

Shipwrecks of Feasibility in the Field of Investment Business

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ABSTRACT

Indonesian Valuable Objects on the Load of Sinking Ships (BMKT) have a large potential. This makes the ships buried in Indonesian territorial seas a tremendous resource. Illegal treasure hunters have targeted Indonesia's BMKT because to its great potential, causing considerable losses. Realizing this, it is vital to pay attention to Valuable Items on the Load of Sinking Ships (BMKT) and develop rules to maximize their potential. This study aims to analyze the policies governing BMKT to support investors in participating in investing in the business sector of BMKT management and creating BMKT management that is optimal and feasible for all aspects of the values contained in the BMKT itself. The approach method used to achieve this research is an approach focused on regulations or policies (statute approach) and conceptual analysis. The result showed that there is still substantial overlap between regulations controlling BMKT, making BMKT administration feasible. In spite of this, the Economic Analysis of Law is used to explain the expansion of the legal dimension through its studies. In addition, the economic value and cultural legacy of BMKTs that cannot be appointed due to the difficulties of appointment or the impossibility of relocation may be used on-site via marine tourist activities, notably diving tourism. As such, investors who wish to participate in the business sector of BMKT management may use BMKT more properly and optimally, including local and international investors.

ABSTRAK

Benda Berharga Indonesia di Muatan Kapal Tenggelam (BMKT) memiliki potensi yang besar. Hal ini membuat kapal-kapal yang terkubur di laut teritorial Indonesia menjadi sumber daya yang luar biasa. Pemburu harta karun ilegal mengincar BMKT Indonesia karena potensinya yang besar sehingga menimbulkan kerugian yang cukup besar. Menyadari hal tersebut, penting untuk memperhatikan Barang Berharga Muatan Kapal Tenggelam (BMKT) dan menyusun aturan untuk memaksimalkan potensinya. Penelitian ini bertujuan untuk menganalisis kebijakan-kebijakan yang mengatur mengenai BMKT untuk mendukung para investor dalam ikut berinvestasi dalam bidang usaha pengelolaan BMKT dan menciptakan pengelolaan BMKT yang fisibilitas dan maksimal terhadap seluruh aspek nilai yang terkandung di dalam BMKT itu sendiri. Metode pendekatan yang digunakan demi tercapainya penelitian ini adalah pendekatan yang difokuskan kepada peraturan atau kebijakan (statute approach) dan analisis konseptual (conceptual approach). Hasil penelitian menunjukkan bahwa masih terdapat tumpang tindih antara peraturan yang mengatur BMKT sehingga majemen terkair BMKT diperlukam. Meskipun demikian, Analisis Ekonomi Hukum digunakan untuk menjelaskan perluasan dimensi hukum melalui kajian-kajiannya. Selain itu, nilai ekonomi dan warisan budaya BMKT yang tidak dapat diangkat karena sulitnya penunjukan atau ketidakmungkinan relokasi dapat dimanfaatkan di tempat melalui kegiatan wisata bahari, khususnya wisata *diving*. Dengan demikian, investor yang ingin berpartisipasi dalam bidang usaha pengelolaan BMKT dapat memanfaatkan BMKT secara lebih baik dan optimal, termasuk investor lokal dan internasional.

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I. INTRODUCTION

Since ancient times, Indonesia has been a region known as the land below the wind (refer to the Southeast Asian region). At that time, the designation was not randomly given to Indonesia without reason, this was due to a reason that Indonesia had various spices at fantastic prices and were rarely found such as cloves, nutmeg and mace (Anggrasari & Mulyo, 2019). These statement are supported by Scott (2019) related to the Indonesian archipelago which is located at the crossroads of the shipping lanes of the Asian and Australian continents as well as the Indian and Pacific oceans.

Unquestionably, since Indonesia is rich in spices, which has once again attracted a large number of immigrants from other countries (Sahasrad et al., 2022). As such, there were records of thousands of ships sailing and settling their hulls in Indonesian waters (Haw, 2019; Vosmer, 2019). Nonetheless, not all voyages to Indonesia are successful, as foreign ships cannot avoid the Indonesian sea's harshness.

Ferocious weather and waves often cause passing ships to be buried at the bottom of Indonesian waters, buried with their valuable cargo for tens or even hundreds of years. In this case, some areas on the islands that are part of Indonesia are a collection of trade centers from China (Khasanah et al., 2020). This historical fact is corroborated by the presence of underwater cultural remains in a ship that sank in the past with a large amount of cargo.

