PhD Thesis

Hidayatulloh

Miskolc

2025

UNIVERSITY OF MISKOLC

Deák Ferenc Doctoral School in Law and Political Sciences

Hidayatulloh

GOVERNANCE LEGAL REFORM OF STATE-OWNED ENTERPRISES: A STUDY OF CONTEMPORARY INDONESIA

PhD Dissertation

Supervisor:

Dr. Erdős Éva

Associate Professor

Manuscript closed on: 21st February 2025

Contents

Contents ..... **iii**

CHAPTER I **1**

STATE-OWNED ENTERPRISES: INTRODUCTION, RESEARCH PROBLEM AND QUESTIONS, THEORETICAL FRAMEWORK, AND RESEARCH APPROACH AND METHODOLOGY **1**

1. Introduction 1
2. Research Problem 5
3. Research Objectives 6
4. Research Questions 7
5. Hypotheses 7
6. Significance of Research 8
7. Theoretical Framework 9
   - 5.1. State-Owned Enterprises 9
   - 5.2. The Ownership of State-Owned Enterprises 11
   - 5.3. The Relationship between State and State-Owned Enterprises 14
   - 5.4. Theory of Corporate Governance 20
   - 5.5. OECD Guidelines on Corporate Governance of State-Owned Enterprises 21
8. Research Approach and Methodology 22
9. Intersection between Public Law and Private Law 24
10. Structure of Thesis 24

CHAPTER II **26**

THE CONCEPT OF INDONESIAN PUBLIC FINANCE AND ITS INFLUENCE ON GOVERNANCE OF STATE-OWNED ENTERPRISES **26**

1. State and State-Owned Enterprises 26
2. Public Finance under Indonesian Laws 27
3. State Finance in State-Owned Enterprises 33
4. State-Owned Enterprise is Part of State Financial Regime 35
5. The Ownership Model of Indonesian State-Owned Enterprises 41
6. Supervision of State-Owned Enterprises 44

CHAPTER III 49
TRANSFORMATION OF LEGAL GOVERNANCE OF STATE-OWNED ENTERPRISES IN INDONESIA 49
1. Transformation of State-Owned Enterprises 49
2. Overview of Indonesian State-Owned Enterprises 50
2.1. Early Period of Independence (1945-1958) 50
2.2. The Nationalization Period (1958-1966) 52
2.3. The Corporatization Period (1966-2003) 56
2.4. The Corporatization in the Reform Period (2003-2024) 60
3. Privatization of State-Owned Enterprises 66
4. Centralized Authority of the Ministry of State-Owned Enterprises over the Management of State-Owned Enterprises 72
CHAPTER IV 75
RESTRUCTURING OF INDONESIAN STATE-OWNED ENTERPRISES 75
1. Indonesia's Economic Development in a Decade: A Short Story 75
2. The Meaning and Purpose of Restructuring Company 76
3. Financial Burden of State-Owned Enterprises Due to a National Strategic Project 78
4. Restructuring State-Owned Enterprises through a Financial Aid 87
4.1. State Equity Participation and State Financial Burden 87
4.2. The Establishment of the National Asset Management Company 95
4.3. Restructuring and Revitalization of State-Owned Enterprises through The National Asset Management Company 100
5. Restructuring State-Owned Enterprises through Reorganization of Company 106
5.1. The Establishment of Holding Company for State-Owned Enterprises 106
1.2. The Convoluted Legal Relationship between Holding and Subsidiaries 114
2. Dissolution of Bankrupt State-Owned Enterprises 118
CHAPTER V 122
OMNIBUS LAW ON STATE-OWNED ENTERPRISES: 122
LEGAL ISSUES AND CHALLENGES 122
1. The History of the Omnibus Law on State-Owned Enterprises 122
2. Understanding the Concept of Omnibus Law 123

3. Omnibus Law in Indonesian Legal Policy: Aims and Strategies 124
4. Transformation of Legal Governance through Omnibus Law on State-Owned Enterprises 126
4.1. Ministry Regulation on Special Assignments and Social and Environmental Responsibility Programs 126
4.2. Ministry Regulation on Governance Guidelines and Significant Corporate Activities 132
4.3. Ministry Regulation on Organs and Human Resources 139
5. Legal Issues in the Omnibus Law on State-Owned Enterprises 142
5.1. Omnibus Law Introduces Types of State-Owned Enterprises that Contradict Law Number 19 of 2003 142
5.2. Omnibus Law Regulates Governance of a Holding Company and a Subsidiary 147
CHAPTER VI 149
GOVERNANCE OF INDONESIAN STATE-OWNED ENTERPRISES IN THE PERSPECTIVE OF THE OECD GUIDELINES ON CORPORATE GOVERNANCE 149
1. Indonesia and OECD 149
2. Implementation of the OECD Guidelines on Corporate Governance of State-Owned Enterprises in Indonesia 150
2.1. Rationales for State Ownership 150
2.2. The State's Role as an Owner 153
2.3. State-Owned Enterprises in the Marketplace 157
2.4. Equitable Treatment of Shareholders and Other Investors 159
2.5. Disclosure, Transparency, and Accountability 161
2.6. The Composition and Responsibilities of the Boards of State-Owned Enterprises 166
2.7. State-Owned Enterprises and Sustainability 170
3. Corporate Governance of State-Owned Enterprises: Examples from Croatia and Hungary 172
3.1. Croatia 172
3.2. Hungary 190

CHAPTER VII 201
CONCLUSION 201
1. Research Findings 201
1.1. Indonesian Public Finance influences State-Owned Enterprises 201
1.2. Nationalization to Corporatization: The Historical Journey of State-Owned Enterprises 202
1.3. The Steep Road of Restructuring for Governance Reform 206
1.4. Omnibus Law and the Need for Amendments to the Law 210
1.5. Indonesian State-Owned Enterprises on OECD Guidelines on Corporate Governance 212
2. Recommendations for Policy and Suggestions for Future Research 214
BIBLIOGRAPHY 216
A. Book 216
B. Journal Article 221
C. Laws and Legislations 232
D. Case 240
E. Other sources 240
F. Web sources 242
G. Curriculum Vitae 248
H. Researcher's Publications During Study Period (2021-2025) 249
I. Oral Presentations 252
APPENDIXES 256
Appendix 1: Summary of OECD Guidelines on Corporate Governance of State-Owned Enterprises 256
Appendix 2: List of Dutch-Owned Companies Nationalized by Indonesia and Changed Their Name 260
Appendix 3: Dutch-owned Industrial and Mining Companies Taken Over by BAPPIT .. 262
Appendix 4: List of National Strategic Projects 2016-second semester June 2023 266
Appendix 5: List of State-Owned Enterprises and Subsidiaries Working on National Strategic Projects 269
Appendix 6: List of State-Owned Holding Company 271

Appendix 7: List of Indonesian State-Owned Enterprises based on the Value Chain and Business Ecosystem 278
Appendix 8: List of Dissolved State-Owned Enterprises 288
Appendix 9: State-Owned Enterprises in 12 business clusters 289
Appendix 10: State-Owned Enterprises with hundred-percent state ownership..... 292

CHAPTER I

STATE-OWNED ENTERPRISES: INTRODUCTION, RESEARCH PROBLEM AND QUESTIONS, THEORETICAL FRAMEWORK, AND RESEARCH APPROACH AND METHODOLOGY

1. Introduction

After the 1998 reforms and the transition of leadership from the New Order regime due to the great financial crisis, the Government of Indonesia made radical changes in political, social, legal, and economic aspects,[1] including improving the governance of state companies.[2] The result was the issuance of Law Number 19 of 2003 on State-Owned Enterprises, which aims to increase the productivity of state-owned companies to advance the national economy and improve people's welfare. This law encourages improved governance in the management and supervision of state-owned companies that are more democratic and in line with global developments.[3]

The legal debate regarding post-reform state corporate governance is increasingly attractive, with several parties examining the materiality of legal regulations related to state companies. For instance, the Legal Forum for State-Owned Enterprises sued the Supreme Audit Agency's authority to audit the finances of state-owned companies in 2013. They argued that a State-Owned Enterprise is a civil legal entity subject to company law.[4] They asked the Constitutional Court to abolish the provisions of Article 2 letters g and i in the Law of State Finance, which includes state company finances in the state finance structure and Article 6 paragraph (1), Article 9 paragraph (1) letter b, Article 10 paragraph (1) and

---

[1] Vedi R. Hadiz, and Richard Robison, "The Political Economy of Oligarchy and the Reorganization of Power in Indonesia," *Indonesia*, no. 96 (October 2013): 35–57. https://doi.org/10.5728/indonesia.96.0033.
[2] Agung Wicaksono, "Indonesian State-Owned Enterprises: The Challenge of Reform," *Southeast Asian Affairs*, (2008): 146–167. http://www.jstor.org/stable/27913357.
[3] Irit Suseno, Sudarsono, A. Mukthie Fadjar, and Sihabudin, "Forms of Ideal Laws of State-Owned Enterprises in Harmony with Article 33 Paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia. *Journal of Law, Policy and Globalization*, no. 85 (2019): 99-110. https://iiste.org/Journals/index.php/JLPG/article/view/48121.
[4] ASH, "Forum Hukum BUMN Uji UU Keuangan Negara dan UU BPK," *Hukumonline*, June 17, 2013, https://www.hukumonline.com/berita/a/forum-hukum-bumn-uji-uu-keuangan-negara-dan-uu-bpk-lt51beeaa52569f/.

paragraph (3), and Article 11 letter a in the Law of Supreme Audit Agency regarding the authority to audit state companies. As a result, the Constitutional Court rejected all their lawsuits in Decisions No. 48 and 62/PUU-XI/2013.[5] The Constitutional Court decided that separated state assets as capital of state companies remain state assets. Therefore, the Supreme Audit Board still has the authority to supervise and audit the finances of state companies.[6]

In addition, the Pertamina United Federation of Trade Unions tested Article 77 Letter C and Letter D Law Number 19 of 2003 to the Constitutional Court on July 6, 2020, because it does not regulate state-owned subsidiaries or company-owned companies regarding the prohibition of privatization. According to the petitioner, the state has the potential to lose the right to control essential production branches for the state, control the livelihoods of many people, and natural resources, including oil and gas natural resources, as stated in Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This lawsuit referred to the corporate action of PT Pertamina, a national oil and gas company, which sold part of its subsidiary's shares through an initial public offering mechanism.[7] The government argued that the ban on privatization applies to state companies, not their subsidiaries. Therefore, selling subsidiary shares to other parties does not constitute privatization.[8] However, the Constitutional Court rejected all lawsuits. It stated that the Constitution accepts privatization, as long as it does not abolish state control, to become the primary determinant of business policy in production branches that are important to the state or affect the people's livelihood.[9] The principle of "privatization does

---

[5] Mahkamah Konstitusi Republik Indonesia, "Putusan No. 48/PUU-XI/2013," https://www.mkri.id/index.php?page=download.Putusan&id=2050.

[6] Hidayatulloh, and Éva Erdős, "Restrengthening the Role of Supreme Audit Agency in Supervising State-Owned Enterprises," *International Comparative Jurisprudence* 8, no. 2 (2022): 152-160. https://doi.org/10.13165/j.icj.2022.12.003.

[7] Mahkamah Konstitusi Republik Indonesia, "Questioning the constitutionality of the Privatization of Pertamina's Subsidiaries," August 11, 2020, https://www.mkri.id/index.php?page=web.Berita&id=16484.

[8] Mahkamah Konstitusi Republik Indonesia, "Government: Sale of Shares of Persero's Subsidiary is Not Privatization," Oktober 15, 2020, https://www.mkri.id/index.php?page=web.Berita&id=16663&menu=2.

[9] Mahkamah Konstitusi Republik Indonesia, "Putusan MK No.61/PUU-XVIII/2020," https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_8132.pdf.

not abolish state control" is a legal doctrine that forms the rationale for privatization in Indonesia.[10]

In terms of management, President Susilo Bambang Yudhoyono 2004-2014, in his two terms of office, strengthened the transformation of governance by centralizing the ownership and arrangement of state companies under the Ministry of State-Owned Enterprises, which was previously part of the Ministry of Finance until 2001.[11] However, the privatization of state companies and forming a holding gets a negative response from parliament and the public. Even worse, corruption issues and management placement of state companies have become challenges in the decade since the reform era.[12]

Furthermore, radical changes occurred during President Joko Widodo's term from 2014 to 2024, which changed the strategy of state companies as agents of national development. He has criticized governments for using state-owned companies as cash cows and profit maximization as the company's work priority.[13] For example, state infrastructure companies build and upgrade public facilities such as ports, airports, toll roads, reservoirs, and trains. The government supports capital placement from the state budget and opens investment opportunities for private companies.[14] Policy changes regarding the management of state companies in the two periods of President Joko Widodo's leadership encouraged legal reform of governance to align with Indonesia's development vision, which tends towards management efficiency and the involvement of state companies in national strategic projects.

---

[10] Hidayatulloh and *Éva Erdős, "The Legal Aspects of Privatization in Electricity Business Sector," Jurnal Cita Hukum 10, no. 2 (2022): 267-288,* https://doi.org/10.15408/jch.v10i2.23540.

[11] According to the World Bank, Indonesia is the only country implementing a ministry-level ownership structure. World Bank. *Corporate Governance of State-Owned Enterprises: A Toolkit* (The World Bank, 2014), p. 82, https://doi.org/10.1596/978-1-4648-0222-5.

[12] Herdi Sahrasad, and Teuku Syahril Ansari, "BUMN, Politics, and Corruption in the Reformasi Era: A Political Economy Reflection," in *Proceedings of the 1st International Conference on Anti-Corruption and Integrity***,** Jakarta September 2-3, 2019, https://doi.org/10.5220/0009400300900095.

[13] Kyunghoon Kim, "Matchmaking: Establishment of State-Owned Holding Companies in Indonesia, *Asia & the Pacific Policy Studies* 5, no. 2 (2018): 313-330, https://doi.org/10.1002/app5.238.

[14] Luther Lie, "In Indonesia, State-Owned Enterprise Reforms are Supporting Infrastructure Development Progress," *Asia Global Online*, July 28, 2022, https://www.asiaglobalonline.hku.hk/indonesia-state-owned-enterprise-reforms-are-supporting-infrastructure-development-progress.

The legal reform of state corporate governance also targets changes to Law Number 19 of 2003, which are considered inconsistent with changes in the business world. The new draft law targets five main points. They are, first, strengthening the principle of business judgment rules and reducing the interference of political power in state companies. Second, the division into categories of state companies that implement profit-oriented business judgment rule principles, such as banking, and state companies that carry out public service obligations, such as public transportation. Next, it regulates immunity rights for directors and commissioners of state companies as long as they do not act outside their authority. Then, it reformates the management of state enterprises by making the Ministry of State-Owned Enterprises the manager and proxy for shareholders so that decisions are more effective and efficient. Finally, the establishment of a state company super holding led by a minister responsible to the president. There will no longer be any technical ministry interference in the management of state companies.[15]

Legal reform for the governance of Indonesian State-Owned Enterprises from 2014 to 2024 changes company management to be more effective and efficient. The Ministry of State-Owned Enterprises continues to streamline and improve the portfolio of state companies through corporate restructurings such as holdings, mergers, acquisitions, and others. The number of state companies is 116, which will continue to decrease to 41 companies in 2022. Furthermore, state companies are divided into 12 business clusters to increase business sustainability.[16] This radical change certainly affected the state corporate governance structure.

Additionally, the amendment to Law Number 19 of 2003 on State-Owned Enterprises is a big step in changing the legal framework for managing state companies, which, of course, aims to increase the profits and benefits of state companies for the public. The 2020-2024 national legislative program passed by the House of Representatives has

---

[15] Rofiq Hidayat, "Ini 5 Poin Pengaturan dalam RUU BUMN," *Hukumonline*, November 18, 2021, https://www.hukumonline.com/berita/a/ini-5-poin-pengaturan-dalam-ruu-bumn-lt619629d90823a/?page=all.

[16] The business cluster consists of: (1) Energy, Oil and Gas Industry; (2) Health Industry; (3) Manufacturing Industry; (4) Mineral and Coal Industry; (5) Food and Fertilizer Industry; (6) Plantation and Forestry Industry; (7) Insurance Services and Pension Funds; (8) Infrastructure Services; (9) Financial Services; (10) Logistics Services; (11) Tourism and Support Services; and (12) Telecommunications and Media Services. See "Klaster Usaha," BUMN, accessed September 12, 2023, https://www.bumn.go.id/portofolio/klaster-usaha.

included changes to this law on the priority list.[17] The draft Law is entering the harmonization stage in the Legislative Body of the House of Representatives.[18]

Moreover, the Indonesian government assigned many state companies to work on national strategic development projects, ultimately burdening the company's finances. Apart from that, state companies still need to be free from the trap of transactional politics that interfere with company management. In the end, many state companies experienced losses, debt burdens, and even the threat of bankruptcy.

2. Research Problem

Indonesia keeps Law Number 19 of 2003 on State-Owned Enterprises alive without any objective to amend it. In fact, since the administration of President Joko Widodo in 2014-2019 in the first period and 2019-2024 in the second period, State-Owned Enterprises have experienced broader and more sophisticated liberalization and corporatization compared to the previous few years.

