draft Government Regulation (RPP) on Investment Management Institutions (LPI) or Sovereign Wealth Funds (SWF) is one of the implementations of the Omnibus Law of the Job Creation Act. LPI was established as an investment management institution mandated with a special authority (*sui generis*)[18] of investment management.[19]

This year is marked as the initial establishment of LPI by the Indonesian government with the main function of facilitating a fairly large amount of infrastructure financing, ensuring the national development, and increasing job opportunities.[20] In its implementation, central government investment is carried out by the following institutions:

1. The Minister of Finance as the State General Treasurer in accordance with the provisions of the laws and regulations concerning with Central Government investment; and/or
2. Institutions that are mandated with special authority (*sui generis*) in the context of investment management, hereinafter referred to as Institutions.

The authority of the Minister of Finance has also been regulated in Article 154 paragraph (4), which reads:

"The Minister of Finance as the State General Treasurer and Institution in carrying out the investment as referred to in paragraph (3) is authorized to:

1. Place funds in the form of financial instruments;
2. Carry out asset management activities;
3. Cooperate with other parties, including trust fund entities;
4. Determine potential investment partners;
5. Give and receive loans; and/or
6. Administer its own assets."[21]

The organizational structure of the Investment Management Institution consists of: (1) Supervisory Board consisting of: (a) the Minister who carries out government affairs in the field of state finance as chairman and concurrently as member; (b) the Minister who carries out government affairs in the field of state-owned enterprises as a member; and (c) 3 (three) professional elements as members; and (2) The board of

[16] Luky Maulana Firmansyah, "Pemerintah Dirikan SWF untuk Genjot Investasi" < https://lokadata.id/artikel/pemerintah-dirikan-swf-untuk-genjot-investasi > accessed 13 November 2020

[17] Luky Maulana Firmansyah, "Pemerintah Dirikan SWF untuk Genjot Investasi" < https://lokadata.id/artikel/pemerintah-dirikan-swf-untuk-genjot-investasi > accessed 13 November 2020.

[18] Law No. 11 of 2020 on Job Creation, article 154 (3)

[19] Law No. 11 of 2020 on Job Creation, article 165 (1)

[20] Triyan Pangastuti, "Pembentukan LPI Diharap Undang Investor Asing", *Investor Daily Indonesia*, an article retrieved from https://investor.id/business/pembentukan-lpi-diharapkan-undang-investor-asing accessed 10 November 2020

[21] Law No. 11 of 2020 on Job Creation, article 154 (4)

ISBN: 978-6239-4803-7-0
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directors as regulated in the Job Creation Act consisting of 5 (five) professional elements.[22]

The initial capital of the Investment Management Institution may be in the form of: (a) cash funds; (b) state property; (c) state receivables from state-owned enterprises or limited liability companies; and/or (d) state-owned shares in state-owned enterprises or limited liability companies. The initial capital of the Investment Management Institution is set at a minimum of IDR 15,000,000,000,000.00 (fifteen trillion rupiahs) in the form of cash funds. Provided that the investment management Institution's capital is significantly reduced, the government is allowed to reincrease the investment management Institution's capital. The initial capital participation is determined by a Government Regulation.[23]

To increase the value of its assets, LPI is entitled to carry out joint management through cooperation with third parties,[24] and the term of "third parties" refers to the followings: (a) investment partners; (b) investment manager; (c) state-owned enterprises; (d) government agencies or institutions; and/or; (e) other entities both at home and abroad. [25]

5. CLOSING

Eventually, Indonesia has officially established a state investment management institution or Sovereign Wealth Funds for the first time. In contrast to developed countries, which mainly derive their sources of investment funds from budget surpluses, Indonesia adopts the Russian model of SWF referred to as the Russian Direct Investment Funds (RDIF), which generates its investment funds from foreign exchange, while providing opportunities for private investors to invest funds in Indonesia.

The legal basis and functions of the Investment Management Institution and its the organizational structure with the main task of managing the placement of funds from the Government Investment Manager have been regulated in the Job Creation Act.

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[22] Law No. 11 of 2020 on Job Creation, article 167 (1)
[23] Law No. 11 of 2020 on Job Creation, article 170
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Law No. 11 of 2020 on Job Creation0

ISBN: 978-6239-4803-7-0
Faculty of Law, Universitas Islam Indonesia (Yogyakarta)