Shipwrecks that have long been buried along with their cargo become treasures with economic value that cannot be considered cheap. This makes the shipwrecks buried at the bottom of Indonesian territorial waters at this time a great potential as abundant maritime resources. By realizing this matters, it is necessary to pay attention to the potential of Valuable Objects on the Load of Sinking Ships or refers to BMKT and provide policies so that this potential can be utilized properly and optimally. Indonesian President, Joko Widodo, through his campaign when running for President, has a mission to focus the government on thinking about Indonesia's maritime potential through the embodiment of the concept of the Global Maritime Fulcrum or World Maritime Axis (Dannhauer, 2022).

Realizing this is a tough task for the government. Many factors make BMKT a resource that cannot be used haphazardly. Abundant BMKT does not only have a value limited to high economic value (Noviyanthi et al., 2019). Seeing BMKT from the other side, BMKT is also a cultural heritage of the former society and is an important key to the real history of the Indonesian nation (Pearson, 2019). Unfortunately, managing BMKT is not an easy matter for the government to do alone, seeing that BMKT itself is an old historical object that requires management with special expertise and is not cheap. The solution to this problem is none other than to make BMKT management activities a broad investment business field for various investors who have the desire to participate in this BMKT management business field.

Looking at the other side of BMKT, many values contained in BMKT make BMKT management difficult to give policies. This is evidenced by the many policies that overlap and clash with one another because they have a different focus on viewing the BMKT value (Sandy et al., 2022). In fact, the Policy is an important key that serves as a guide for investors who want to take part in BMKT management activities. Many of these policies conflict with each other, making investors confused about the direction of BMKT management policies. Hence, this study seeks to achieve a goal to see and further analyze the policies that apply in Indonesia and regulate BMKT to support investors in

investing in the BMKT management business and create BMKT management that is feasibility and maximum of all aspects of the value contained in the BMKT itself.

II. RESEARCH METHODS

Normative juridical or legal research is used as the type of research chosen and is also used to achieve the objectives of this writing (Marzuki, 2016). Meanwhile, for the type of research used is the type of normative juridical research, it is hoped that this will help in this research to focus more on researching library materials and existing literature so that this makes this research also known as library law research. By using the selected research type, normative juridical research is expected to become a thinking concept by the author to see a rule or policy as a normative systematic construction that has an autonomous and closed nature and does not forget the free nature that is detached from legal life in society.

The statutory regulation approach used related to regulations regarding BMKT in Indonesia, such as the Presidential Decree No. 43/1989; Presidential Decree No. 25/1992; Presidential Decree no. 107/200; Presidential Decree No. 19/2007; Presidential Decree No. 12/2009; Minister of Finance No. 184/2009; Permenbudpar No. 48/2009; Law no. 11/2020 which replaced Law no. 5/1992; Presidential Decree No. 39/2014; Law No. 11/2020, and supported by Presidential Decree No. 10/2021. In addition, a conceptual approach is also used in this study. By making regulations as material for analysis, it will provide an overview to investors who want to take part in investing in the business sector of BMKT management in a correct and orderly manner.

III. RESULTS AND DISCUSSION

1. BMKT Potential in Indonesian Waters Territory

Indonesia is a large archipelagic nation that has served as a trade route since centuries past. As a maritime country, Indonesia is located on a crossroads between two continents and two oceans, this makes Indonesia has a strategic geographical location and is passed by foreign ships from all over the world. The territory of Indonesia itself is the largest archipelagic country in the world. Indonesia has an area that stretches for 3.977 miles between the Indian Ocean and the Pacific Ocean, and approximately 75% of Indonesia's territory is water territory. Furthermore, the country of Indonesia is located on the longitude of the equator, making the country of Indonesia a country that has a tropical climate. Moreover, Indonesia is a region with the largest tropical rainforest in the world.

As a country with large rainforests, almost all land areas in Indonesia have fertile soil. Making Indonesia rich in vegetation that grows in Indonesia's mainland and has rich crops, both in the form of minerals and agricultural products. As a country with well-known agricultural products, it lures traders to come in droves and hunt for Indonesia's natural resources, such as cloves, nutmeg, mace, and other spices (Turner, 2019).

However, passing through Indonesian waters is a challenge in itself for sailors who want to try to visit the archipelago. The rigors of the waves and the cruel weather had to be traversed by traders who wanted to set foot in Indonesian territory. Foreign traders who are willing to sail to Indonesia with valuable goods often fail to set foot in Indonesian territory, or to return to their countries and have to drown in the Indonesian seas. In fact, the sea vehicle contains many valuable objects such as porcelain ceramics, precious metals, expensive rocks, mineral rocks, and so on that have high economic value (Burhanuddin, 2018).

Research conducted by UNESCO found various foreign ships crossing Indonesian territorial waters originating from various parts of the world. The research showed that the number of foreign ships found reached 3.000 thousand ships that had crossed the Malacca Strait (Hung et al., 2022), but no information was ever found regarding the return of these ships to their home territory.