Some of the main issues that have become public concern regarding the phenomenon of liberalization and corporatization of State-Owned Enterprises are restructuring in financial aspects, organizational structure, and company objectives. First, in financial aspects, the Indonesian government provides State Capital Participation to many State-Owned Enterprises that are experiencing poor financial conditions due to debt, mismanagement, and infrastructure development tasks from the government. Next, in organizational structure, the government forms State-Owned Holding Companies by merging several State-Owned Enterprises and transferring state ownership shares. Some companies become holding companies, and some become subsidiaries. In addition, the government also burdens State-Owned Enterprises with the task of developing

[17] On 17 December 2019, the House of Representatives established a National Legislation Program, which included Law Number 19 of 2003 concerning State-Owned Enterprises as one of several laws to be amended. See "Perencanaan Hukum," Badan Pembinaan Hukum Nasional, accessed September 12, 2023, https://bphn.go.id/data/documents/draft_ruu_prolegnas.pdf.

[18] On December 15, 2022, the House of Representatives passed a decree regarding the list of national legislative programs for 2023, one of which included the Draft Law on State-Owned Enterprises. See "Perencanaan Hukum," Badan Pembinaan Hukum Nasional, accessed September 12, 2023, https://bphn.go.id/data/documents/sk_prolegnas_ruu_prioritas_tahun_2023.pdf.

infrastructure projects. National strategic projects that should be government work programs have turned into state-owned enterprise work programs under the pretext of the government's status as the owner of the company. However, they ignore the goals and functions of the corporation.

Instead of revising Law Number 19 of 2003 on State-Owned Enterprises, the government, through the Ministry of State-Owned Enterprises, issued an Omnibus Law in the form of a Regulation of the Minister of State-Owned Enterprises as the legal basis for liberalization and corporatization activities over the past ten years. The government ignored the revision of fundamental legal regulations by taking a shortcut through the Omnibus Law, which is not known in the civil law tradition in Indonesia.

On the other hand, Indonesia has applied to become a member of the Organization of Economic Cooperation and Development in 2023. Therefore, regulations and policies of State-Owned Enterprises need to be adjusted to the norms and values of the OECD as an association of developed countries that manage State-Owned Enterprises well.

3. Research Objectives

Indonesia has been carrying out political reforms since 1998 that have encouraged economic democratization, market liberalization, and improved governance of State-Owned Enterprises. However, the new developmentalism policy throughout 2014-2024 has attracted much public attention because there have been changes in the governance of State-Owned Enterprises through restructuring, reorganization, and active involvement of State-Owned Enterprises in strategic government projects.

This study aims to examine and analyze the policies of the Indonesian Government in the last ten years related to the reform of governance of State-Owned Enterprises. Five important aspects that are the research objectives include the influence of the conceptual framework of public finance in the governance of State-Owned Enterprises, transformation of corporate governance, restructuring and emerging legal problems, legal aspects of the Omnibus Law, and governance according to the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

4. Research Questions

In short, this study aims to clarify:

1. What is the concept of Indonesian public finance and its influence on the governance of State-Owned Enterprises?
2. How has the transformation of legal governance on state-owned enterprises in Indonesia occurred?
3. How has the restructuring of State-Owned Enterprises been carried out during 2014-2024, and what legal problems will arise?
4. Has the Omnibus Law on State-Owned Enterprises supported corporate governance reform?
5. How the governance of Indonesian State-Owned Enterprises from the perspective of the Organization for Economic Cooperation and Development.

5. Hypotheses

Indonesia adheres to a civil law system with the constitution as the primary legal basis in the national life system. Public financial, and legal policies affect the governance of State-Owned Enterprises as a subsystem in national governance.

As a sovereign country after independence in 1945, Indonesia has experienced a long history of transformation in the governance of State-Owned Enterprises to date. This transformation follows the phenomenon of globalization and economic democratization, leading to the corporatization of State-Owned Enterprises while still prioritizing the public interest and public welfare.

Throughout the 2014-2024 administration, Indonesia has been reforming the governance of State-Owned Enterprises through restructuring efforts aimed at improving corporate management and finance. These efforts have raised challenges, especially in the legal aspects that affect the success of the reform.

The Omnibus Law on State-Owned Enterprises is a new legislative model adopted following the tradition of the Common Law system. The main hope is that this legal policy supports good corporate governance.

The OECD has the Guidelines on Corporate Governance of State-Owned Enterprises as an important reference in realizing good corporate governance. Indonesia, although not yet an official member, can take it as a legal resource to be able to follow the developed countries that are members of the OECD.

6. Significance of Research

Indonesia is a member of the G20 world, and it is one of the developing countries with significant economic valuation and trade influence. Moreover, Indonesia is currently applying to become a member of the Organisation for Economic Cooperation and Development (OECD) and BRICS, which is a forum for cooperation among a group of leading emerging economies. More importantly, Indonesia has bilateral and multilateral trade cooperation with many countries in the world.

Indonesia's economy is strongly supported by State-Owned Enterprises that control the leading trade and service sectors at the national level. In addition, State-Owned Enterprises manage natural resources, which consist of oil and gas, mining, marine, forestry, water, and air sectors.

The concept of ownership of Indonesia's natural resources is based on the interests of the state with the aim of public welfare. Therefore, sectors related to the livelihoods of many people must be under the control and management of the state. In this case, State-Owned Enterprises have many privileges, such as monopolies of specific sectors, distributors of subsidies for people with low incomes, providers of public goods and services, and recipients of State Capital Participation from the State Budget as separated state assets.

Good corporate governance for state-owned enterprises is an absolute principle of concern to the Indonesian government, not only for Indonesian businesspeople themselves but also for the interests of foreign investors and Indonesia's trading partner countries. The

corporatization of State-Owned Enterprises that has been running so far needs to receive proper attention in order to realize a fair and open economy.

7. Theoretical Framework

5.1. State-Owned Enterprises

In developing the theoretical framework for State-Owned Enterprises, the meaning of terms is an integral starting point for discussion. The definition of a State-Owned Enterprise has many variations and differences. For instance, the Organisation for Economic Cooperation and Development (OECD) explains that a state company is any company, including joint stock companies, limited liability companies, and partnerships limited by shares, which is a state company as long as the law regulates it as an enterprise and the state owns shares in the company. Likewise, statutory corporations are state companies regulated in law as long as the aim and some or all of their activities are to seek economic profit. [19]

Differently, the European Union, based on Directive 80/723/EEC, uses the term public undertaking to refer to a public company, which presents a definition that emphasizes the dominance of state influence over a company, either directly or indirectly. As long as the state has financial participation in the form of ownership shares and has influence over the company's operations, the company is a state company.[20] This definition is closer to the state company used by the European System of Accounts (ESA) 2010, which emphasizes government control over a state-owned company that dominates a particular economic market. The term state company in the ESA 2010 is a public non-financial corporation.[21] If

[19] OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (Paris: OECD Press, 2015), 14, https://doi.org/10.1787/9789264244160-en.
[20] EUR-Lex, "Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings," accessed September 12, 2023, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31980L0723.
[21] European Union, *European Systems of Account ESA 2010* (Luxembourg: Publications Office of the EU 2013), 35, https://ec.europa.eu/eurostat/web/products-manuals-and-guidelines/-/ks-02-13-269.

the state has 100% ownership of State-Owned Enterprises, then the state's dominance over the market economy will be strong, but it is different if ownership is not majority.[22]

Based on the three definitions presented by the OECD, EU Directive, and ESA, all acknowledge that a State-Owned Enterprise is a legal entity in the form of a company established and owned by the state. In the context of public law, the state establishes, owns and manages a State-Owned Enterprise as one of its roles in managing state wealth and public service facilities for the community. The state needs a State-Owned Enterprise to channel its policies which cannot always be in accordance if its interests are handed over to private companies.

In simple terms, in terms of state ownership, State-Owned Enterprise can be divided into four types as follows: 1) a company with full state ownership; 2) a company with a majority share of public authorities; 3) a company with a minority share but public authorities have special statutory powers; and 4) a company with a minority share but public authorities have no special statutory powers.[23]

Apart from referring to the definition of State-Owned Enterprise from the OECD and EU, the various definitions from various countries are also interesting for discussion. For example, Indonesia uses State-Owned Enterprise (*Badan Usaha Milik Negara*, BUMN) in Law Number 19 of 2003. Ownership of all or part of BUMN capital by the state occurs from investing state assets directly in the company. BUMN consists of public, limited liability, and limited liability companies. Public companies are wholly owned and controlled by the state and provide goods and services for the public interest. They are different from a limited company whose capital is divided into fully controlled shares or at least 51% by the state. Meanwhile, a public limited company carries out a public offering under capital market regulations.[24]

---

[22] Horváth M, Tamás, Ildikó Bartha, Péter Bordás, and Dóra Lovas. "A látható kéz: Kormányzati tulajdon és szabályozó szerep vállalati körben." (2024), p. 47-48.
[23] European Union, *State-Owned Enterprises in the EU: Lesson Learnt and Ways Forward in a Post-Crisis Context* (Luxembourg: Publications Office of the EU 2013), 6-7, http://dx.doi.org/10.2765/99224.
[24] Article 1 paragraphs 1-4, Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003.

In Malaysia, listed companies in which government investment organizations hold a controlling stake are called Government-linked Companies (GLCs). They are companies with a primary commercial objective, and the Malaysian Government has a direct controlling stake due to the percentage ownership and ability to appoint boards and make significant decisions. GLCs include the companies that the Government of Malaysia controls directly and companies where GLCs have a controlling stake, such as subsidiaries and affiliates of GLCs.[25]

5.2. The Ownership of State-Owned Enterprises

The basic concept of ownership in a company is that individuals or business entities have legal ownership rights to assets that can be proven, such as shares and others.[26] The ownership function is a fundamental right inherent in shareholders, such as the right to elect the board of directors and monitor company performance.[27] In considering the economics of a country, ownership is essential because it is related to cash flow rights and decision rights. The state can control the behavior of public company managers in their relationship as shareholders and management.[28] In the case of State-Owned Enterprises, the state, as the owner of all or most of the shares, delegates its ownership rights to government institutions such as ministers or special agencies.[29] This part of the article will present theory and analysis to understand the ownership model of State-Owned Enterprises in several countries.

A comprehensive study of ownership arrangements of State-Owned Enterprises carried out by the World Bank divided it into four categories. First, the decentralized model

---

[25] GLC, *Catalysing GLC Transformation to Advance Malaysia Development* (Putrajaya: GLC, 2006), 38, https://pcg.gov.my/glc-transformation-manual/.

[26] Sujit Sur, Horand Gassmann, and Jing Zhang. "Defining Ownership: An Empirical Assessment of the Ownership Measures." *Canadian Journal of Administrative Sciences/Revue Canadienne des Sciences de l'Administration* 36, no. 1 (2019): 5-19, https://doi.org/10.1002/cjas.1479.

[27] Paddy Ireland, "Company Law and the Myth of Shareholder Ownership." *Modern Law Review* 62, no. 1 (2003): 32-57, https://doi.org/10.1111/1468-2230.00190.

[28] Marco Becht, Patrick Bolton, and Ailsa Röell, "Corporate Governance and Control," In *Handbook of the Economics of Finance*, GM Constantinides, M Harris, R Stulz (eds). (Amsterdam: Elsevier), 109.

[29] Mikko Rajavuori, "Governing the Good State Shareholder: The Case of the OECD Guidelines on Corporate Governance of State-Owned Enterprises," *European Business Law Review* 29, no. 1 (2018): 103-142, https://doi.org/10.54648/eulr2018005.

spreads responsibility for ownership of state companies to various line ministries. Second, the dual model gives authority to two ministries; for example, the technical ministry is responsible for operational technical matters, while the finance ministry oversees financial matters. Third, the advisory model regulates the distribution of ownership among many ministries. However, the government appoints a coordinating or advisory body to advise and direct ministers regarding company ownership matters. Fourth, the centralized model regulates ownership responsibility to central units, such as ministries or special agencies that are independent or may fall within the government.[30]

Other primary reference for looking at the state ownership model of State-Owned Enterprises is the OECD findings, which divide it into six models: a centralized model, a coordinating agency model, a twin-track model, a separate track model, a dual ownership model and a decentralized ownership model. In a centralized model, one body regulated by law becomes the centralized decision maker. The role of this body is as a shareholder for all companies and organizations controlled by the state directly or indirectly. This central body also regulates the company's financial targets, operations, and performance monitoring processes, including appointing individuals as directors and commissioners. Many countries in the world adopt this model, such as Austria, Chile, China, Colombia, Finland, France, Greece, Hungary, Iceland, Israel, Italy, Korea, Netherlands, New Zealand, Norway, Peru, Russia, Slovenia, South Africa, Spain, and Sweden. [31]

In a coordinating agency model, the government establishes an extraordinary institution or department that coordinates between state companies and the ministries that are shareholders. It operates to monitor company performance and advise on technical and operational issues. Several countries apply this ownership model, including Bulgaria, Costa Rica, India, Ireland, Latvia, Lithuania, Morocco, Philippines, Poland, and the United Kingdom.[32]

---

[30] World Bank, *Corporate Governance of State-Owned Enterprises: A Toolkit* (Washington DC: The World Bank, 2014), 70, https://doi.org/10.1596/978-1-4648-0222-5.
[31] OECD, *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices* (Paris, Secretary General of OECD, 2021), 16, https://www.oecd.org/corporate/ownership-and-governance-of-state-owned-enterprises-a-compendium-of-national-practices.htm.
[32] OECD, *Ownership and Governance of State-Owned Enterprises*, 17-18.

In a twin-track model, the government assigns two institutions exclusively to carry out ownership functions in each company's portfolio. This model has functional similarities to the centralized model but with two individual portfolio companies supervised by two government agencies. The countries that apply this model are Turkey and Belgium.[33]

In a separate-track model, a company's ownership portfolio is spread across several ownership entities, holding companies, privatized institutions, or similar entities. Kazakhstan and Malaysia adjust this model.[34]

In the dual ownership model, the law regulates state companies' ownership by two ministries or high institutions with a division of duties and authority. For example, the finance ministry is responsible for financial performance, while another ministry is responsible for company operations. Apart from that, two ministries, by consensus, appoint directors. For example, each of them has representation in the company organization. Australia, Brazil, Croatia, Czech Republic, Estonia, Indonesia, Romania, and Switzerland are countries that adhere to this model.[35]

The decentralized ownership or dispersed model is the opposite of the coordinating agency model because ownership of state companies is not vested in one ministry or government agency. In this model, state companies appear to be agencies extending the duties and authority of the ministries that are their owners. Ownership of state companies is in the hands of many ministries or other government institutions according to their field of work. Argentina, Canada, Denmark, Germany, Japan, Mexico, Saudi Arabia, Tunisia, and Ukraine are countries that practice this model.[36]

[33] OECD, *Ownership and Governance of State-Owned Enterprises*, 19.
[34] OECD, *Ownership and Governance of State-Owned Enterprises*, 19.
[35] OECD, *Ownership and Governance of State-Owned Enterprises*, 19.
[36] OECD, *Ownership and Governance of State-Owned Enterprises*, 19.

5.3. The Relationship between State and State-Owned Enterprises

The state and state-owned enterprises have rational economic, organizational, and political relationships. In the economic aspect, many countries generally hand over the management of natural wealth, energy, central infrastructure, public transportation, and public services to state companies as a form of positive intervention and state responsibility for the welfare of society.[37] The state needs to be involved in economic activities through ownership and control over state companies to support the national economy and strategic interests, to ensure the stability of ownership and control over state companies, to provide specialized goods and services primarily when the private market cannot offer them or is available but is expensive, and to conduct business activities that are a "natural monopoly" on certain goods and services for the benefit of the wider community. [38]

Many state companies have an enormous influence on the national economy. They have considerable assets and employ many people to drive the national economy. For example, OECD research data in 2012 shows an obvious illustration even though it does not represent all countries in the world. Based on data contributions from 34 countries, the total number of State-Owned Enterprises[39] is 2,111 companies with 5,937,954 employees and total assets reaching 2,218.1 billion USD. Hungary has the most significant number of public companies, namely 371, while Switzerland only has four public companies. As for the number of workers, France absorbs the most significant number of workers, with a total of 1,584,501 people, while Denmark has the fewest workers in public companies, with 22,823 people. Then, in terms of public company wealth, the United States has the highest total assets of 599,010 billion USD, and Latvia has the lowest amount of public company wealth of 4.9 billion USD.[40]

---

[37] Edimon Ginting, and Kaukab Naqvi. eds. *Reforms, Opportunities, and Challenges for State-Owned Enterprises* (Manila: Asia Development Bank: 2020) 1, https://dx.doi.org/10.22617/TCS200201-2.

[38] OECD, *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices* (Paris: OECD Publishing, 2018), 23, https://www.oecd.org/corporate/ownership-and-governance-of-state-owned-enterprises-a-compendium-of-national-practices.htm.

[39] In this research, the requirements for a company to be a public corporation are 1) another public unit must control it, and 2) it must be a market producer.

[40] OECD, *The Size and Sectoral Distribution of SOEs in OECD and Partner Countries* (Paris: OECD Publishing, 2014), 10-12, https://doi.org/10.1787/9789264280663-en.

Table 1.1.

Overview of State-Owned Enterprises in 2012

Country	Number of enterprises	Number of employees	Value of enterprises (USD bn)
Australia	15	49 945	18.3
Austria	9	74 161	22.1
Belgium	8	88 476	10.2
Canada	47	86 558	28.3
Chile	34	48 900	22.2
Colombia	43	80 883	169.5
Czech Republic	125	140 300	40.3
Denmark	17	22 823	11.9
Estonia	53	25 217	5.4
Finland	42	84 760	44.2
France	57	1 584 501	111.4
Germany	72	349 203	47.3
Greece	52	45 258	12.9
Hungary	371	124 924	6.6
Ireland	24	39 582	31.9
Israel	34	54 959	48.9
Italy	17	526 911	226.1
Japan	24	64 173	339.3
Korea	57	129 235	200.9
Latvia	74	52 240	4.9
Lithuania	137	41 246	6.7
Mexico	69	*no data*	83.2
Netherlands	26	78 286	60.3
New Zealand	18	31 088	15.1
Norway	45	221 045	243.7
Poland	326	159 730	61.6

Portugal	84	171 534	7.7
Slovenia	39	52 039	12.6
Spain	53	95 589	5.5
Sweden	49	135 608	51
Switzerland	4	101 098	39.7
Turkey	50	246 071	90.8
United Kingdom	17	332 601	66.2
United States	19	599 010	13.5
Total	**2 111**	**5 937 954**	**2 218.1**

Source: OECD 2014, p. 10-12.

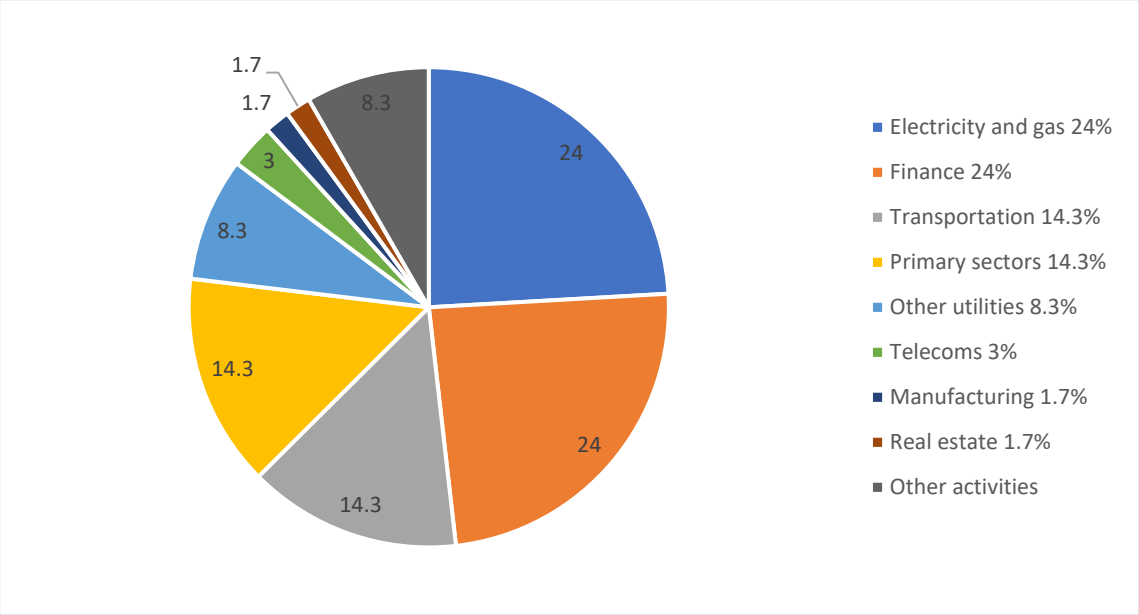
The data in Table 1.1. shows that the number of State-Owned Enterprises, workforce, and value is enormous and varies in each country. Emerging economies in Europe, such as Hungary, Poland, the Czech Republic, and Lithuania, have a large number of companies. Interestingly, France, the United States, England, Norway, and Turkey have fewer companies but absorb a vast number of workers. The existence of State-Owned Enterprises is able to open up more jobs. Next, related to company value, Japan, Norway, and Italy are examples of countries that generate much profit from the performance of State-Owned Enterprises for state revenue.

Furthermore, in OECD data, most state companies' business distribution is in the electricity and gas sector, which is as large as the financial sector at 24%. The next largest are transportation and primary sectors, each with a company value of 14.3%. The rest are telecoms, real estate, manufacturing, and others, with a company value of less than 10%.[41] The variety of types of company business, especially strategic fields controlled by the state, shows the economic role of State-Owned Enterprises in various countries in the world.

[41] OECD, *The Size and Sectoral Distribution of SOEs in OECD and Partner Countries*, 13-14.

Figure 1.1

Sectoral distribution of State-Owned Enterprises by company value



Source: OECD 2014, p. 10-12.

Figure 1.1. describes that the energy sector, such as electricity and gas, and the financial sector dominate the types of business activities and values of State-Owned Enterprises. Meanwhile, the transportation sector and primary sectors occupy the second position. Then, the business sectors below 10 percent are diverse, such as other utilities, telecommunications, manufacturing, and housing.

From an organizational perspective, one of the distinctive characteristics of State-Owned Enterprises is the placement of government representatives as owners in company management. Traditionally, the government appoints individuals to the board of directors and commissioners from government employees or professionals.[42] However, the appointment of individuals in company management is often heavily biased towards

[42] OECD, *Boards of Directors of State-Owned Enterprises: An Overview of National Practices* (Paris: OECD Publishing, 2013), 50, https://doi.org/10.1787/9789264200425-en.

government political considerations, to the point of deviating from the assessment of qualifications, skills, and integrity.[43]

Apart from the selection process, which is only sometimes fair, in carrying out their duties, company boards must pay attention to two principles, namely 1) focus on conformity and compliance with the directives of the state owner and 2) focus on performance. In general, boards pay more attention to conformance than performance because they avoid mistakes in managing public funds that result in ignoring more significant issues, such as the effectiveness of business strategy and company profits.[44] Thus, management more often follows government rules in its business policies even though it could be more economically beneficial for the company.

Then, in the political aspect, the state's dominant position over State-Owned Enterprises is a reality due to the ownership factor. Referring to domination theory, Max Weber revealed two forms of domination. First, domination under authority, such as power to command and duty to obey. Second, domination under a constellation of interests.[45] In the company structure, shareholders hand over their assets to individuals because they believe that management will act rationally and dutifully and consider the impact on the welfare of the capital owners.[46] Both state and private companies apply this framework as the basis for their formation.

A constellation of interests can also take the form of political intervention, which occurs in company policy because laws provide opportunities for government institutions to provide detailed and partisan considerations.[47] Government policy intervention is example of complicated relationship between the state and State-Owned Enterprises which

---

[43] Renée M. Thompson, and Philmore Alleyne. "Role of a Board of Directors and Corporate Governance in a State-Owned Enterprise." *Corporate Governance: The International Journal of Business in Society* 23, no. 3 (2023): 478-492, https://doi.org/10.1108/CG-05-2021-0170.

[44] W. Richard Frederick, *Enhancing the Role of the Boards of Directors of State-Owned Enterprises: OECD Corporate Governance Working Paper* (Paris: OECD Publishing, 2011), 13, https://doi.org/10.1787/5kg9xfg6n4wj-en.

[45] Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (California: California University Press, 1978), 943.

[46] Michael Magill, Martine Quinzii, and Jean-Charles Rochet, "A Theory of the Stakeholder Corporation." *Econometrica* 83, no. 5 (2015): 1685-1725, https://doi.org/10.3982/ECTA11455.

[47] Jean-Pierre Anastassopoulos. "State-Owned Enterprises between Autonomy and Dependency." *Journal of Public Policy* 5, no. 4 (1985): 521–39, http://www.jstor.org/stable/3998400.

has terrible consequences such as over-investments[48] and even financial losses.[49] To reduce the conflict of interest between the government and state companies, the solution is the separation of ownership functions and regulatory functions. State-owned enterprises must have economic activity independence to achieve commercial goals like private companies, while the government can establish separate and independent regulatory bodies.[50]

Furthermore, to escape too much interference from the government, state companies can carry out diversification, internationalization, and negotiation to maximize business profits and achieve their entrepreneurial vision. A diversification strategy is a company's move to develop new business units or establish subsidiaries to enter new markets. The internationalization step involves expanding business networks outside the country of origin by collaborating with companies in the destination country. The next step is negotiation and lobbying for the government to implement legal policies that provide companies with more unrestricted space for innovation and business expansion without being hindered by political preferences.[51]

Aside from the economic, organizational, and political approaches discussed previously, their relationship could be more straightforward because both are autonomous entities with their interests. They are not truly independent because they need each other and even strengthen each other's goals. On the one hand, state companies maintain close relations with the state regarding government subsidies, capital injection, financial risks, and public trust. Meanwhile, on the other hand, state companies are trying to establish distant relations with the state regarding business autonomy, political intervention, and information disclosure.[52]

---

[48] Jun Bai, and Lishuai Lian. "Why do State-Owned Enterprises Over-invest? Government Intervention or Managerial Entrenchment." *China Journal of Accounting Studies* 1, no. 3-4 (2013): 236-259, https://doi.org/10.1080/21697221.2013.867401.

[49] Voicu D. Dragomir, Mădălina Dumitru, and Liliana Feleagă. "Political interventions in state-owned enterprises: The corporate governance failures of a European airline." *Journal of Accounting and Public Policy* 40, no. 5 (2021): 106855, https://doi.org/10.1016/j.jaccpubpol.2021.106855.

[50] Jenik Radon, and Julius Thaler. "Resolving Conflicts of Interest in State-Owned Enterprises." *International Social Science Journal* 57, no. s1 (2005): 11-20, https://doi.org/10.1111/j.1468-2451.2009.00702.x.

[51] Carole Rentsch and Matthias Finger, "Yes, no, maybe: The Ambiguous Relationships between State-Owned Enterprises and the State," *Annals of Public and Cooperative Economics* 86, no. 4 (2015): 617-640, https://doi.org/10.1111/apce.12096.

[52] Carole Rentsch and Matthias Finger, "Yes, no, maybe: The Ambiguous Relationships between State-Owned Enterprises and the State."

5.4. Theory of Corporate Governance

Corporate governance often refers to three fundamental elements: the executives, the board of directors, and the shareholders. These three elements work together in a check and balance system so that the company works transparently and accountably to achieve its goals. Therefore, corporate governance is everything about how the structure and direction of a company work well.[53]

More importantly, corporate governance is attached to protecting the investment of capital owners, aka shareholders. The success of the corporate governance system occurs due to legal protection for investors, huge companies that strictly separate ownership and control functions.[54] Apart from that, the company uses internal mechanisms and external governance procedures. Internal governance is through directors' supervision, shareholders' monitoring, and performance-based compensation. In contrast, external governance is an environment that supports good performance if internal governance does not work according to government legal regulations.[55]

The concept and theory of corporate governance continue to develop because, in principle, it has intersections and points of contact with various scientific disciplines such as economics, finance, law, politics, management, and organizational behavior. Chriss A. Malin presents several theories that influence the development of corporate governance. The first is agency theory which identifies the agency relationship where one party delegates work to another party. In the context of a corporation, the owners are the principal, and the directors are the agents.[56]

The second is transaction cost economics theory which views the firm itself as a governance structure. The choice of an appropriate governance structure can help align the interests of directors and shareholders.

---

[53] Robert AG Monks, and Nell Minow. *Corporate Governance* (John Wiley & Sons, 2011), 18, https://doi.org/10.1002/9781119207238.ch1.
[54] Andrei Shleifer, and Robert W. Vishny, "A Survey of Corporate Governance," *The Journal of Finance* 52, no. 2 (1997): 737-783, https://doi.org/10.1111/j.1540-6261.1997.tb04820.x.
[55] Nihat Aktas, Ettore Croci, and Serif Aziz Simsir, "Corporate Governance and Takeover Outcomes," *Corporate Governance: An International Review* 24, no. 3 (2015): 242-252, https://doi.org/10.1111/corg.12116.
[56] Chris A. Mallin, *Corporate Governance*. (Oxford University Press, 2016), 15-16.

Third is stakeholder theory which takes account of a wider group of constituents rather than focusing on shareholders. Where there is an emphasis on stakeholders, the governance structure of the company may provide for some direct representation of the stakeholder groups.

Fourth is stewardship theory which states that Directors are regarded as the stewards of the company's assets and will be predisposed to act in the best interests of the shareholders.

In this research, from various corporate governance theories, agency theory is a theory that directly describes the relationship between the state as the owner of State-Owned Enterprises and directors as agents who manage and move the company under the state's ideals as stated in statutory regulations. The state, in this case, the government as the owner's representative, can make the rules of the company's activities according to its wishes even though it is contrary to the wishes and economic logic of the directors. Therefore, the theory of agency is a crucial element in analyzing the object of this research.

5.5. OECD Guidelines on Corporate Governance of State-Owned Enterprises

OECD Guidelines is a standard recognized internationally as a recommendation for governments to encourage State-Owned Enterprises to work efficiently, transparently, and accountably. The Guidelines, published in 2005 and refined in 2015, complemented the OECD Principles of Corporate Governance.[57]

The Guidelines consist of two parts. The first part includes several discussions: 1) Rationales for state ownership; 2) The state's role as owner; 3) State-owned enterprises in the marketplace; 4) Equitable treatment of shareholders and other investors; 5) Stakeholder relations and responsible business; 6) Disclosure and transparency; and 7) The responsibilities of the board of state-owned enterprises. In the second part, annotations complement the first part, which contains commentators and helps readers understand the

[57] OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (Paris: OECD, 2015), 7-8, https://doi.org/10.1787/9789264244160-en.

Guidelines.[58] See appendix 1: Summary of OECD Guidelines on Corporate Governance of State-Owned Enterprises

In this research, the OECD Guidelines are a vital reference for analyzing the implementation of governance of State-Owned Enterprises in Indonesia. Various OECD member countries practically applied the OECD Guidelines as an internationally recognized standard. Therefore, Indonesia can refer to it in the context of good corporate governance reform.

8. Research Approach and Methodology

Legal reform for the governance of State-Owned Enterprises in Indonesia took place simultaneously with political reform in 1998 after President Soeharto's regime fell. The legal configuration also changed radically in the form of amendments to the 1945 Constitution of the Republic of Indonesia and the birth of laws that support economic democracy, including Law Number 19 of 2003 concerning State-Owned Enterprises. Until the leadership of President Joko Widodo in the 2014-2024 period, the reform of state corporate governance became stronger because of the government's development vision, which focused on public infrastructure by empowering state companies.

This research explores and analyzes legal changes in the governance of State-Owned Enterprises throughout 2014-2024 using doctrinal research methods. It focuses on interpreting and analyzing legal texts made by legal authorities in a country by conducting a comprehensive literature search.[59] Laws, government regulations, ministries, and other agencies are the objects of this research study.

This study uses a doctrinal research method that focuses on interpreting and analyzing legal texts made by legal authorities in a country by conducting a comprehensive literature search. In addition to official regulations as government policies, this study also examines research results published in scientific journals, books, and institutional reports.

---

[58] OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 13.
[59] Michael Salter and Julie Mason. *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research.* (Harlow: Pearson Education Limited, 2007), p. 182-183.

Therefore, this study is a literature review that collects various secondary data at the national and international levels.

In testing and analyzing data, this study uses a historical approach, a statute approach, and a comparative approach. With a historical approach, this study traces written documents that describe legal, political, social, and economic policies in the past. While the statute approach explores and examines laws and regulations, including court decisions, hierarchically, systematically, and comprehensively. In addition, the comparative approach explores the theory and application of law in other countries or global institutions in an effort to find good legal norms as inspiring examples.

In Indonesian Law, which adheres to a civil legal system, regulations have a hierarchy from highest to lowest, with the provisions that the lowest regulations must not violate higher regulations. The concept of superior and empirical norms is an adoption of Hans Kelsen's legal thinking.[60] Therefore, Indonesia has a mechanism for judicial review of laws against the Constitution to the Constitutional Court and judicial review of government/ministerial regulations against laws to the Supreme Court. The hierarchy of laws and regulations in Indonesia is: (1) the 1945 Constitution of the Republic of Indonesia; (2) Decree of the People's Consultative Assembly; (3) Law/Government Regulation in Lieu of Law; (4) Government Regulations; (5) Presidential Decree; (6) Provincial Regional Regulations; (7) Regency/City Regional Regulations.[61]

In testing regulatory norms using a doctrinal approach, this research also analyzes several Constitutional Court decisions related to the judicial review of Law Number 17 of 2003 concerning State Finances, Law Number 19 of 2003 concerning State-Owned Enterprises, and Law Number 15 of 2006 concerning the Audit Board of Indonesia. Several Constitutional Court decisions related to the governance of State-Owned Enterprises have become legal doctrines that are essential references for the Indonesian rule of law.

Furthermore, in the context of state corporate governance theory, this research examines implementation in Indonesia using the OECD Guidelines on Corporate

---

[60] Robert Kolb, "The law of nations in Hans Kelsen's 'pure theory of law'system." In *Truyol y Serra's Doctrines of International Law* (Edward Elgar Publishing, 2018), 87-107, https://doi.org/10.4337/9781788116374.00011.

[61] Article 7 paragraph 1 Law Number 12 of 2011 on the Formation of Legislative Regulations, https://peraturan.go.id/id/uu-no-12-tahun-2011.

Governance of State-Owned Enterprises. It is the guidelines that are widely adopted and agreed upon in various member and non-member countries.

This research aims to comprehensively understand State-Owned Enterprises' governance by combining legal inquiry with normative legal analysis. Legal scholarship is a center but also adopts an economic approach to enrich and strengthen perspectives. Therefore, this research does not only examine legal norms in laws and court decisions but also examines public financial references.

9. Intersection between Public Law and Private Law

State-owned enterprises are legal entities that are part of government institutions because the capital comes from the state budget. Moreover, the ownership of the company is in the power of the state. It is undeniable that the state plays a role as the founder, owner of capital, and holder of the highest power over State-Owned Enterprises. Therefore, the existence of the state in State-Owned Enterprises cannot be eliminated.