Many various ships have come from various countries in the world and the sinking of these ships in Indonesian waters has made one of Indonesia's marine potentials an ancient historical relic which has high economic value, namely Sinking Ship Loading Objects (BMKT) of which there are more or less 463 locations where ships sank from the 14th to 19th centuries (Kusnita et al., 2021). Based on the survey results provided by the Secretary of the Association of Indonesian Sinking Ships Lifting and Utilization Companies (APPP BMKTI), Indonesia's territorial waters were recorded at approximately 464 coordinate points of sunken ships. All of these locations that have been recorded are estimated to have valuable objects with high economic value which have an estimated value of approximately USD 12,7 billion or the equivalent of IDR 127,6 trillion.

The value of BMKT itself can be said to have high complexity, because the value of BMKT is not only based on economics but also on history and other sciences. Mysteries regarding world trade, shipping science technology and relations between various countries can be answered by examining sunken ships and BMKT. Through data released by the Ministry of Maritime Affairs and Fisheries Research and Development in 2000, there were 463 coordinate points, and at least approximately 20% had just passed the verification stage and 3% had just passed the exploration stage. From an economic point of view, at each coordinate point of the BMKT location it is estimated at USD 80 thousand to 18 million and can be used to boost tourism value with an estimated profit of reaching USD 800 – 126.000/month/location.

The complexity of the BMKT assessment is the reason for the expansion of BMKT potential in Indonesian waters. The large area of Indonesian waters and the potential for archaeological objects, in this case a sunken ship with valuable objects inside, has potential value for development at the national level, particularly in the economic, social and cultural fields, as well as in the national education sector.

2. Policies Related to BMKT Management

No matter how big the value of an object is, it will feel very valuable when you feel the loss of the object. Similar to the potential of BMKT in Indonesia, the government has not provided a basic policy to BMKT until it has felt the loss when BMKT was stolen by a treasure hunter named Michael Hatcher who long targeted shipwrecks in Indonesia from 1972 and began his action by collecting data in 1975 through documents of Algemeen Rijksarchief, The Hague. The results of his data collection bore fruit when he found documents regarding the sinking of the De Geldermalsen ship in Indonesian waters. Through illegal means, the BMKT exploration execution began in 1983 and recovered valuables from the ship, namely 160.000 pieces of porcelain and 225 gold and was auctioned off with a profit of 17 million USD (Akmal, 2020).

Michael Hatcher is not the only treasure hunter trying to hunt for BMKT resources in Indonesia. There have been many sunken ships that have been plundered legally and illegally, some of these sunken ships are :

a. Java Sea Shipwreck

The shipwreck that sank in the waters of the Java Sea was found to have been stolen first by local fishermen before the location point was notified by a salvage company that had a license in Indonesia. Factors causing the lack of government funds for this excavation, in the end the project was mandated to be given to Pacific Sea Resource under the coordination of Flecker in 1996. The shipwreck has allegations of being an Indonesian state sailing ship originating from the XIII century, with shipping lines from the country China to the land of Java which is loaded with ceramics and metals. As much as 200 Tons of metal were loaded in the form of cast metal and ingots of wrought metal. As for the ceramics that were brought there should have been 100.000 pieces. An estimated 12.000 Song dynasty ceramics have been recovered, which are cutlery such as early celadon-type plates from furnaces in South China and bowls.

b. Intan Sea Shipwreck

The Intan shipwreck was stolen by local fishermen with a radius of 18 km from the Java Sea shipwreck. However, the Indonesian Navy took action against the perpetrators by detaining them right at the time the theft of the contents of the shipwreck was being carried out by them, and notifying a company from Indonesia that had a license in their efforts to rescue the cargo of the sinking ship. This licensed company is a company that cooperates with Seabed Explorations, a company from Germany to manage the ship completely. Excavations from the site of the sunken ship yielded results where the shipwreck is the oldest in Southeast Asia with complete contents of the ship. This condition was confirmed through analysis of coins and ceramics as well as through carbon dating testing, the age of the ship shows results dating from the 10th century. Meanwhile, from the few remaining hulls, identification and detailing of the arrangement of the wooden beams was carried out, resulting in an indication that this ship was a sailboat made in Indonesia. This ship is predicted to have a shipping route from the capital of Sriwijaya, Palembang, with the aim of shipping to Central Java or East Java. The shipwreck was very diverse, consisting of several thousand ceramics originating from China, tin bullion, silver, bronze, Indonesian gold jewelry, mirrors from China, glassware from Arab countries, cast iron and various organic materials.

c. Belitung Shipwreck

This shipwreck site was discovered by local fishermen around a remote location from Belitung Island, South Sumatra, in 1998. Seabed Explorations eventually made an acquisition by buying the site from fishermen and starting excavation activities under a license in another part of same year. A glimpse of the Belitung shipwreck is thought to be the only example of an ancient Arab or Indian ship that has ever been found. The remains of the broad hull sections are still firmly entwined. This shipwreck, through the analysis of ceramics and carbon dating, is believed to date from the 9th century. The location is in Indonesian territorial waters, and the cargo contains ceramics from China, it provides archaeologists with complementary evidence of direct trading links between the western Indian Ocean and China in the first millennium. The contents of the cargo of the shipwreck are mostly Changsa ceramics from China in various forms. Not a few bowls are packed in large crock Dusun type. In addition, there are also greenware and whiteware of quite high quality, as well as some examples of early blue-and-white ceramics.

d. Bakau Shipwreck

The Bakau wreck has a location point which is located not far from Bakau Island in the Karimata Strait, the first time it was discovered by fishermen around the location point of the ship. When Flecker conducted a visit to the site in 1999, he was surprised to find that so little of the ship's cargo remained. Shipwrecks buried at the bottom of the coral island waters with parts of the hull still attached. The hull itself originally consisted of bulkheads and end boards which were connected together by a number of iron nails in crossed positions, a clear sign of ship construction originating from China. The contents include ceramics and carbon dating gives the result that the shipwreck is from the early 15th century. The main cargo of this ship includes jars originating from Thailand. Moreover, there are also selected Chinese Longquan wares, Sukhothai ceramics, Sawankhalok and some highly polished jug-shaped items.

The government finally realized to give important attention to the information and data of each BMKT in Indonesian waters in the 1990s due to the actions of Michael Hatcher during President Soeharto's era with the formation of the BMKT PANNAS (National Committee for the Appointment and Utilization of BMKT). PANNAS BMKT based on the Presidential Decree of the Republic of Indonesia Number 43 of 1989 concerning the National Committee for the Lifting and Utilization of Valuables from the Load of Sinking Ships (hereinafter referred to as Presidential Decree No. 43/1989) was formed in a government led by President Soeharto, with the Coordinating Minister for Politics and The security appointed to occupy the position of chairman of PANNAS BMKT (Pretylia, 2017). In Article 1 letter a

Presidential Decree No. 43/1989 explained broadly and abstractly that what is meant by Valuables are objects that have historical, cultural, economic and other values. While in Article 1 letter b Presidential Decree No. 43/1989 is explained in detail but narrowly and limitedly regarding sunken ships, which are limited to a number of ships, namely ships that sank during World War II, Portuguese ships, VOC and Spanish ships in Indonesian waters.

Since the beginning of the issuance of policies related to BMKT, BMKT utilization has included sales activities as based on Article 1 letter d of Presidential Decree No. 43/1989. This was strengthened by the issuance of Presidential Decree No. 25 of 1992 concerning Distribution of the Profits from the Lifting of Valuables from the Load of Sunken Ships between the Government and Companies (hereinafter referred to as Presidential Decree No. 25/1992). Initially, the policy regarding BMKT could be said to be based solely on economic values, and had not taken into account other BMKT values, both from historical and cultural values contained in the BMKT. Presidential Decree No. 25/1992 is of the view that BMKT is categorized as BMKT which has cultural heritage values and does not have cultural heritage values. BMKT which includes cultural heritage value is not allowed to be traded with it and absolutely handed over to the state. Then BMKT which has no cultural heritage value in Presidential Decree No. 25/1992 is BMKT which may be traded.

The Indonesian government further regulated regulations regarding BMKT in 1992 by issuing regulations related to cultural heritage through Law Number 5 of 1992 concerning Cultural Conservation Objects (hereinafter referred to as Law No. 5/1992) which includes matters of BMKT with at least 50 years old included in the category of Cultural Heritage Objects. In Article 4 paragraph (1) in conjunction with Article 5 paragraph (1) of Law no. 5/1992 states that objects of cultural heritage with reasons of value, nature, quantity and type for historical, scientific and cultural interests absolutely belong to the state. However, there are exceptions in Article 6 paragraph (3) juncto article 6 paragraph (2) of Law No. 5/1992 which explains to Indonesian citizens to own Cultural Heritage Objects and Article 6 paragraph (4) juncto article 6 paragraph (2) letter b of Law No. 5/1992 for foreign nationals in owning or controlling Cultural Heritage Objects.

In 2000, Presidential Decree No. 43/1989 was revoked and amended by Decree of the President of the Republic of Indonesia Number 107 of 2000 concerning the National Committee for the Lifting and Utilization of Valuables from the Load of Sinking Ships (Keppres No. 107/2000) in the era of President Abdurrahman Wahid's administration. The striking thing that was renewed through Presidential Decree No. 107/2000 is regarding the composition of the BMKT PANNAS committee and the expansion of the meaning of Sinking Ships and adjustments to Law no. 5/1992 namely "Verenigde Oost-Indische Compagnie (VOC) ships, Dutch, Portuguese, Spanish, British, Japanese, Chinese and other ships that have sunk in Indonesian waters, Indonesian EEZ, and the Indonesian Continental Shelf for at least 50 years".