However, from the aspect of legal entities, State-Owned Enterprises are companies that are subject to and comply with company regulations like private companies. Therefore, the regulation of State-Owned Enterprises also follows the provisions of private law in the context of their existence as corporate legal entities.

In this study, State-Owned Enterprises are a multidisciplinary study because their position is in the realm of public law and private law at the same time. However, I focus my research on corporate governance, which analyzes and examines the position of State-Owned Enterprises as public legal entities that are closely related to state policies in the structure of public law.

10. Structure of Thesis

In the first chapter, I write a conceptual framework about the introduction, research problem, methodology, and theoretical framework as a basis for understanding this research.

Then, in the second chapter, I describe the theory of public finance based on the Indonesian legal system and analyze its influence on the concept of governance of State-Owned Enterprises.

In the third chapter, I analyze the transformation process of State-Owned Enterprises since Indonesian independence in 1945 until now. With a historical approach, I divide the transformation period into four: the early period of independence (1945-1958), the nationalization period (1958-1966), the corporatization period (1966-2003), and the corporatization in the reform period (2003-2024).

Next, in the fourth chapter, I examine the policy on restructuring State-Owned Enterprises using financial assistance patterns and company reorganization to the formation of business type clusters and holding companies. In this chapter, I present an analysis of the challenges to efforts to improve governance of State-Owned Enterprises over the past ten years.

In addition, in the fifth chapter, I explore the policy of issuing the Omnibus Law on State-Owned Enterprises, which simplifies dozens of regulations of the Minister of State-Owned Enterprises into three regulations.

Furthermore, in the sixth chapter, I analyze the implementation of governance of State-Owned Enterprises in Indonesia with the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

Finally, I close this dissertation in the seventh chapter with conclusions and recommendations.

CHAPTER II

THE CONCEPT OF INDONESIAN PUBLIC FINANCE AND ITS INFLUENCE ON GOVERNANCE OF STATE-OWNED ENTERPRISES

1. State and State-Owned Enterprises

The development of state companies cannot be distinct from the public finance conceptual framework adopted by a country. The existence of state companies is mainly from a country's initiative to manage natural resources and exploit them to generate profits that positively impact state finances.[62] Developed countries such as the United States and European countries use state companies as providers of services and public services needed by most of society, such as transportation, energy, mining, and postal services. Meanwhile, developing countries, which generally have abundant natural resources, view state companies as essential institutions in managing natural resources and preventing them from being taken over by foreign parties. This framework of thought is a residue of the dark memory of colonialism in previous Western countries.[63]

The position of the state as the owner of State-Owned Enterprises has received little attention in the era of global economic liberalization that wants state ownership to continue to be reduced. Therefore, ownership policies differ in each country.[64] However, it cannot be denied that state ownership is still very relevant because of the close relationship between the economic market and a country's public financial policy in managing State-Owned Enterprises.[65]

This article studies the conceptual framework of public finance law in Indonesia and its influence on the governance of State-Owned Enterprises. This study analyzes how the

---

[62] Cuervo-Cazurra, Alvaro, Andrew Inkpen, Aldo Musacchio, and Kannan Ramaswamy. "Governments as owners: State-owned multinational companies." *Journal of international business studies* 45 (2014): 919-942. https://doi.org/10.1057/jibs.2014.43.

[63] Valente, Mike, and Andrew Crane. "Public responsibility and private enterprise in developing countries." *California Management Review* 52, no. 3 (2010): 52-78. https://doi.org/10.1525/cmr.2010.52.3.52.

[64] Horváth M, Tamás, Ildikó Bartha, Péter Bordás, and Dóra Lovas. "A látható kéz: Kormányzati tulajdon és szabályozó szerep vállalati körben." (2024), p. 47-48.

[65] Smith, D. Andrew C., and Michael J. Trebilcock. "State-owned enterprises in less developed countries: Privatization and alternative reform strategies." *European Journal of law and Economics* 12 (2001): 217-252. https://doi.org/10.1023/A:1012817825552.

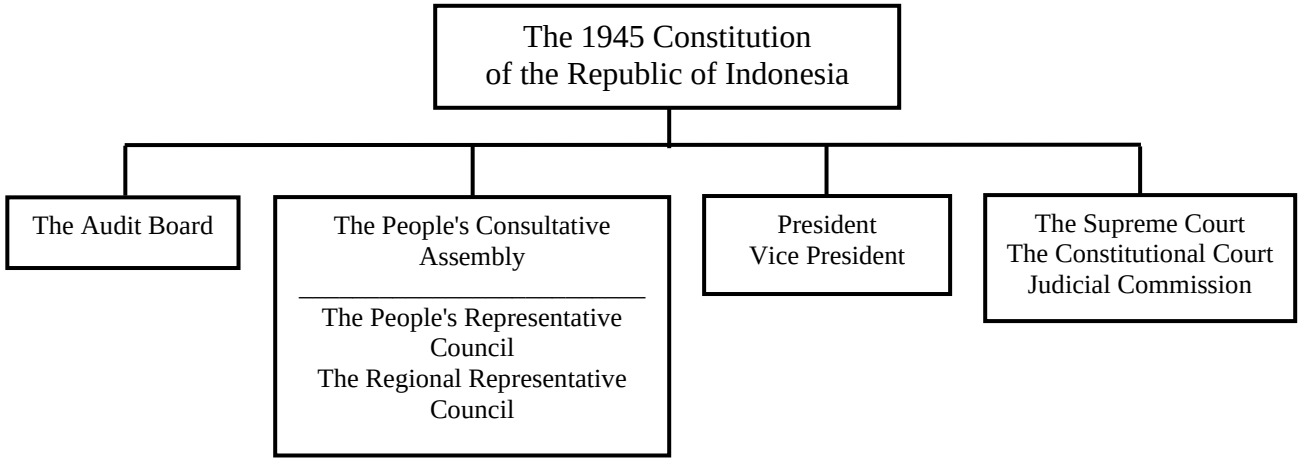
1945 Constitution, as the constitution of the Republic of Indonesia, formulates state finance in the context of companies founded and owned by the state. Furthermore, this study also explores the state's role in supervising State-Owned Enterprises as business entities that manage state assets, which are separated from the State Revenue and Expenditure Budget.

2. Public Finance under Indonesian Laws

In Indonesia's political administration system based on amendments to the 1945 Constitution, the President as Head of State and Head of Government has an equal position with high state institutions, including the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, Judicial Commission, and Financial Audit Agency. A parallel government organization system is a mandate for constitutional change, especially in matters of state finances, so that checks and balances mechanisms occur in the preparation, implementation, and supervision of the state budget.[66]

Figure 2.1

State Institutional Structure in Indonesia



Source: Author

[66] Tjandra, W. Riawan. (2006). *Hukum Keuangan Negara*. Jakarta: Grasindo, p. 15.

Figure 2.1. shows the institutional structure of the state in Indonesia. The 1945 Constitution is the highest source of law which is the main reference for state institutions. From the right position is the judicial power represented by the Supreme Court, the Constitutional Court, and the Judicial Commission. The President is the executive power. While the legislative power is in the People's Consultative Assembly, the People's Representative Council, and the Regional Representative Council. The Audit Board is an institution for monitoring and auditing state finances which is in the executive power.

In the 1945 Constitution, articles related to public finance appear in Chapter VIII concerning Financial Affairs. In this chapter, Article 23 regulates the State Revenue and Expenditure Budget, which is submitted by the President as head of government to the House of Representatives every year.[67]

Furthermore, Chapter VIIIA regulates the position of the Financial Audit Board as a high-state institution parallel to the state executive institution. This body is free and independent in supervising and auditing state financial management. In carrying out its functions, this Agency submits audit reports to the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council every year.[68]

Based on the order of Article 23C of the 1945 Constitution concerning the regulation of state finances in law, Indonesia has ratified Law Number 17 of 2003 on State Finances. This new law is the result of legal reform because previously, since independence in 1945, Indonesia used state financial regulations based on the *Indische Comptabiliteitswet (stbl. 1925 Number 448)*, which became Law Number 9 of 1968.[69]

Following the mandate of Article 23C of the 1945 Constitution, Law Number 17 of 2003 describes the basic rules into general principles, which include principles that have long been known in state financial management, such as the annual principle, the universality principle, the unity principle, and the principle of specialization and new

[67] The 1945 Constitution of the Republic of Indonesia (1945). https://www.mkri.id/index.php?page=web.PeraturanPIH&id=1&menu=6&status=1.
[68] The 1945 Constitution of the Republic of Indonesia.
[69] Sutedi, Adrian. (2022). *Hukum keuangan Negara*. Jakarta: Sinar Grafika, p. 2-3.

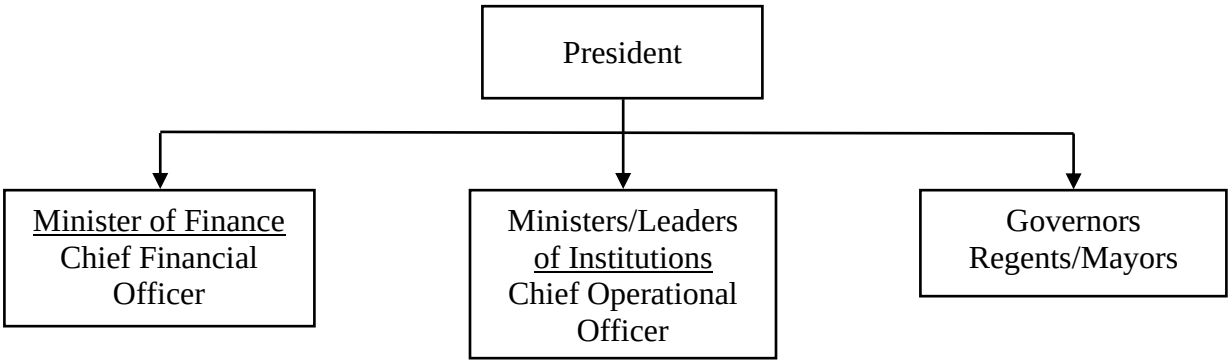
principles as a reflection of best practices (application of good principles) in managing state finances, including: results-oriented accountability, professionality, proportionality, openness in the management of state finances, and financial audit by a free and independent audit body.[70]

In the structure of Law Number 17 of 2003, the President, as Head of Government, is the holder of the power to manage state finances. State finances means "all the rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that can be made property of the state in connection with the implementation of these rights and obligations."[71] In exercising this power, the President delegates some of his authority to the Minister of Finance as Fiscal Manager and Government Representative to own separate state assets. The President also assigns Ministers/Leaders of Institutions as Budget Users/Property Users of the state ministries/institutions they lead. As the President's assistant in the financial sector, the Minister of Finance is the Chief Financial Officer (CFO) of the Government of the Republic of Indonesia. At the same time, each minister/institution head is the Chief Operational Officer (COO) for a particular government area.[72] However, specifically for regional financial management powers, the President delegates these powers to Governors in Provincial areas and Regents/Mayors in Regency/City areas. They prepare and execute the Regional Revenue and Expenditure Budget.[73] Financial management powers do not include authority in the monetary sector, which includes, among other things, issuing and circulating money because this is the authority of Bank Indonesia as the central bank of state.[74]

[70] Explanatory section of Law Number 17 of 2003 on State Finances.
[71] Article 1 paragraph (1) Law Number 17 of 2003 on State Finance.
[72] Explanatory section of Law Number 17 of 2003 on State Finances.
[73] Article 6 paragraph (2) Law Number 17 of 2003 on State Finance.
[74] Article 23D of the 1945 Constitution. See also Law Number 23 of 1999 on Bank Indonesia.

Figure 2.2

Power Structure over State Financial Management in Indonesia



Source: Author

Figure 2.2. shows that the President is the highest leader in the governance of state finances. He distributes his authority to three institutions based on the provisions of the law. The Minister of Finance is the Chief Financial Officer, and the Ministry/Leaders of Institutions is the Chief Operational Officer. Meanwhile, regional leaders such as Governors, Regents, and Mayors are the holders of regional financial responsibilities based on the provisions of the law and the delegation of authority from the President as the holder of central government power.

To exercise power over fiscal management, the Minister of Finance has the following duties: a) formulating fiscal policy and macroeconomic framework; b) preparing a draft of State Revenue and Expenditure Budget and a draft of State Revenue and Expenditure Budget amendment; c) ratifying budget implementation documents; d) entering into international agreements in the financial sector; e) carrying out the collection of state revenues as determined by law; f) carrying out the functions of the state general treasurer; g) preparing financial reports which constitute accountability for the implementation of the State Revenue and Expenditure Budget; and h) carrying out other tasks in the field of fiscal management based on statutory provisions.[75]

[75] Article 8 Law Number 17 of 2003 on State Finance.

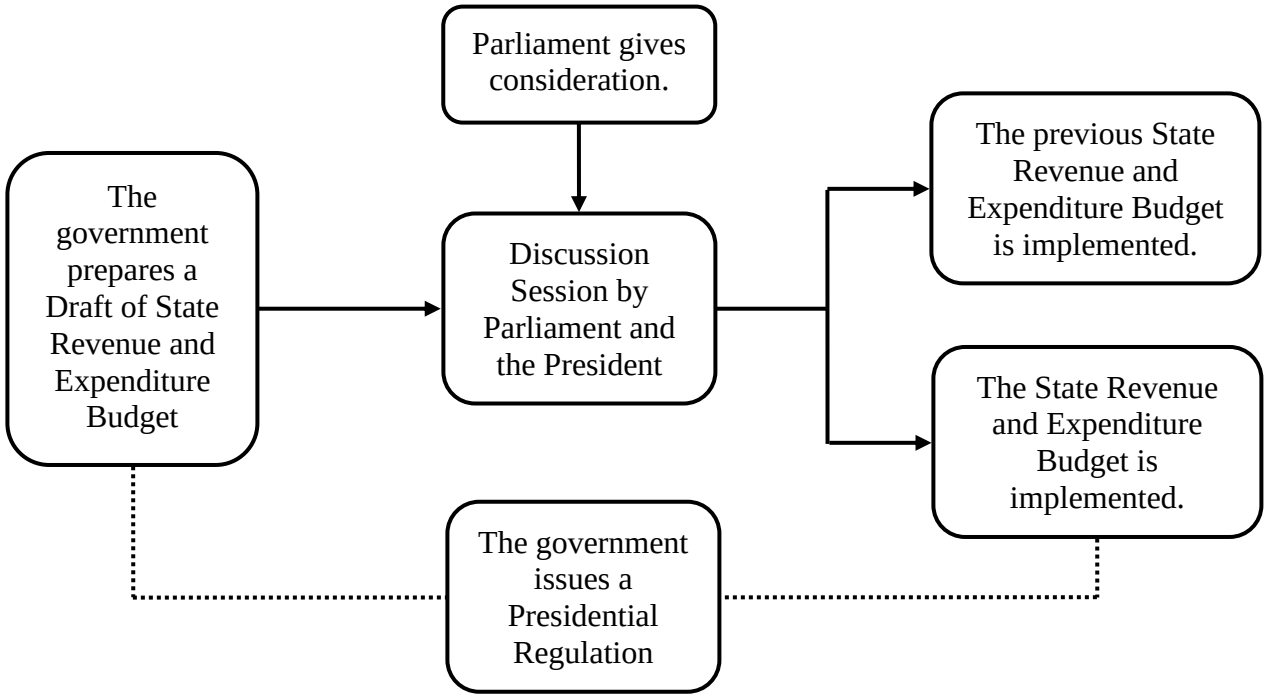
Ministers/institution heads as Budget Users/Property Users of the state ministries/institutions they lead have the following duties: a) preparing a draft budget for the state ministry/institution they lead; b) preparing budget implementation documents; c) implementing the budget of the state ministry/institution he leads; d) carrying out non-tax state revenue collection and depositing it into the Treasury Country; e) managing state receivables and debts, which are the responsibility of state ministries/institutions he leads; f) managing state property/wealth is the responsibility of the state ministries/institutions he leads; g) preparing and submitting financial reports of state ministries/institutions led by him; and h) carry out other tasks that are his/her responsibility based on the provisions of the Constitution.[76]

Furthermore, in realizing state financial management, each minister and head of institution prepares a work plan and budget in the draft State Revenue and Expenditure Budget and submits it to the Minister of Finance as the drafter of the Draft Law on the State Revenue and Expenditure Budget.[77] Then, the Central Government proposes/submits the Draft Law to the House of Representatives every August of the previous year. As a legislative institution, the People's Representative Council discusses the draft in question. It can submit proposals that result in changes to the amount of revenue and expenditure in the Draft Law. If the House of Representatives rejects the draft proposal, the Government will implement/enact the previous year's State Revenue and Expenditure Budget.[78] Furthermore, based on its authority, the Government issued a Presidential Regulation containing technical details for implementing the Law on State Revenue and Expenditure Budget.[79]

[76] Article 9 Law Number 17 of 2003 on State Finance.
[77] Article 14 Law Number 17 of 2003 on State Finance.
[78] Article 15 Law Number 17 of 2003 on State Finance.
[79] Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Figure 2.3

Mechanism for Preparing the State Revenue and Expenditure Budget



Source: Author

The current mechanism for preparing the State Revenue and Expenditure Budget is the result of the 1998 Indonesian legal reform, which strengthened the role of the House of Representatives in the budget process. The House of Representatives enjoys the authority to revise drafts, make decisions regarding revenue and expenditure, and supervise and even discipline the executive's discretionary power.[80] However, strengthening the legislature's role in the budget process has drawn criticism from the public because it allows parliament members to commit fraud and corruption and creates a complicated bureaucracy.[81]

[80] Juwono, V., & Eckardt, S. (2008). Budget Accountability and Legislative Oversight in Transition: The Case of Post-Suharto Indonesia. In R. Stapenhurst, R. Pelizzo, D. Olson & L. Trapp (Eds.), Legislative Oversight and Budgeting. A World Perspective. (pp. 293-309). Washington DC: World Bank Institute.