Furthermore, the BMKT PANNAS policy through Presidential Decree No. 107/2000 was again amended and replaced by Presidential Decree No. 19 of 2007 concerning the National Committee for the Lifting and Utilization of Valuables from the Load of Sinking Ships (hereinafter referred to as Presidential Decree No. 19/2007) which was issued during the era of President Susilo Bambang Yudhoyono. The striking thing about Presidential Decree No. 19/2007 is that there have been arrangements regarding the use of BMKT which can be traded. Technically, BMKT sales are carried out through an auction process based on Government Regulation Number. 6 of 2006 concerning Management of State/Regional Property (hereinafter referred to as PP No. 6/2006). Nonetheless, the BMKT criteria that can or cannot be used for sales activities still have abstract and unclear arrangements. Nonetheless, the rules of this policy differ from UNESCO's, where the strong desire to seek to manage BMKT as an object of conservation and must be preserved as an underwater cultural reserve (Sari et al., 2021).

In 2009, the abstract regarding the BMKT criteria that allowed sales activities to be used was finally answered with changes to Presidential Decree No. 19/2007 with revision through Presidential Decree of the Republic of Indonesia Number 12 of 2009 concerning Amendments to Presidential Decree Number 19 of 2007 concerning the National Committee for the Lifting and Utilization of Valuables from the Load of Sinking Ships (hereinafter referred to as Presidential Decree No. 12/2009) which clarifies the status of BMKT which is not included in or declared as state property as referred to in Article 2 paragraph (2) may be carried out by selling activities for its utilization.

To support Presidential Decree No. 12/2009, the government issued another policy in Minister of Finance Regulation Number 184/PMK.06/2009 concerning Procedures for Determining the Status of the Use and Sale of Valuable Objects Loaded in Sunken Ships (hereinafter referred to as Permenkeu No. 184/2009). In Permenkeu No. 184/2009 regulates in more detail regarding technical sales of BMKT with the aim that the use of BMKT in sales activities can run more orderly, directed and accountable. While more detailed technical details regarding the determination of BMKT status are further regulated through the Minister of Culture and Tourism Regulation Number PM.48/UM.001/MKP/2009 (hereinafter referred to as Permenbudpar No. 48/2009) which serves as a guideline for utilizing BMKT values related to the protection, development and utilization of BMKT from cultural, educational, scientific, religious, social, and tourism values.

The Minister of Finance is legally given the authority to determine the status of using BMKT with the status of State Property (also known as BMN), to give approval for the implementation of the sale of BMKT with the status of non-state-owned BMN and to give approval for the implementation of the sale of BMKT with status other than BMN and by the Director General of State Assets as the executor. As a consequence, BMKT, whose status is designated as BMN and included as a state collection, cannot be sold, so the BMKT can be converted into an additional collection at the museum to encourage education improvement or as an object for research.

Conversely, the consequences for BMKT whose status has been determined as BMN and are not included as state collections can be traded. Technically, BMKT sales are carried out by auction as based on Government Regulation (PP) No. 6/2006 which was amended by Government Regulation Number 38 of 2008 concerning Amendments to Government Regulation Number 6 of 2006 concerning Management of State/Regional Property (hereinafter referred to as PP No. 38/2008), in Article 51 paragraph (2) it states that "sale of state/regional property is carried out by auction, except in certain cases". Another consequence for BMKT with BMN status that has gone through an auction process and is not sold, can be divided between the government and the appointment permit holder.

Further, Law no. 5/1992 was repealed and replaced with Law Number 11 of 2010 concerning Cultural Conservation (hereinafter referred to as Law No. 11/2010). In 2010, there were various polemics regarding the regulation of cultural heritage using BMKT from its economic value. Article 12 paragraph (1) Law no. 11/2010 explains that cultural heritage objects can be owned by everyone by paying attention to their social functions and not contradicting Law no. 11/2010. Article 14 of Law no. 11/2010 states that cultural heritage objects cannot be owned by foreign citizens, and/or foreign legal entities and may not be taken out of the territory of the Unitary State of the Republic of Indonesia. Foreign citizens or foreign legal entities may be exempted from owning cultural heritage objects while living and residing in the territory of the Unitary State of the Republic of Indonesia.

In addition, Article 16 of Law no. 11/2010 explains that cultural heritage, in this case objects of cultural heritage owned by everyone, can be transferred to the state or other people, but transfers to the state take precedence before being transferred to other people. Furthermore, cultural heritage objects that are already owned by the state cannot be transferred, bearing in mind that all BMKT cultural heritage objects are State-Owned Objects. The classification of BMN which does not include state collections where previously it could be traded, after Law no. 11/2010 became a fatal controversy in the utilization of BMKT with sales activities. One of the loopholes for transferring

ownership is as Article 17 of Law no. 11/2010, namely with the permission of the Minister, Governor or Regent according to their level. The long-term consequences of Law no. 11/2010 are the imposition of a moratorium on lifting of sunken ships.