[81] Emirullah, C. (2014). The Budgetary Role of the Indonesian Parliament: The Impact of the Law on State Finances. *Journal of Governance and Development (JGD)*, *10*(1), 75-92, https://e-journal.uum.edu.my/index.php/jgd/article/view/13883.

3. State Finance in State-Owned Enterprises

In managing the country, the government uses financial instruments to regulate government instruments related to infrastructure development, education and health services, poverty alleviation, natural resource management, and so on. The government is obliged to allocate a large budget every year to meet the needs of the public It is how the state manages its expenditure on the public.[82] Therefore, the government is obliged to have legal regulations regarding state finances to achieve the state's goal of realizing social justice and community welfare.[83]

State Finance in Law Number 17 of 2003 is "all state rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be made the property of the state in connection with the implementation of these rights and obligations."[84] In modest terms, State Finance is a form of government wealth obtained from government revenues, debts, and loans, or it can be in the form of government spending, fiscal policy and monetary policy.[85]

State finance includes four main objects: state revenues, state expenditure, state debt and loans, and financial policy, which consists of monetary policy, fiscal policy, international economic policy, and government debt management.[86] The central state revenues are taxes, excise, and levies. In addition, the state receives profits from State-Owned Enterprises and Regional-Owned Enterprises as dividends. Therefore, Law Number 17 of 2003 includes money, securities, receivables, goods, and other rights that can be valued in cash, including separated assets in state and regional companies as part of state finances.[87]

---

[82] Robert S. Ford. (1949). State and Local Finance. *The Annals of the American Academy of Political and Social Science*, *266*, 15–23. http://www.jstor.org/stable/1027563.
[83] Lipsky, M., & Smith, S. R. (1989). Nonprofit Organizations, Government, and the Welfare State. *Political Science Quarterly*, *104*(4), 625–648. https://doi.org/10.2307/2151102.
[84] Article 1 paragraph 1 Law Number 17 of 2003 on State Finance.
[85] Haliassos, M., & Tobin, J. (1990). The macroeconomics of government finance. *Handbook of Monetary Economics*, Elsevier vol *2*, p. 889-959, https://doi.org/10.1016/S1573-4498(05)80024-4.
[86] Utama, M. A. R., Maulana, M. R., Putri, F. R. A., Ramadhani, F., & Octaviana, S. N. (2020). State Financial System in Indonesia: Some Recent Developments. *The Indonesian Journal of International Clinical Legal Education*, *2*(2), 147-166, https://doi.org/10.15294/ijicle.v2i2.37676.
[87] Article 2 paragraph g Law Number 17 of 2003 on State Finance.

The existence of state finance in State-Owned Enterprises emerges in Law Number 19 of 2003, which mentions that company capital is a separate state asset. State capital participation in establishing and participating in State-Owned Enterprises comes from the State Revenue and Expenditure Budget, reserve capitalization and other sources.[88]

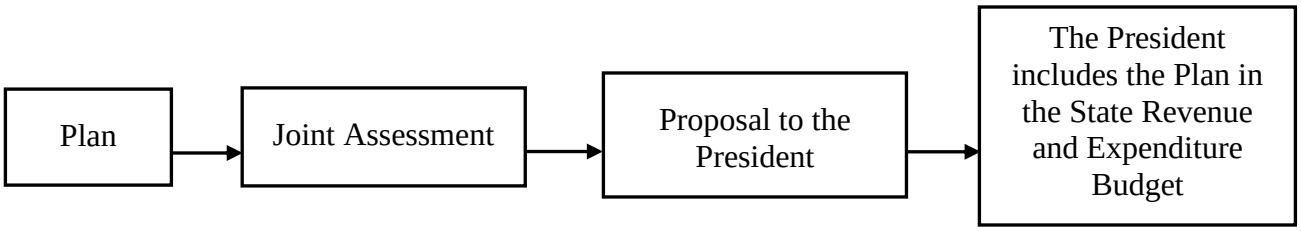
Technically, the procedure for "separating state assets" in Law Number 17 of 2003 and Law Number 19 of 2003 is State Equity Participation, namely the process of separating state assets from state finances as company capital. For example, through the State Revenue and Expenditure Budget, the Government places capital in State-Owned Enterprises to increase business capital or restructure the company's finances. In other examples, the Government directly buys shares in private companies or includes additional state capital to State-Owned Enterprises to buy shares in private companies.[89]

In the State Equity Participation process, as shown in the Figure 2.4. The first procedure is the preparation of a plan initiated by the Minister of Finance or Technical Minister related to the business activities of State-Owned Enterprises. Next, the Minister of Finance leads the review of the State Equity Participation plan with Ministers, heads of other agencies or independent consultants. After the study team decided that the State Equity Participation plan was feasible, the Minister of Finance submitted the proposal to the President for approval. The President will include the State Equity Participation proposal in the Draft State Revenue and Expenditure Budget for further discussion in the parliamentary session.[90]

[88] Article 4 paragraph 1-2 Law Number 19 of 2003 on State-Owned Enterprises.
[89] Hidayatulloh, & Erdős, É. (2023). State-Owned Enterprise's Debt in the State Financial Regime. *Sriwijaya Law Review*, *7*(1), 105-120, http://dx.doi.org/10.28946/slrev.Vol7.Iss1.1843.pp105-120. See also Government Regulation Number 44 of 2005 concerning procedures for participating and administering state capital in State-Owned Enterprises and Limited Liability Companies.
[90] Articles 10 and 11 Government Regulation Number 44 of 2005 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies.

Figure 2.4

Procedures for State Equity Participation in State-Owned Enterprises



Source: Author

Sources of State Equity Participation from the State Revenue and Expenditure Budget include state assets in the form of fresh funds, state-owned goods, state receivables from State-Owned Enterprises or Limited Liability Companies, state-owned shares in State-Owned Enterprises or Limited Liability Companies, and other state assets.[91] The State can carry out State Equity Participation to establish State-Owned Enterprises wholly owned by the State or those with a majority share. The State can also increase state equity participation for State-Owned Enterprises by paying subsidies or rescuing failed or debt-ridden companies. In certain circumstances, the State can buy shares in private companies based on statutory provisions to save the national economy.[92]

4. State-Owned Enterprise is Part of State Financial Regime

The constitutional debate regarding the wealth status of State-Owned Enterprises arose due to the definition of state finance in Law Number 17 of 2003. It mentions, in Article 1, that state finance is all state rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be used as state property in connection with the implementation of these rights and obligations. Next, Article 2 addresses that state finance includes: the right of the state to collect taxes, issue and circulate money and make

[91] Article 2 Government Regulation Number 71 of 2016 on Amendments to Government Regulation Number 44 of 2005.
[92] Articles 5 and 6 Government Regulation Number 44 of 2005 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies.

loans, the state's obligation to carry out public service tasks for the state government and pay bills to third parties, state revenue, state expenditure, regional reception, regional output, separated state assets/regional assets managed by themselves or by other parties in the form of securities, receivables, goods, and other rights that can be valued in money, including separated state assets in state/regional companies, assets of other parties controlled by the government in the context of carrying out government duties and/or public interests, and other party's assets obtained by using facilities provided by the government.[93]

Based on the understanding of the meaning of "state finance" in Article 2 Letter (g) and (i) Law Number 17 of 2003, the assets of State-Owned Enterprises are part of state finance because they originate from the State-Owned Revenue and Expenditure Budget.

Previously, the explanation of Law Number 31 of 1999 emphasizes that the meaning of state finance is all state assets in whatever form, separated or not separated, including all parts of state assets and all rights and obligations arising from the control, management, and accountability of State institution officials, both at the central and regional levels. In addition, it is also under the control, management, and responsibility of State-Owned Enterprises/Regional-Owned Enterprises, foundations, legal entities, and companies that include state capital or third-party capital based on an agreement with the State.[94]

According to the Center for Strategic Studies University of Indonesia (CSSUI), the regulation of "separated wealth in state companies/regional companies" within the scope of state financial management is contrary to Article 23 paragraph (1) of the 1945 Constitution, which regulates that the Revenue and Expenditure Budget as the only form of state financial management. This provision means that the State Revenue and Expenditure Budget, which originates from taxes, has the potential not to be fully used for the main interests of the people, such as development, health, education, and other public services.[95]

CSSUI considers that this article creates discrimination because state assets are only calculated as capital, while most of the profits generated by state companies or regional

[93] Article 1 and 2 Law Number 17 of 2003 on State Finance.
[94] Law Number 31 of 1999 on Eradication of Criminal Act of Corruption.
[95] Decision of the Constitutional Court of the Republic of Indonesia Number 48/PUU-XI/2013, https://www.mkri.id/index.php?page=download.Putusan&id=2050.

companies are in the interests of company managers. Moreover, CSSUI emphasizes that state assets in State-Owned Enterprises are in the form of company shares. Not all company assets are state assets. [96] In corporate theory, wealth is separated between the owner and the company. Therefore, if the company loses or is in debt, the owner's loss is only based on his share ownership and does not result in losing all his assets.[97]

Regarding the separation of the assets of the owner and the company, Law Number 19 of 2003 has a concept contradictory to Law Number 17 of 2003. Article 1 point (10) of Law Number 19 of 2003 states: "Separated state assets are state assets which come from the State Revenue and Expenditure Budget to be used as state capital participation in Persero and/or *Perum* (Public Company) and other limited liability companies." Furthermore, in the Explanation to Article 4 paragraph (1), it is stated: "What is meant by separated is the separation of state assets from the State Revenue and Expenditure Budget to be used as state participation in State-Owned Enterprises for further guidance and management no longer based on the State Revenue and Expenditure Budget system, but its development and management are based on healthy company principles."[98]

On the issue of understanding "separated state assets" in State-Owned Enterprises, the Minister of Finance requested a Fatwa from the Supreme Court of the Republic of Indonesia. Subsequently, the Supreme Court issued a Fatwa number WKMA/YUD/20/VIII/2006/2006 concerning SOE Receivables. First, the meaning of "separated state assets" is the separation of state assets from the State Revenue and Expenditure Budget to be used as state capital participation in SOEs. Thus, the development and management of state assets are based on the principles of good corporate governance, not the State Revenue and Expenditure Budget principles. [99]

Next, Article 1 point 6 of Law Number 1 of 2004 on the State Treasury mentions that "State receivables are the amount of money that must be paid to the Central Government

---

[96] Fahriyadi, "UU Keuangan Negara Digugat ke MK," Kontan 22 May 2013, https://nasional.kontan.co.id/news/uu-keuangan-negara-digugat-ke-mk.

[97] Millon, D. (1990). Theories of the Corporation. *Duke Law Journal*, *1990*(2), 201–262. https://doi.org/10.2307/1372611.

[98] Article 1 and 4 Law Number 19 of 2003 on State-Owned Enterprises.

[99] Fatwa of the Supreme Court of the Republic of Indonesia No WKMA/YUD/20/VIII/2006/2006 on SOE Receivables.

and/or the rights of the Central Government which can be valued in money as a result of agreements or other consequences based on applicable laws or other lawful effect." Based on the contents of this article, the Supreme Court stated that SOE receivables are not State receivables.

In addition, Article 8 of Law Number 49 Prp of 1960 on the Committee for State Receivables stipulates that state receivables also include receivables from entities whose assets and capital are partly or wholly owned by the state, for example, state banks, state companies, and others. However, the provision for SOEs receivable in the law does not apply due to Law Number 19 of 2003 concerning SOEs which is the particular and latest law.

Finally, the legal provisions regarding state finances in Article 2 letter g of Law Number 17 of 2003 concerning State Finances mentioned that assets separated from state companies or regional companies do not have legally binding force.

In its decision, the Constitutional Court concluded that state finance is not only the State Revenue and Expenditure Budget but is broader as Article 23C of the 1945 Constitution, which mentions: "Other matters regarding state finances are regulated by law." Based on this provision, state finance is broad, including, among other things, state assets, which are separated from the State Revenue and Expenditure Budget into State-Owned Enterprises. Therefore, State-Owned Enterprises are representatives of the state in carrying out some of the public welfare functions stipulated in the provisions of Article 33 of the 1945 Constitution. In addition, State-Owned Enterprises are not entirely private legal entities like private companies.[100]

The provisions of Article 33 of the 1945 Constitution embody the welfare state concept adopted by Indonesia. In simple terms, the concept of a welfare state is the state's role and responsibility for its citizens' prosperity.[101] The state provides the basic needs of

[100] Decision of the Constitutional Court of the Republic of Indonesia Number 48/PUU-XI/2013, https://www.mkri.id/index.php?page=download.Putusan&id=2050.
[101] Alfitri, A. (2012). Ideologi Welfare State Dalam Dasar Negara Indonesia: Analisis Putusan Mahkamah Konstitusi Terkait Sistem Jaminan Sosial Nasional. *Jurnal Konstitusi*, *9*(3), 449-472, https://doi.org/10.31078/jk932.

society in order to avoid the economic gap between the rich and the poor.[102] Likewise, the state is obliged to control essential public goods because often, the market cannot provide them, or if they are available, they are costly.[103]

Therefore, the principles of the Indonesian welfare state are the following five basic things. First, the state controls essential branches of production that concern the livelihoods of many people. Next, private businesses may control economic sectors outside the branches of production which concern the livelihoods of many people. However, the state regulates competition and prevents monopolies and oligopolies, which can distort the market. In addition, the state is directly involved in efforts to improve the welfare of the people. Moreover, the country can develop a progressive tax system. Finally, public decision-making is democratic.[104]

The Constitutional Court's decision reaffirms the provisions of Law Number 17 of 2003 that State-Owned Enterprises are part of the state financial regime even though they are separate from the State Revenue and Expenditure Budget.[105] Therefore, State-Owned Enterprises are fully responsible for managing the company's finances to the state, not only as shareholders but also for the state finance attached to them.

Furthermore, the Constitutional Court's decision amplifies the concept of Indonesian state finance. It divides its management into state finance institutions, both managing separated and non-separated of the State Revenue and Expenditure Budget. State-owned enterprises manage a part of state finance which is not the State Revenue and Expenditure Budget. The following is an illustration that describes the scope of state finance:[106]

---

[102] Korpi, W., & Palme, J. (1998). The paradox of redistribution and strategies of equality: Welfare state institutions, inequality, and poverty in the Western countries. *American sociological review*, 661-687, https://www.jstor.org/stable/2657333.

[103] Prasetyo, K. F. (2012). Politik hukum di bidang ekonomi dan pelembagaan konsepsi welfare state di dalam Undang-Undang Dasar 1945. *Jurnal Konstitusi*, *9*(3), 495-514, https://doi.org/10.31078/jk934.

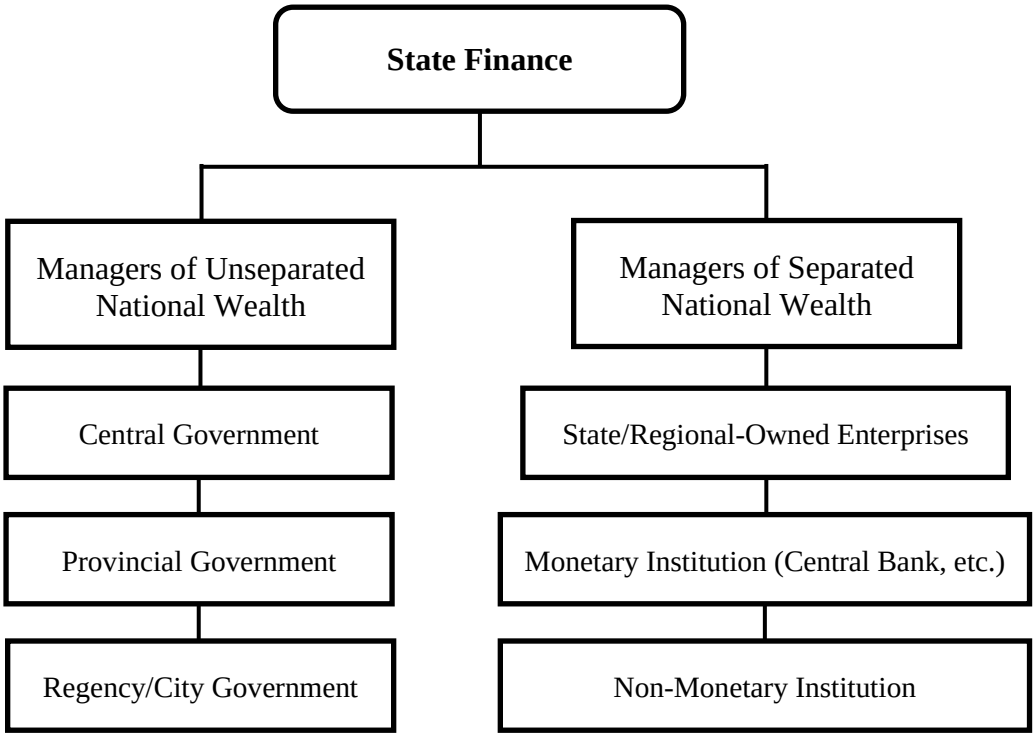
[104] Decision of the Constitutional Court of the Republic of Indonesia Number 48/PUU-XI/2013, https://www.mkri.id/index.php?page=download.Putusan&id=2050.

[105] Hidayatulloh, H., & Erdős, É. (2023). State-Owned Enterprise's Debt in the State Financial Regime. *Sriwijaya Law Review*, *7*(1), 105-120, http://dx.doi.org/10.28946/slrev.Vol7.Iss1.1843.pp105-120.

[106] Decision of the Constitutional Court of the Republic of Indonesia Number 48/PUU-XI/2013, https://www.mkri.id/index.php?page=download.Putusan&id=2050.

Figure 2.5

Scope of Indonesian State Finance from the Subject Side



Source: Author

Figure 2.5. describes the subject side of the scope of public finance in Indonesia. Conceptually, in public law, state financial management is divided into Managers of Unseparated National Wealth and Managers of Separated National Wealth. Government institutions included in the Managers of Unseparated National Wealth are the Central Government, Provincial Government, and Regency/City Government. In contrast, government institutions that are Managers of Separated National Wealth are State/Regional Owned Enterprises, Monetary Institutions, and Non-Monetary Institutions.

5. The Ownership Model of Indonesian State-Owned Enterprises

Based on the division of ownership types of State-Owned Enterprises, the World Bank has put forward four types adopted by many countries in the world, including the decentralized model, the dual model, the advisory model, and the centralized model. In the first ownership model, the state divides the duties and responsibilities of supervision of State-Owned Enterprises among many ministries. Generally, each ministry regulates companies related to its work area. The second ownership model is the division of supervisory responsibilities between only two ministries. The Ministry of Finance is involved in financial affairs, while the Ministry of Technical Affairs is involved in management matters, business activities and company performance.[107]

Furthermore, the third model has the same concept as the first model, which divides ownership of State-Owned Enterprises among many ministries. However, the significant difference is that a particular body coordinates and advises all ministries that manage State-Owned Enterprises. Finally, the fourth ownership model is centralization in one independent institution or unique ministry. Therefore, all State-Owned Enterprises have sole authority as owners and performance supervisors.[108]

In contrast to the World Bank, the OECD divides the ownership types of State-Owned Enterprises into six models: a centralized model, a coordinating agency model, a twin-track model, a separate track model, a dual ownership model and a decentralized ownership model. In the first model, ownership of state-owned enterprises rests with just one body that has a centralized role. The Government handed over the authority to regulate and supervise State-Owned Enterprises to this particular agency. Then, in the second model, the Government appoints an extraordinary institution to coordinate between the shareholders and State-Owned Enterprises ministries. Apart from that, the role of this unique agency is also to supervise and provide evaluations to companies.[109]

---

[107] World Bank, *Corporate Governance of State-Owned Enterprises: A Toolkit* (Washington DC: The World Bank, 2014), 70, https://doi.org/10.1596/978-1-4648-0222-5.
[108] World Bank, *Corporate Governance of State-Owned Enterprises: A Toolkit*, p. 70.
[109] OECD, *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices* (Paris, Secretary General of OECD, 2021), 16-17, https://www.oecd.org/corporate/ownership-and-governance-of-state-owned-enterprises-a-compendium-of-national-practices.htm.

Furthermore, in the third model, ownership of State-Owned Enterprises rests with two institutions also tasked with regulating and supervising. As for the fourth model, ownership of State-Owned Enterprises is spread across many institutions, such as holding companies and privatized institutions. Then, in the fifth model, ownership of State-Owned Enterprises is vested in two ministries or government institutions with a division of roles. One ministry or agency supervises financial matters, while another supervises management matters. Finally, the sixth model is that ownership is decentralized or not centered on one institution. Every State-Owned Enterprise has shareholders from ministries or government institutions following its business focus and activities.[110]

In the ownership structure of State-Owned Enterprises in Indonesia, the Government appoints and authorizes the Minister of State-Owned Enterprises as shareholder and capital owner, while the Technical Minister is the policy regulator for the sector where the company carries out business activities.[111] This dual ownership model gives two ministries the power to exercise ownership with a division of roles, as in the results of the OECD study.[112] Meanwhile, the World Bank categorizes that Indonesia implements centralized ownership because it determines the Ministry of State-Owned Enterprises as the sole owner on behalf of the government.[113] The results of the OECD research emerge on an understanding of the rules in Law Number 19 of 2003, which regulate the division of roles between the Technical Minister and the Minister of State-Owned Enterprises, while the World Bank sees that ownership matters fall under the full authority of the Ministry of State-Owned Enterprises as the government's representative based on law.

In general, the Ministry of State-Owned Enterprises has the task of carrying out government affairs related to State-Owned Enterprises and developing entities that are directly and indirectly related to State-Owned Enterprises. The ministry has several functions. First, to formulate and establish policies in developing strategic business

---

[110] OECD, *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices,* p. 18-19.
[111] Article 1 paragraph 5 and 6 of Law Number 19 of 2003 on State-Owned Enterprises. See also Article 1 paragraphs 5 and 6 Government Regulation Number 45 of 2005 on the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises.
[112] OECD, *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices,* p. 15.
[113] World Bank, *Corporate Governance of State-Owned Enterprises: A Toolkit,* p. 82-83.

initiatives, strengthening competitiveness and synergy, strengthening performance, creating sustainable growth, restructuring, business development, and increasing the capacity of company business infrastructure. Next, it must coordinate and synchronize policy implementation in preparing strategic business initiatives, strengthening competitiveness and synergy, strengthening performance, creating sustainable growth, restructuring, business development, and increasing the capacity of company business infrastructure. In addition, it should coordinate the implementation of tasks, coaching, and providing administrative support within the Ministry of State-Owned Enterprises. Moreover, it has obligation to manage state property which is the responsibility of the Ministry of State-Owned Enterprises. Lastly, it must supervise the implementation of tasks within the Ministry of State-Owned Enterprises.[114]

In carrying out his duties and functions, the Minister of State-Owned Enterprises shares roles with the Technical Minister and the Minister of Finance. For example, in preparing and amending the articles of association of a public company, the Minister of State-Owned Enterprises must review them with the Technical Minister.[115] In addition, regarding the appointment and dismissal of directors, the Minister of State-Owned Enterprises may request the consideration of the Technical Minister and/or the Minister of Finance. Furthermore, in the organizational structure, Public Company Supervisory Board members represent elements of officials under the Technical Minister, Minister of Finance, Ministers, and heads of departments/non-departments whose activities are directly related to Public Companies.[116]

[114] SOEs, Functional and Main Duties, https://bumn.go.id/profil/peranan#two.
[115] Article 10 Government Regulation Number 45 of 2005 on the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises.
[116] Article 49 paragraph 1 Government Regulation Number 45 of 2005 on the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises.

6. Supervision of State-Owned Enterprises

Every company has internal and external monitoring mechanisms, including State-Owned Enterprises. The company's monitoring system begins with protecting shareholders' assets from losses from two assumptions. The first is that the managers are usually competent, fair, and loyal. They can work well without intervention from shareholders. The second assumption is the opposite, that managers will lack competence or lose competence. They can carry out actions and policies that are detrimental to the company.[117]

Internal supervision shares roles with external supervision. Both are equally important in good corporate governance. Internal control can control organizational performance, incentive policies and managerial positions. Moreover, internal supervisors can involve themselves continuously with company managers and build personal relationships. Meanwhile, external supervision is outside the company organization and is independent. Government legal policies support its existence and can provide sanctions for bad company behavior. However, in corporate governance studies, external supervisors can maintain a company's good image before the public.[118]

In Indonesian State-Owned Enterprises, the Commissioner and Supervisory Board are two internal supervisory organizations that are fully responsible. The difference is that the Commissioner is the supervisor of the State-Owned Enterprise, which has the legal entity Persero. At the same time, the Supervisory Board is the supervisor of the State-Owned Enterprise, which is the legal entity of a Public Company. They must carry out their duties by the Articles of Association and statutory regulations and implement the principles of professionalism, efficiency, transparency, independence, accountability, responsibility, and fairness.[119]

Commissioners are appointed and dismissed by the General Meeting of Shareholders, while the Supervisory Board is by the Minister of State-Owned

---

[117] Conard, Alfred F. "The Supervision of Corporate Management: A Comparison of Developments in European Community and United States Law." *Michigan Law Review* 82, no. 5/6 (1984): 1459–88. https://doi.org/10.2307/1288490.

[118] de Waal, M. M. (2020). The Balancing Act of Effective Supervision: Understanding the Relationship between Internal and External Supervision. University of Groningen, SOM research school, https://doi.org/10.33612/diss.134516438.

[119] Article 1 paragraph 7-8 and Article 6 Law Number 19 of 2003 on State-Owned Enterprises.

Enterprises.[120] Commissioners and Supervisory Boards, two bodies with supervisory roles in State-Owned Enterprises, must have integrity, dedication, understanding of corporate governance issues, knowledge about the company, and readiness to carry out their duties.[121]

In the organizational structure, Indonesian State-Owned Enterprises use a two-tier board system model with a division of duties between the Board of Commissioners as supervisors and the Board of Directors as company managers.[122] The two-tier structure is a Germanic system that is widely adopted by Continental European countries. In Germany, the supervisory board (*Aufsichtsrat*) has the task of monitoring the management board's (*Vorstand*) competence. It provides advice on important company policies.[123] Another example is Poland, which places the management board as the decision-making body responsible for the company's strategy and operations. In contrast, the supervisory body exercises daily supervision in all areas of the company's activities.[124] Likewise, Chinese State-Owned Enterprises implement a two-tier board structure consisting of a Board of Directors as a decision-making unit and a Supervisory Board as a monitoring mechanism.[125]

Furthermore, each country has Supreme Audit Institutions (SAIs), the leading public sector audit organizations, regarding external supervision for state-owned enterprises. Each audit body is established to ensure that all public expenditures are managed effectively, efficiently, and economically through audit and examination.[126] In international relations, this body joins an umbrella organization called the International Organization of Supreme Audit Institutions (INTOSAI) as a forum for sharing knowledge, experience, and organizational development. Based in Vienna, Austria, this organization has four work

---

[120] Article 27 and 56 Law Number 19 of 2003 on State-Owned Enterprises.
[121] Article 50 Government Regulation Number 45 of 2005 on the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises.
[122] Umanto, U., Hartatiningsih, I., & Ikasari, N. (2022). Board Structure in State-Owned Enterprises (SOEs): Two-tier Model Analysis on the Implementation of Corporate Governance in Indonesia. *BISNIS & BIROKRASI: Jurnal Ilmu Administrasi dan Organisasi*, *29*(3), 5, https://doi.org/10.20476/jbb.v29i3.1324.
[123] Weimer, Jeroen, and Joost Pape. "A taxonomy of systems of corporate governance." Corporate governance: An international review 7, no. 2 (1999): 152-166. https://doi.org/10.1111/1467-8683.00143.
[124] Bohdanowicz, L. (2015). The impact of ownership structure on supervisory board size and diversity: evidence from the Polish two-tier board model. *Procedia economics and finance*, *23*, 1420-1425, https://doi.org/10.1016/S2212-5671(15)00429-3.
[125] Xiao, J. Z., Dahya, J., & Lin, Z. (2004). A grounded theory exposition of the role of the supervisory board in China. *British Journal of Management*, *15*(1), 39-55, https://doi.org/10.1111/j.1467-8551.2004.t01-1-00399.x.
[126] Hidayatulloh; Erdos, Eva. (2022). Restrengthening the Role of Supreme Audit Agency in Supervising State-Owned Enterprises. *ICJ*, *8*, 152, https://doi.org/10.13165/j.icj.2022.12.003.

streams: professional standards, knowledge sharing, capacity development, and international organization model. They produced two critical documents, the "Lima Declaration" in 1977 and the "Mexico Declaration" in 1997. They have widely collaborated with many public audit organizations throughout the world.[127]

Even though audit bodies are members of INTOSAI, each country has an audit organization model, generally divided into three: the Napoleonic or Judicial model, the Westminster model, and the Board or Collegiate model. In the Napoleonic or Judicial model, SAI has administrative and judicial authority independent of legislative and executive power. This institution is part of the judicial authority that examines and adjudicates public financial legal issues. Latin countries of Europe (France, Italy, Spain, and Portugal), Turkey, and most Latin Americas and francophone African countries adopted this model. Then, in the Westminster model, SAI, which has professional auditors and technical experts, is an independent body responsible to parliament but has no judicial authority. Many commonwealth countries such as England, Canada, Australia, India, and many Caribbean, Pacific and sub-Saharan African countries practice this model. Lastly is the Board or Collegiate model, which has no judicial authority like the Westminster model and is independent of the executive institution in helping the legislative institution supervise public financial managers. Asian countries like Indonesia and the Republic of Korea generally apply this model.[128]

Indonesia, adopted the Board or Collegiate model, has the Audit Board of the Republic of Indonesia. It is "a state institution tasked with examining the management and responsibility of state finances as intended in the 1945 Constitution of the Republic of Indonesia."[129] It has a constitutional mandate as one of the high state institutions to supervise and examine the management of state finance.[130] This institution is domiciled in

[127] The Organization for Economic Co-operation and Development. (2010). Good Practices in Supporting Supreme Audit Institutions. Paris: OECD, p. 11-12, https://www.eurosai.org/en/databases/products/OECD-Good-Practices-in-Supporting-Supreme-AuditInstitutions/.
[128] Stapenhurst, R., & Titsworth, J. (2001). Features and functions of supreme audit institutions. Africa Region Findings & Good Practice Infobriefs; No. 208. World Bank, Washington, DC. http://hdl.handle.net/10986/9766.
[129] Article 1 Paragraph 1 of Law Number 15 of 2006 on the Audit Board of the Republic of Indonesia.
[130] Hidayatulloh; Erdos, Eva. (2022). Restrengthening the Role of Supreme Audit Agency in Supervising State-Owned Enterprises. *ICJ*, *8*, 152, https://doi.org/10.13165/j.icj.2022.12.003.

the nation's capital and has representatives in every province.[131] Nine members, elected by the House of Representatives, including the chair and deputy chairperson, serve for five years and can be re-elected for one term.[132]

The main task of the Audit Board is to examine the management and responsibility of state finances carried out by the Central Government, Regional Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regional-Owned Enterprises, and other institutions that manage state finances, including state-owned legal entities, foundations that receive state facilities, commissions established by law, and private entities that receive and/or manage state money. The scope of duties is financial audits, performance audits, and audits with specific objectives.[133]

After carrying out the audit, the Audit Board submits the audit results on the management and responsibility of state finances to the People's Representative Council, Regional Representative Council and Regional People's Representative Council by its authority. Examination result documents are public data that are open to the public.[134] To follow up on audit results, the Audit Board also submits written audit results to the President, Governor, and Mayor/Regent by its authority. If a criminal element shows in the audit results, the Audit Board reports it to the authorized investigating officer.[135]

The Audit Board's duties only extend to the results of audits of state financial management. However, suppose there is a potential for a criminal act of corruption. In that case, the Corruption Eradication Commission, as an independent institution, can follow up the Calculation Result Report of State Financial Losses to the investigation stages, inquiry, and prosecution to the Corruption Crime Court.[136] Even other institutions, such as the Center for Financial Transaction Reports and Analysis, can involve themselves in alleged criminal acts of money laundering if there are indications of state financial losses due to an

---

[131] Article 3 Paragraph 1 of Law Number 15 of 2006 on the Audit Board of the Republic of Indonesia.
[132] Article 4 Paragraph 1 of Law Number 15 of 2006 on the Audit Board of the Republic of Indonesia.
[133] Article 6 Paragraph 1 of Law Number 15 of 2006 on the Audit Board of the Republic of Indonesia.
[134] Article 7 Paragraph 1 of Law Number 15 of 2006 on the Audit Board of the Republic of Indonesia.
[135] Article 8 Paragraph 1 of Law Number 15 of 2006 on the Audit Board of the Republic of Indonesia.
[136] Candra, L. A., Ruslan, A., & Arie, M. (2022). The Authority of the State Audit Board in Managing State Finances as an Effort to Prevent Corruption. *Jurnal Hukum Volkgeist*, *7*(1), 89-96, https://doi.org/10.35326/volkgeist.v7i1.2810.

audit by the Audit Board. [137] The three institutions can work together to save the state treasury from fraud and corruption. This collaboration is a model for eradicating corruption using an administrative law approach with the role of the Audit Board as the leading institution providing preliminary information.[138]

[137] Illahi, B. K., & Alia, M. I. (2017). Pertanggungjawaban Pengelolaan Keuangan Negara Melalui Kerja Sama BPK dan KPK. *Integritas: Jurnal Antikorupsi*, *3*(2), 37-78, https://doi.org/10.32697/integritas.v3i2.102.
[138] Yustia, D. A., & Arifin, F. (2023). Bureaucratic reform as an effort to prevent corruption in Indonesia. *Cogent Social Sciences*, *9*(1), 2166196, https://doi.org/10.1080/23311886.2023.2166196.

CHAPTER III

TRANSFORMATION OF LEGAL GOVERNANCE OF STATE-OWNED ENTERPRISES IN INDONESIA

1. Transformation of State-Owned Enterprises

In increasing prosperity and reducing poverty, several developing countries such as Indonesia, Pakistan, Bolivia, and Colombia utilize State-Owned Enterprises to redistribute income and provide essential goods. With monopoly power, state-owned enterprises provide basic food, electricity, water, and mass transportation with subsidies from the government. Even more than that, as in Indonesia and Malaysia, government banks provide credit with interest rates to poor people to advance their businesses and increase their income.[139]

Throughout its history, State-Owned Enterprises have had challenges and obstacles that have forced them to change according to the conditions of the times. Currently, the country's political elite and the political connections of corporate executives are driving the globalization of State-Owned Enterprises. Developed countries, although sometimes competing and allying with each other, are expanding to operate state companies to expand trade and income.[140] On the other hand, developing countries are trying to improve the governance of State-Owned Enterprises, especially in order to maintain natural resource wealth so that it remains state ownership. Corporate governance reform is an absolute obligation for them.[141]

Since independence in 1945, Indonesia, for example, has experienced several political upheavals and legal reforms that have affected the governance of State-Owned Enterprises. Economic democratization also plays a vital role in transforming the

---

[139] Gillis, Malcolm. "The Role of State Enterprises in Economic Development." *Social Research* 47, no. 2 (1980): 248–89, http://www.jstor.org/stable/40982645.