In fact, the imposition of a moratorium on lifting activities for sunken ships cannot be completely stopped. The issuance of policies that occurred suddenly still left other regulations which resulted in a lot of overlap between one regulation and another. One of the overlapping rules in the appointment of BMKT is the Minister of Transportation Regulation Number PM 38 of 2018 concerning the Second Amendment to the Minister of Transportation Regulation Number PM 71 of 2013 concerning Salvage and/or Underwater Work (hereinafter referred to as Permenhub No. 38/2018), Article 5 Paragraphs 2 and 3 stated that "a company can lift and remove the hull of the ship and its cargo and all obstacles that interfere with shipping lanes" (Sandy et al., 2022).

The lifting of a ship that is considered to disturb the shipping lanes will raise questions regarding the rights and obligations regarding the contents of the cargo being lifted. In addition, since 2014, controversy has resurfaced with the issuance of Law Number 1 of 2014 concerning Amendments to Law No. 27 of 2007 concerning the Management of Coastal Zone and Small Islands (hereinafter referred to as Law No. 1/2014) which categorizes historic shipwrecks as a resource as stated and implied in Article 19 paragraph (1) letter g of Law no. 1/2014. As such, it can be assumed that it allows the exploitation of sinking ships economically (Sandy et al., 2022).

In the same year as Law no. 1/2014, President Susilo Bambang Yudhoyono again issued Presidential Regulation Number 39 of 2014 concerning List of Closed Business Fields and Open Business Fields with Conditions in the Investment Sector (hereinafter referred to as Presidential Decree No. 39/2014). Through Presidential Decree No. 39/2014, submitted regarding the business field of BMKT appointment which had been open with special conditions since 1992 was proposed to be closed. The closure of the BMKT appointment business field was based on the reason that shipwrecks that qualify as Cultural Heritage are important objects for storytelling of the Indonesian civilization and cultural heritage, so they are required to be protected and cared for for the sake of history and science.

The potential of BMKT, which has so far been revered because of its very high appraisal value, must be buried for quite a long time. Until 2020, during the era of President Joko Widodo during his second term of government, he again glanced at the great potential of Indonesia's waters with the issuance and ratification of the Omnibus Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as Law 11/2020). Through Law 11/2020, the current state policy related to BMKT where this potential had to be buried for quite a long time, was finally reopened. The business field which was previously called the appointment of BMKT, was changed in terms of the business field of BMKT management.

President Joko Widodo, who has reopened the BMKT management business, issued Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector (hereinafter referred to as Presidential Regulation No. 10/2021) in accordance with the mandate of Law 11/2020 Articles 77 and 185 letter b. In Presidential Decree 10/2021, it has been stipulated regarding business fields for BMKT appointments that are open to foreign investment. Even though in reality the management of BMKT in Presidential Decree No. 10/2021 is not included in parts of Appendix I, II, or III, it does not rule out the possibility that foreign investors wishing to register themselves to participate in investing are still clearly open. This matter is based on Article 3 of Presidential Regulation 10/2021 which explains that the open business field is a priority business field, the business field is allocated or partnership between cooperatives and MSMEs, and certain requirements business fields, as well as business fields that are not included in the priority business field, the business field is allocated or cooperative and MSME partnerships, and certain business fields can be pursued by all investors.

In addition, BMKT management itself has been registered in the Indonesian Business Field Standards (KBLI) and is integrated with applicable policies. BMKT management is included in the YTDL

Professional, Scientific and other Technical Activities classification with KBLI number 74909. Besides, BMKT is also a business sector included in the list of business fields with the sub-sector Marine Spatial Management.

3. BMKT Management Feasibility as Investment Business Sector

The number of ships that have sunk in Indonesian waters, which is estimated to have been more than 3.000 ships since long times ago, is the reason for the large amount of BMKT's wealth in Indonesia. In its implementation, managing BMKT is not an easy thing. Management of BMKT required high costs. Besides requiring high costs, not everyone can do these activities. Experts are needed in the field of BMKT management such as archeology, good diving knowledge and other abilities to support BMKT management activities so that they run well .

Sufficient surveys are also urgently needed, both in terms of cost, human resources, and the required supporting technology. According to Lawrence quoted by (Ardiwidjaja, 2017), as follows:

“Techniques, equipment and funds for carrying out underwater inspections differ between cultural heritage sites of sunken ships and their cargo at depths of 1-30.m (shallow-water wrecks) and depths of 30-60 m (medium-depth sites) with deeper depths. from 60 m (deep-water wrecks)”

The results of the mapping and assessment of the underwater inspection can form the basis for identification materials, spatial evaluation, and protecting and preserving the BMKT. These reasons make BMKT management require the involvement of investors who wish to invest in these activities for their implementation.

Utilization of BMKT must be carried out in full and maximally. Therefore, in addition to utilizing BMKT with sales activities, BMKT which cannot be traded can be utilized through other activities. Based on the place where the BMKT management activities are carried out, namely by in-situ management which is the management of the object exactly where the object is located, or indeed because the object is not possible to move its location and management ex-situ which is the management of an object but is no longer in place Originally the object was located or because it was possible for the object to be moved due to the small size or low risk.

Investors who wish to take part in investing in this business sector must, of course, follow the policies enforced in Indonesia. All efforts to manage the potential of marine and fishery resources, especially the management of BMKT, in addition to providing knowledge about the importance of benefits from marine and fishery resources for the creation of even better community welfare, also need to be further instilled regarding the meaning of managing these resources, must with economic, ecological and social approaches, so as to achieve a balance between exploitation and conservation (Kusnita et al., 2021). Hence, it is necessary to have a concept of a scientific framework that does not only see a potential in terms of law, but further than that also regarding the economy.

To answer this question, it is necessary to have a synergy between law and economics to explain human behavior based on these two disciplines. The science of law in general limits human behavior and on the other hand economics seeks to find out human behavior to meet all their needs, making a correlation or interdependence of law and economics for reciprocity. The economic analysis of law begins with Jeremy Bentham's concept of the foundation of utilitarianism, with the principle of expediency focused as a doctrine of jurisprudence. Jeremy Bentham argues that the law is effective to apply and want to be lived by society as their rules only if there are great benefits to the wider community that can be given (Darwis, 2018).

Furthermore, Posner explained that the study of the economics of law can be used as an approach to address legal issues that are closely related to legal justice itself by making the law an economic tool to achieve maximization of happiness by voicing other definitions of the many assumptions about

law in order to obtain a framework thought about a form of satisfaction and the highest level of happiness (maximization of happiness).

In order to clarify the expansion of the legal dimension, the Economic Analysis of Law which further clarifies how the scientific truth about the relationship between law and economics is inseparable from its studies, because it is mutual and fills in the gaps of each, then gives rise to the idea of a solution to a legal problems (Darwis, 2018). Economic Analysis of Law more generally is also a complement to the teachings of justice through the framework of economic justice.

The ideas of many experts voiced regarding the Economic Analysis of Law in general explaining where the era of world globalization applies the concept of cause and effect in all aspects of society including the world of economics and law. Regarding the science of law and economics where each has different goals and views on the value of a potential, but in further developments in the future, these disciplines will be intertwined and inseparable to analyze the many problems that continue to develop in society (Darwis, 2018) that the principle of Economic Analysis of Law that can be used in filtering legal regulations so as to obtain an effective and efficient regulation is as follows (Mercuro & Medema, 2020) :

- a. **Principle of Equilibrium Composition**
The principle referred to is a principle that emphasizes what needs to be stated regarding this principle, namely the existence of a rationality gap towards a definition, perception of interests and a goal based on being divided into two criteria, namely definitions that have criteria for the interests of the people and the interests of the state.
- b. **Gap-filling Principle**
The principle referred to is the principle that emphasizes the participation of law enforcement officials and law users in realizing, using and applying the power of law itself.
- c. **Hypothetical Bargains Principle**
The principle referred to can be understood from the name given, that the principle describes a general characteristic as befits a trade. Merchandise will sell well if it can provide benefits to the buyer, so will merchants get the same profit.
- d. **Correlated Productive Principle**
This one principle emphasizes the level of productivity of a rule of law through increasing legal awareness of all parties at every level of society.
- e. **Ken's Extensive Principle**
This last principle focuses on the scope of knowledge and the general public's understanding of a regulation, both normative and empirical. Basically, regulations and legal provisions may not apply retroactively, so that it can be said that laws and regulations regulate current provisions for the future.

Considering the existing regulations governing BMKT management in Indonesia, the possibility for BMKT appointments to protect investors who wish to contribute to the investment business sector in BMKT management is not yet optimal. It is really regrettable to see the potential that may be seen based on the data, particularly up to 400 coordinate locations of shipwrecks that have been found, as well as hundreds of ships based on Indonesia's maritime history during World War II. In this instance, policies that strictly overlap do not adhere to the gap-filling principle. To prevent a recurrence of past events in the history of BMKT in Indonesia, it is required to alter the policy such that it regulates BMKT linearly so that it can be employed optimally and efficiently, either through legal trading or other activities that do not violate laws and regulations.