[140] Liang, H., Ren, B. & Sun, S. An anatomy of state control in the globalization of state-owned enterprises. *J Int Bus Stud* **46**, 223–240 (2015), https://doi.org/10.1057/jibs.2014.35.

[141] Kaunda, Elias, and Theuns Pelser. "Corporate governance and performance of state-owned enterprises in a least developed economy." *South African Journal of Business Management* 54, no. 1 (2023): 3827, https://journals.co.za/doi/full/10.4102/sajbm.v54i1.3827.

management of State-Owned Enterprises, especially regarding the balance between capital owners and company executives.[142]

This article analyzes the transformation of the law on the governance of State-Owned Enterprises in the history of the Republic of Indonesia. Besides, governance development is also related to how the corporatization process of State-Owned Enterprises adapts to modern economic developments. Using a legal history approach, the Indonesian Government issued many laws and regulations that reformed the governance, form, legal relationships, and ownership of State-Owned Enterprises.

2. Overview of Indonesian State-Owned Enterprises

2.1. Early Period of Independence (1945-1958)

This early period was the movement for Indonesian independence from the Dutch Colonial Government. Since the declaration of independence on 17 August 1945, the Indonesian government took overpower from the Dutch, including sources of economic income from state companies. The State Constitution, as a result of the formulation of the nation's founders, mandates that the Indonesian state must manage and control all the wealth of Indonesia's homeland, such as agricultural products, water management, and mining.[143] On the other hand, the Dutch, who had controlled the archipelago (before it officially became Indonesia) for an extended period, wanted to maintain their economic interests in Indonesia after independence. Therefore, the takeover of companies that managed state assets from the Netherlands to the Indonesian government gave rise to military and social conflict in society.[144]

The beginning of this period was also the peak of the spirit of the "Indonesianization" movement or the acquisition of political, social, and economic power by native Indonesians over long periods of Dutch control. Along the way, the process of

---

[142] Wicaksono, Agung. "Indonesian State-Owned Enterprises: The Challenge of Reform." *Southeast Asian Affairs*, 2008, 146–67, http://www.jstor.org/stable/27913357.
[143] Dick, Howard. "Formation of the nation-state, 1930s–1966." In *The Emergence of a National Economy*, pp. 153-193. Brill, 2002. https://doi.org/10.1163/9789004486454_015.
[144] Anderson, Benedict RO'G. "Old state, new society: Indonesia's new order in comparative historical perspective." *The Journal of Asian Studies* 42, no. 3 (1983): 477-496, https://doi.org/10.2307/2055514.

"Indonesianization" underwent several formation processes. Initially, the Indonesian government established the new companies in previously closed sectors to natives—next, the transfer of assets that initially belonged to Dutch private companies to the Indonesian government. Besides, the Indonesian government also increased supervision of foreign-owned companies and businesses and increased indigenous participation in foreign-owned companies and businesses. Moreover, another policy is the transfer of ownership of foreign companies to the Indonesian government, including the transfer of foreign privately-owned companies to Indonesia and national organizations. More importantly, the Indonesian government also increased the amount of equity ownership of indigenous people in foreign companies. Finally, the expropriation of land is controlled by foreigners and foreign-owned companies to natives.[145]

In the historical records of state companies, Bank Negara Indonesia (BNI; Indonesian State Bank) is the first State-Owned Enterprise. BNI has a dual role as a central and commercial bank based on Government Regulation in Lieu of Law no. 2 of 1946 dated July 5, 1946. He replaced De Javasche Bank (DJB), which had the authority to print and circulate Gulden currency in the Dutch East Indies (before Indonesia became independent). BNI's main task is coordinating economic programs, circulating currency, and managing foreign currency exchange.[146] However, its role as a central bank ended in 1953 after the Government nationalized the DJB and made it the Central Bank of the Republic of Indonesia based on Law Number 11 of 1953 concerning the Principles of Bank Indonesia on July 1, 1953.[147]

After the BNI, the Indonesian government established the Bank Industri Negara (BIN; State Industry Bank) on 4 April 1951 after recognizing full sovereignty from the Netherlands on 23 December 1949. The forerunner to BIN was the president director's order to the head of BNI's credit department to establish a particular bank to finance the industry.

---

[145] Lindblad, J. Thomas. "The Economic Decolonisation of Indonesia: a Bird's-eye View." *Journal of Indonesian Social Sciences and Humanities* 4 (2011): 1-20, http://dx.doi.org/10.14203/jissh.v4i0.71. See also Van der Kerkhof, Jasper. "Indonesianisasi of Dutch economic interests, 1930-1960: The case of Internatio." *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 161, no. 2-3 (2005): 181-209. https://www.sciencedirect.com/org/science/article/pii/S0006229405000018.

[146] The history of BNI https://www.bni.co.id/en-us/company/about-bni/history, accessed 7 May 2024.

[147] The history of Bank Indonesia https://www.bi.go.id/id/tentang-bi/sejarah-bi/default.aspx, accessed 7 May 2024.

The legal basis for establishing this industry-specific bank is Emergency Law Number 5 of 1952 on Providing Legal Status Provisions to State Industrial Banks.[148] The primary duty of BIN was to provide financing and financial assistance to agricultural, plantation, and other industry players. BIN is also working on state development projects and taking over several non-operating private companies. The Indonesian government is diversifying the roles of BIN and BNI so that state banks can work optimally to serve indigenous needs at that time. In subsequent developments, the government merged BIN into the Bank Pembangunan Indonesia (Bapindo; Indonesian Development Bank) in 1960 based on Government Regulation in Lieu of Law Number 30 of 1960.[149]

In this early period, establishing state companies was an effort to strengthen Indonesia's existence as a new sovereign country, apart from Dutch colonial rule. Economic resources urgently need to be controlled to finance state management and improve the welfare of society. Moreover, state companies can play an essential role in fighting the dominance of Dutch and other foreign companies, such as Chinese and Arab, which have developed earlier. These efforts embody Article 33 of the 1945 Constitution, especially regarding the control of natural resources by the government so that they can be fully manageable for the nation's welfare.[150]

2.2. The Nationalization Period (1958-1966)

During this period, the Indonesian government established state companies to support national economic development and took over Dutch-owned companies that were related to the public interest. Before Law Number 86 of 1958 was enacted on the Nationalization of Dutch-owned companies, the takeover of foreign property was legally regulated in the *Onteigeningsordonanntie* (property confiscation regulations) in 1920.

---

[148] Emergency Law no. 5 of 1952 on Providing Legal Status Provisions to State Industrial Banks, https://peraturan.bpk.go.id/Details/52644/uudrt-no-5-tahun-1952, accessed 22 May 2024.
[149] Government Regulation in Lieu of Law (Perpu) no. 30 of 1960 on the Consolidation of the State Industrial Bank into the Indonesian Development Bank, https://peraturan.bpk.go.id/Details/53530/perpu-no-30-tahun-1960, accessed 22 May 2024.
[150] Kadir, MY Aiyub, and Alexander Murray. "Resource nationalism in the law and policies of Indonesia: A contest of state, foreign investors, and indigenous peoples." *Asian Journal of International Law* 9, no. 2 (2019): 298-333, https://doi.org/10.1017/S204425131900002X.

Some companies were state electricity companies, railway companies, postal telegram and telecommunications services, pawnshops, public transport, and several Dutch plantations.[151]

However, the peak of the military and social conflict between the Indonesian and Dutch governments was Indonesia's legal policy to take over and control Dutch-owned companies in Indonesian territory. On December 27, 1958, the Indonesian Government passed Law Number 86 of 1958 on the Nationalization of Dutch-owned companies. The law states that Dutch-owned companies located in the territory of the Republic of Indonesia are subject to nationalization and are declared to be the complete and independent property of the Republic of Indonesia. The owners of these companies received compensation based on the provisions of the appointed Committee of the Indonesian Government.[152]

This legal policy is the culmination of diplomatic failure between the two countries regarding the territory of the Republic of Indonesia, especially West Irian. The Dutch refused to hand over the easternmost region of Indonesia and still controlled the national economy, with its companies continuing to operate. Therefore, the nationalization of hundreds of Dutch-owned companies was a response to the failure of territorial negotiations and the takeover of Dutch economic power.[153]

To complement this law, Government Regulation Number 2 of 1959 regulates three critical aspects of nationalization. Firstly, this regulation regulates the provisions for Dutch-owned companies that are subject to the nationalization legal policy, namely: (1) Companies that are wholly or partly owned by individual Dutch citizens and are domiciled in the territory of the Republic of Indonesia; (2) a company owned by a legal entity whose capital in whole or in part or its founding capital comes from individual Dutch citizens and the

---

[151] Kanumoyoso, Bondan. "Nasionalisasi perusahaan Belanda di Indonesia: menguatnya peran ekonomi negara." Master's thesis, Faculty of Humanity, University of Indonesia, 2001, p. 51-79. https://lib.ui.ac.id/detail?id=93283&lokasi=lokal.

[152] Law Number 86 of 1958 on The Nationalization of Dutch-Owned Companies, https://peraturan.bpk.go.id/Details/52372/uu-no-86-tahun-1958, accessed 21 May 2024. See also Van der Kerkhof, Jasper. "Indonesianisasi of Dutch economic interests, 1930-1960: The case of Internatio." *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 161, no. 2-3 (2005): 181-209, https://brill.com/view/journals/bki/161/2-3/article-p181_1.xml.

[153] Thomas, Kenneth D., and Bruce Glassburner. "Abrogation, Take-over and Nationalization: The Elimination of Dutch Economic Dominance from the Republic of Indonesia." *Australian Outlook* 19, no. 2 (1965): 158–79, https://doi.org/10.1080/10357716508444203.

legal entity is domiciled in the territory of the Republic of Indonesia; (3) a company located within the territory of the Republic of Indonesia and wholly or partly owned by an individual Dutch citizen residing outside the territory of the Republic of Indonesia; and (d) companies located within the territory of the Republic of Indonesia and belonging to a legal entity domiciled within the territory of the Kingdom of the Netherlands.[154]

Second, Government Regulation Number 2 of 1959 established the Dutch Company Nationalization Agency as a committee to take over the assets and wealth of Dutch-owned companies and resolve compensation cases. The Prime Minister has the authority to appoint members of this committee by appointing representatives of the Ministry of Finance and the Ministry of Justice as chairman and deputy chairman to determine compensation.[155]

Third, labor matters fall under the authority of the Minister of Labor to regulate technically by collaborating with company leaders. However, the Minister of Labor's policies are subject to the rules of the Dutch Company Nationalization Agency.[156]

There were many Dutch-owned companies affected by the nationalization policy, which are divided into several types. The first is IBW (*Indonesische Bedrijvenwet*) which is a profit-oriented state company with capital sourced from the state budget as debt. The second is ICW (*Indische Comtabiliteitswet wet*) which is a state company oriented towards social or public services with capital sourced from the state budget as equity. The third is the Nationalized Dutch Companies. The fourth is private companies under BIN and BNI.[157]

Due to the diverse forms of companies that require the unification of organizational models, the Indonesian Government passed Government Regulation Number 19 of 1960 as the legal basis for introducing a new model of state corporate governance. This regulation emphasizes that a state company is a production unit that provides services and public benefits and generates income. The aim of establishing a state company is to help develop

---

[154] Government Regulation (PP) Number 2 of 1959 Principles of Implementation of the Dutch Company Nationalization Law (Law No. 86 of 1958), https://peraturan.bpk.go.id/Details/75698/pp-no-2-tahun-1959, accessed 21 May 2024.
[155] Government Regulation (PP) Number 2 of 1959.
[156] Government Regulation (PP) Number 2 of 1959.
[157] Wie, Thee Kian. "Indonesianization: Economic aspects of decolonization in Indonesia in the 1950s." In *Indonesian economic decolonization in regional and international perspective*, pp. 17-38. Brill, 2009, https://doi.org/10.1163/9789004253780_003.

the national economy by prioritizing the needs of the people and the peace and enjoyment of working within the company towards a society that is just and prosperous materially and spiritually.[158]

This rule also regulates the leadership or directors of state companies appointed by the government. The main task is to determine policy and manage and control the assets of state companies by legal regulations. However, the existence of directors as leaders of state companies' experiences overlapping authority with the existence of the General Management Board.[159] This body's duties are to carry out the work of controlling and managing state companies, the duties of the Board of Directors of certain state companies, and cooperation and unified action in managing state companies. In addition, it has to supervise the control and management of state companies.[160]

Apart from organizational structure challenges, the nationalization program also experienced financial challenges, especially regarding compensation payments to Dutch-owned companies. The Indonesian government spent enormous funds over time to complete the asset nationalization process. In 1960, parties supporting the government, such as the Indonesian National Party and the Indonesian Communist Party, planned to stop paying compensation, but this idea aroused rejection from other parties. After the change in national leadership from Soekarno to Suharto, payments on debts from nationalization continued until fully completed in 2002.[161] See Appendix 2 on the List of Dutch-Owned Companies Nationalized by Indonesia and Changed Their Name.

To strengthen the organization for nationalizing Dutch-owned companies, the government established *Badan Pusat Penguasa Perusahaan-Perusahaan Industri dan Tambang* (BAPPIT; the Central Body for Ruling Industrial and Mining Companies) based on Government Regulation Number 10 of 1958. Based in Jakarta, this body had tasks to control and administer the governance of Dutch-owned industrial companies and mines in

---

[158] Government Regulation Number 19 of 1960 on State Company, http://peraturan.bpk.go.id/Details/53474/perpu-no-19-tahun-1960, accessed 21 May 2024.
[159] Verhezen, Peter, and Tanri Abeng. "Indonesian State-Owned Enterprises: boards that govern and lead." *Doing Business in ASEAN Markets: Leadership Challenges and Governance Solutions across Asian Borders* (2016): 137-158, https://link.springer.com/chapter/10.1007/978-3-319-41790-5_9.
[160] Government Regulation Number 19 of 1960.
[161] Wasino, Wasino. "Nasionalisasi Perusahaan-Perusahaan Asing Menuju Ekonomi Berdikari." *Paramita: Historical Studies Journal* 26, no. 1 (2016): 62-71, https://doi.org/10.15294/paramita.v26i1.5146.

Indonesia. However, this agency can also open branches in the regions and abroad. This agency also takes care of production financing issues and the company's operational costs. Led by directors appointed by the government and in coordination with the Minister of Industry, this agency employs experts from civil society, the military, and experienced professional indigenous workers.[162] See Appendix 3 on the Dutch-owned Industrial and Mining Companies Taken Over by BAPPIT.

2.3. The Corporatization Period (1966-2003)

Corporatization is a change in the model and institutional structure of public services previously organized, produced, and carried out directly by the state, which becomes corporations that operate based on the provisions of company law.[163] In general, corporatization aims to maintain ownership of public services managed by the state by changing the organizational structure, similar to a private company, to encourage increased financial profits. While maintaining state ownership, the government established a public company that separated itself from government institutions.[164]

Corporatization in Indonesia from 1966 to 2003, although still limited to the management aspect, can be seen in changes in legal regulations from Government Regulation Number 19 of 1960 to Law Number 9 of 1969 on Forms of State Enterprises. In its consideration, Law Number 9 of 1969 states that Government Regulation Number 19 of 1960 does not support the efficient performance of state companies. This law introduces three forms of state companies: *Perusahaan Jawatan* (PERJAN; service company), *Perusahaan Umum* (PERUM; public company), and *Perusahaan Persero* (PERSERO; limited liability company).[165]

---

[162] Government Regulation Number 10 of 1958 on the Establishment of a Central Body for Ruling Dutch Industrial and Mining Companies, https://peraturan.bpk.go.id/Details/76191/pp-no-10-tahun-1958, accessed 4 June 2024.
[163] Clifton, J. & Díaz-Fuentes, D. (2018) The state and public corporations. In: A. Nolke & C. May (Eds.) Handbook of the international political economy of the corporation. Cheltenham: Edward Elgar, pp. 106–119, https://doi.org/10.4337/9781785362538.00013.
[164] McDonald, David A. "Public ambiguity and the multiple meanings of corporatization." *Rethinking corporatization and public services in the Global South* (2014): 1-30, https://www.torrossa.com/it/resources/an/5211277.
[165] Law Number 9 of 1969 on Forms of State Enterprises, https://peraturan.bpk.go.id/Details/49109/uu-no-9-tahun-1969, accessed 24 May 2024.