Based on the results of an interview with the Director of Marine Services, Mr. Miftahul Huda on September 26 2022, the use of BMKT in addition to making adjustments to relevant laws and regulations regarding BMKT management in Indonesian waters, besides that BMKT management policies can also be directed to other ex-situ activities against BMKT which cannot be traded for one

reason or another because it is not permitted according to the law in force. In this case, the BMKT can be directed for utilization with shipwreck tourism activities which contain BMKT, ships, and reviews of ship history or a maritime museum with an attractively arranged atmosphere and facilities so as to ignite the desire of visitors to come and make a profit. For the sake of expanding the use of maritime cultural heritage, in this case BMKT, beyond its commercial value, into the realms of science as an object supporting education and recreation (Sari et al., 2021).

This utilization is also linear with the Presidential Regulation of the Republic of Indonesia Number 16 of 2017 concerning Indonesian Maritime Policy, in which maritime culture has the aim of providing a complete understanding of maritime science to the general public by implementing 3 programs that are strengthened in cultural and maritime literacy (Sari et al., 2021). To develop innovations based on cultural literacy as found in shipwreck and underwater heritage, this can be done by placing these items in a museum or gallery, as well as a building specially made for maintenance and other storage to support ex-situ BMKT utilization activities.

Furthermore, regarding BMKT which cannot be lifted or moved from the location where the BMKT is located, it can be utilized in-situ by being used as a diving tourism sector. By making diving tourism, there are several advantages by looking at the provisions that support and encourage conservation, but from another perspective it can be used as an educational facility as well as an economic facility. According to the United Nations Environment Program (UNEP), for the benefit of sustainable tourism, coastal areas and the concept of marine tourism provide options for developing countries to take part in conservation activities and protect ecosystems and the organisms in them by utilizing marine areas (marine and sub-marine).

The government includes temporary tours into special interest tours with activity zones on the coast (coastal), above the surface or seascape (marine), and submarine or below sea level. The potential for marine tourism, or in this case, namely diving tourism, has great potential to continue to be developed optimally given the high demand aspect. It can be seen clearly through the contribution of the local community that this tour is very attractive to foreign tourists due to the strong attraction to the value of conserving the natural environment and preserving cultural heritage.

World Tourism and Travel Council (WTTC) strongly encourages the use of BMKT for diving tourism as a source of profit labeled as an industry (Rahman, 2021). WTTC revealed that marine tourism generated a profit of USD 3,5 trillion in 1993, this amount is equivalent to 6-7% of the world's total gross. Interest in diving tourism or especially The Professional Association of Driving Instructors in its development has issued a large number of which from 500 thousand diving certificates in 1967 increased to 2,5 million in 1998 and continued to accelerate to 10 million in 2000, and 1,8 million in 2008.

IV. CONCLUSION

BMKT policy has directed the use of BMKT towards the direction of buying and selling activities since the beginning of the realization of BMKT as an important and valuable potential through Presidential Decree No. 43/1989 and Presidential Decree No. 25/1992. Following that, Law No. 5/1992 was enacted as a form of government awareness of BMKT values, which include not only economic values but also cultural heritage values. The issuance of Presidential Decree No. 107/2000, which replaced Presidential Decree No. 43.1989, was followed by Presidential Decree No. 19/2007, which further regulates the use of BMKT through sales activities. Presidential Decree No. 19/2007 was changed to Presidential Decree No. 12/2009, which was supported by Minister of Finance No. 184/2009 for more detailed arrangements regarding technical sales of BMKT and Permenbudpar No. 48/2009 for guidelines for determining BMKT status. The long wait was finally over with the issuance of Presidential Decree No. 39/2014, which covers the BMKT management business sector, and Law No.

11/2020, which was later supported by Presidential Decree No. 10/2021. This law was the first step toward reviving BMKT management.

There is still considerable overlap between policies governing BMKT, making BMKT management feasible. Even so, the Economic Analysis of Law is used to explain the expansion of the legal dimension through its studies, which further clarifies how scientifically speaking the legal and economic relations are inseparable, because they complement each other and fill each other's gaps, and then come up with the idea of a legal problem solution. BMKT can still be used for all of the values it contains. The economic value of BMKT can be used in sales activities while keeping in mind special laws and regulations for BMKT, which include BMN that is not included in the state collection. While BMKT that is part of the BMN or state collection can be used for economic value and cultural heritage through museums, galleries, and other activities that include ex-situ utilization of cultural heritage as well as sales activities. Furthermore, for BMKTs that cannot be appointed due to appointment difficulties or the impossibility of moving BMKTs, in-situ utilization of their economic value and cultural heritage can be carried out through marine tourism activities, specifically diving tourism. Thus, the utilization of BMKT can be carried out more effectively and maximally for both domestic and foreign investors who want to participate in the business sector of BMKT management.

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