PERJAN is a State Company established and regulated according to the provisions of the *Indonesische Bedrivenwet* (*Staatsblad* of 1927 Number 419) and Government Regulation Number 6 of 2000 on PERJAN. The leadership of PERJAN is handled by a head responsible for the minister or director general in a ministry organization or state institution, with civil servant resources as company employees. The source of company capital is the State Revenue and Expenditure Budget, which is state wealth that cannot be separated from it. In general, the goods and services of this company are the government's obligation to provide services to the community.[166]

Meanwhile, PERUM is a State Company established and regulated based on the provisions contained in Government Regulation in Lieu of Law Number 19 of 1960 on State Companies and Government Regulation Number 13 of 1998 on PERUM. PERUM leaders are directors appointed and dismissed by the government for a five-year term of office and can be reappointed. In carrying out their duties, the board of directors appoints and dismisses employees/workers of state companies according to personnel regulations approved by the Minister. In contrast to PERJAN, PERUM capital is state wealth separated and not divided into shares. PERUM conducts business activities through services and public services to make a profit.[167]

PERSERO is a company in the form of a Limited Liability Company as regulated according to the provisions of the Commercial Law Book (*Staatsblad* of 1847 Number 23) and Law Number 9 of 1969 on Forms of State Enterprises, and Government Regulation (PP) Number 24 of 1972 on Amendments to the Provisions of Article 7 of the Government Regulation of the Republic of Indonesia Number 12 of 1969 on Limited Liability Companies. Furthermore, Government Regulation (PP) Number 12 of 1998 on Limited Liability Companies (Persero) revoked the provisions of Government Regulation (PP) Number 24 of 1972. However, Government Regulation (PP) Number 45 of 2001 changed the provisions in Government Regulation Number 12 of 1998 on Companies Company (Persero).

---

[166] Ali, Chidir. *Badan hukum*. Bandung: Penerbit Alumni, 1987, p. 22-28. See also Government Regulations on Job Companies, http://peraturan.bpk.go.id/Details/53149/pp-no-6-tahun-2000, accessed 24 May 2024.

[167] Government Regulation in Lieu of Law Number 19 of 1960 on State Companies, https://peraturan.bpk.go.id/Details/53474/perpu-no-19-tahun-1960, accessed 27 May 2024.

PERSERO's capital comes from state assets, separated and open to domestic and foreign private investors. Ownership is divided into shares. Likewise, the staffing structure is private employees appointed and dismissed by the company, not civil servants, as PERJAN and PERUM. As for its business sector, PERSERO provides goods and services that compete directly with private companies in pursuit of profit because not all its businesses are government assignments, such as PERJAN and PERUM. However, to protect state ownership of PERSERO, the government controls most company ownership shares to have control over the company's directors.[168]

The three forms of state companies received strengthening and support from technical regulations in Presidential Instruction Number 17 of 1967 on the Direction and Simplification of State Companies into Three Forms of State Enterprises. This presidential instruction aims to unify the form, legal status, organizational structure of personnel, and administration of state companies to strengthen the nation's economic development and prosperity.[169]

Table 3.1.

Types of State-Owned Enterprise in the Corporatization Period

Explanation	**PERJAN**	**PERUM**	**PERSERO**
Regulation	Law Number 9 of 1969 replaced by Government Regulation Number 6 of 2000	Government Regulation Number 13 of 1998	Government Regulation Number 12 of 1969 replaced by Government Regulation Number 12 of 1998 replaced by Government

[168] Ali, Chidir. *Badan hukum*. Bandung: Penerbit Alumni, 1987, p. 22-28.
[169] Presidential Instruction Number 17 of 1967 on Direction and Simplification of State Enterprises into Three Forms of State Enterprises, https://www.hukumonline.com/pusatdata/detail/556/instruksi-presiden-republik-indonesia-nomor-17-tahun-1967/, accessed 27 May 2024.

			Regulation Number 45 of 2001
Ownership model	Fully owned by the state under the ministry	Fully owned by the state	The state owns at least 51% of the company's shares
State finance	Not separated	Separated	Separated
Purpose	Business activities aimed at benefiting the public, in the form of providing high quality services and not solely seeking profit	It carries out businesses aimed at public benefit in the form of providing high quality goods and/or services and at the same time generating profits based on company management principles.	It provides high quality goods and/or services. strong competitiveness in both domestic and foreign markets and fostering profits to increase company value.
Employee status	Civil servant	Company employees in accordance with labor law	Company employees in accordance with labor law
Assignment of directors	Ministry	Ministry	General Meeting of Shareholders

Source: author

Table 3.1. shows that each form of State-Owned Enterprise has a different legal basis. The existence of PERJAN is based on Law Number 9 of 1969, replaced by Government Regulation Number 6 of 2000. Then, PERUM was established based on Government Regulation Number 13 of 1998. The legal basis of PERSERO is Government Regulation Number 12 of 1969, replaced by Government Regulation Number 12 of 1998, replaced by Government Regulation Number 45 of 2001.

Then, in the company ownership model, the three have differences. The state controls ownership of PERJAN and PERUM completely. However, specifically, PERJAN is under the authority of the ministry, while PERUM is under the authority of the central government. The state ownership of PERSERO is a minimum of 51% as the minimum ownership to control company policies.

From the aspect of state finance in public law, PERJAN finance is an inseparable part of state finance, while PERUM and PERSERO finance have been separated from state finance.

The next difference is the company's objectives. Business activities in PERJAN aim to benefit the public in the form of providing high-quality services and not solely seeking profit. While PERUM carries out businesses aimed at public benefit in the form of providing high-quality goods and/or services and, at the same time, generating profits based on company management principles. Then PERSERO provides high-quality goods and/or services, strong competitiveness in both domestic and foreign markets, and fosters profits to increase company value.

Furthermore, in terms of employment, PERJAN employees are civil servants like other government employees, while PERUM and PERSERO employees are company employees in accordance with labor law.

Finally, the appointment of company directors is also different. The Ministry is the party authorized to appoint and dismiss PERJAN and PERUM directors, while in PERSERO, the General Meeting of Shareholders is the institution authorized to appoint and dismiss directors.

2.4. The Corporatization in the Reform Period (2003-2024)

After the political reform event with the fall of President Soeharto in 1998, several laws and regulations underwent changes and improvements toward economic democratization and strengthening the free market in the international world. Legal reform in the governance of state companies was only completed several years later with the ratification of Law Number 19 of 2003 on State-Owned Enterprises.

The spirit of Law Number 19 of 2003 is to strengthen corporate culture and professionalism in state companies by improving governance and supervision. In addition, the new legal policy encourages company efficiency and productivity through privatization and restructuring. Privatization aims to increase company performance and added value, improve management and financial structures, create a healthy and competitive industrial structure, strengthen global competitive capabilities, and spread ownership to the public. Meanwhile, sectoral restructuring functions create a conducive business climate to achieve efficiency and optimal service. The company restructuring includes rearranging the form of business entity, business activities, organization, management, and finance.[170]

Since the enactment of Law Number 19 of 2003, the fundamental change in the organizational aspect of state companies is the abolition of PERJAN (*Perusahaan Jawatan*; Service Company).[171] The two forms of legal entity for state companies in Indonesia are PERUM (*Perusahaan Umum*; Public Company) and PERSERO which is divided into PERSERO (*Perusahaan Persero*; State-Owned Limited Liability Enterprise) and PERSERO Terbuka (*Perusahaan Persero Terbuka*; Publicly Listed State-Owned Enterprise). PERUM is a state-owned enterprise whose entire capital is owned by the state and is not divided into shares. The purpose of establishing this company is to benefit the public by providing high-quality goods and services. Even though the state wholly owns it, PERUM still generates profits based on company management principles.[172]

Meanwhile, the division between PERSERO and PERSERO Terbuka is related to the portion of company share ownership and legal relations with the capital market. PERSERO is a state-owned enterprise whose capital is divided into shares. The state owns all or at least 51% of the company's shares. The main aim of establishing this company is to generate profits. Furthermore, PERSERO Terbuka is a state-owned enterprise that carries out a public offering of shares based on capital market legal regulations and has capital and a certain number of shareholders.[173] In Law Number 8 of 1995 on Capital Market, a Public

[170] Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003, accessed 6 June 2024.
[171] The process of changing the legal form of PERJAN to PERUM or PERSERO lasted for two years (2003-2005) based on Chapter X Transitional Provisions Article 93 of Law Number 19 of 2003.
[172] Article 1 Law Number 19 of 2003 on State-Owned Enterprises.
[173] Article 1 Law Number 19 of 2003 on State-Owned Enterprises.

Company has shareholders of at least 300 (three hundred) people, paid-up capital of at least 3,000,000,000 (three billion rupiahs) and carries out a public offering of shares on the Stock Exchange to the wider public.[174]

PERUM, in the company's organizational structure, has three organs: the Minister, the Board of Directors, and the Supervisory Board. The Minister is the government representative and the company's capital owner. The Minister also has the authority to approve business development policies proposed by the Board of Directors. In addition, the Minister appoints and dismisses the Directors and Supervisory Board through a fit and proper test mechanism based on statutory provisions. The term of office of the Board of Directors and Supervisory Board is five years and can be reappointed for one term of office. The Board of Directors is tasked with carrying out the company's business activities, while the Supervisory Board supervises and advises the Board of Directors.[175]

Unlike PERUM, PERSERO has three organs, such as a privately owned public company: a General Meeting of Shareholders, a Board of Directors, and Commissioners. The Minister acts as a General Meeting of Shareholders if the state controls all PERSERO's shares and acts as a shareholder when the state does not own all of the company's shares. As the highest organ, the General Meeting of Shareholders has the authority to appoint and dismiss the Board of Directors and Commissioners for five years and can be reappointed for one term of office. PERSERO Terbuka, in particular, must comply with capital market regulations.[176]

The spirit of reforming State-Owned Enterprises based on Law Number 19 of 2003 is a change in orientation to become a business entity that generates profits while meeting the needs of goods and services for the wider community. State-owned enterprises act as agents of development to compete healthily with private companies at the national and global levels. In addition, in the name of efficiency and effectiveness, the government also releases monopoly rights to State-Owned Public Enterprises.

---

[174] Article 1 Point 22 Law Number 8 of 1995 on Capital Market, https://ojk.go.id/en/kanal/pasar-modal/regulasi/undang-undang/Pages/law-no-8-of-1995-on-capital-market.aspx, accessed 11 June 2024.
[175] Article 35 Law Number 19 of 2003 on State-Owned Enterprises.
[176] Article 13 Law Number 19 of 2003 on State-Owned Enterprises.

However, “demonopolization” of State-Owned Enterprises must be limited to specific sectors only. For state-owned enterprises that provide goods and services related to the critical needs of the people, monopoly rights should still be given so that people get reasonable prices that do not fluctuate due to open market conditions.[177] Therefore, the corporatization of State-Owned Enterprises in Law Number 19 of 2003 does not eliminate the type of State-Owned Enterprises that the government fully controls. PERUM represents state-owned enterprises characterized by the type of public sector business and is the community's main livelihood.

Table 3.2.

Types of State-Owned Enterprise based on Law Number 19 of 2003

Explanation	**PERUM**	**PERSERO**
Regulation	Law Number 19 of 2003	Law Number 19 of 2003
Ownership model	Fully owned by the state	The state owns at least 51% of the company's shares
State finance	Separated	Separated
Purpose	To benefit the public by providing high-quality goods and services as well as to generate profits based on company management principles	The main aim is to generate profits
Employee status	Company employees in accordance with labor law	Company employees in accordance with labor law
Assignment of directors	Ministry	General Meeting of Shareholders

Source: author

[177] Samawati, Putu. "Demonopolization SOEs Policy as An Efforts to Restructured Roles and Institutions in Facing Global Competition." *Bappenas Working Papers* 2, no. 1 (2019): 116-132, https://doi.org/10.47266/bwp.v2i1.34.

Table 3.2. explains that based on Law Number 19 of 2003, State-Owned Enterprises consist of PERUM and PERSERO. In terms of ownership, the state fully controls PERUM and controls at least 51% of PERSERO. The capital of both comes from state finances, which are separated from the state budget. The apparent difference is in the purpose of its establishment. PERUM aims to benefit the public by providing high-quality goods and services as well as to generate profits based on company management principles. At the same time, PERSERO has the primary goal of generating profits. The employment status of both is the same, namely company employees in accordance with labor law. Moreover, finally, there is a difference in the appointment and dismissal of the company's directors. In PERUM, the Minister is the responsible party, while in PERSERO, the General Meeting of Shareholders is the authorized party.

However, in subsequent developments, Government Regulation Number 72 of 2016 introduced the terminology of subsidiaries of State-Owned Enterprises. State-Owned Enterprises have subsidiaries by establishing a new company or investing capital in another company. This policy is one of the government's strategies for forming a state-owned enterprise holding company.[178]

The formation of a State-Owned Enterprise subsidiary is more straightforward and faster. A significant difference is that establishing a State-Owned Enterprise uses a State Budget and Expenditure mechanism and a strict legislative process in the House of Representatives. Meanwhile, establishing a State-Owned Enterprise subsidiary uses capital participation from something other than the State Budget and Expenditure Revenue without a legislative process in the House of Representatives. However, the capital participation comes from the assets of the State-Owned Enterprise itself.

Furthermore, a strict definition of a subsidiary of a State-Owned Enterprise appears in the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 as "a limited liability company whose shares are more than 50% (fifty

[178] Government Regulation Number 72 of 2016 on Amendments to Government Regulation Number 44 of 2005 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies, https://peraturan.bpk.go.id/Details/5793/pp-no-72-tahun-2016, accessed 7 August 2024.

percent) owned by the State-Owned Enterprises or limited liability companies controlled directly by State-Owned Enterprises."[179]

In order to maintain state ownership of subsidiaries of State-Owned Enterprises, Government Regulation Number 72 of 2016 regulates government privileges in the company's articles of association, including appointment of directors and commissioners, changes to the articles of association, changes to the share ownership structure, and mergers, consolidation, separation, and dissolution, as well as takeover of the company by another company.[180]

Subsidiaries of State-Owned Enterprises can establish new companies, individually or jointly, with subsidiaries of other State-Owned Enterprises. Even State-Owned Enterprises can establish new companies together with subsidiaries of State-Owned Enterprises. The Minister of State-Owned Enterprises introduced the concept of "Affiliated Company of State-Owned Enterprises," which means a Limited Liability Company whose shares are more than 50% (fifty percent) owned by a Subsidiary of a State-Owned Enterprise, a combination of Subsidiaries of a State-Owned Enterprise, or a combination Subsidiaries of State-Owned Enterprises with State-Owned Enterprises, or limited liability companies controlled directly by Subsidiaries of State-Owned Enterprises, combinations of Subsidiaries of State-Owned Enterprises, or combinations of Subsidiaries of State-Owned Enterprises with State-Owned Enterprises."[181]

Subsidiaries of State-Owned Enterprises and Affiliated Companies of State-Owned Enterprises are companies not included in the category of State-Owned Enterprises based on Law Number 19 of 2003. Their wealth does not come from state capital participation, which is the State Budget and Expenditure Revenue, but their capital comes from assets of State-Owned Enterprises. However, regarding Government Regulation Number 72 of 2016,

---

[179] Minister of State-Owned Enterprises Regulation Number PER-3/MBU/03/2023 of 2023 on Organs and Human Resources of State-Owned Enterprises, https://peraturan.bpk.go.id/Details/270210/permen-bumn-no-per-3mbu032023-tahun-2023, accessed 31 July 2024.
[180] Article 2A Government Regulation Number 72 of 2016.
[181] Minister of State-Owned Enterprises Regulation Number PER-3/MBU/03/2023 of 2023 on Organs and Human Resources of State-Owned Enterprises, https://peraturan.bpk.go.id/Details/270210/permen-bumn-no-per-3mbu032023-tahun-2023, accessed 31 July 2024.

both can receive special assignments from the Government to provide goods and services in the public interest.

3. Privatization of State-Owned Enterprises

Privatization means reducing the state's role by increasing the private sector's role in meeting community needs. When the state hands over the activities or functions of producing goods and services to the private sector, that is the general meaning of privatization.[182] In economic activities, the government reduces or transfers permanently its role and strengthens the private sector's ability, small to large companies, to produce and provide goods and services for society.[183]

In the context of state companies, privatization is the sale of company shares, in part or whole, to other parties to improve company performance, benefit the state, and expand share ownership by the community.[184] The sale of company shares can be carried out using the initial public offering method on the capital market, which attracts investors widely, or by private placement to confident investors.[185]

In 1988, Indonesia started privatizing several state-owned enterprises. However, the term used in Presidential Instruction Number 5 of 1988 is steps to improve the poor and inefficient finances and governance of State-Owned Enterprises. The term privatization is not used expressly in the regulations.[186] Furthermore, the Minister of Finance technically regulates changes in business entities from PERJAN to PERUM and PERUM to

---

[182] Savas, E.S. (1999). *Privatization and Public-Private Partnerships*. New York, Chatham House Publishers, p. 19.
[183] Dunleavy, Patrick. (1986). *Explaining The Privatisation Boom: Public Choice Versus Radical Approaches*. Public Administration Journal. Volume 64, Number 1, 113-34. DOI: https://doi.org/10.1111/j.1467-9299.1986.tb00601.x.
[184] Article 1 point 12 Law Number 19 of 2003 on State-Owned Enterprises.
[185] Cronqvist, Henrik, and Mattias Nilsson. "The choice between rights offerings and private equity placements." *Journal of Financial economics* 78, no. 2 (2005): 375-407, https://doi.org/10.1016/j.jfineco.2004.12.002.
[186] Presidential Instruction Number 5 Year 1988 on Guidelines for Restructuring and Management of State-Owned Enterprises, http://peraturan.bpk.go.id/Details/292691/inpres-no-5-tahun-1988, accessed 11 June 2024.

PERSERO.[187] Changes in corporate organization led to the expansion of ownership, not only by the government but also by the private sector.

Politically, the government still avoided the use of the word privatization because many parties considered privatization a step in selling state assets to foreign parties or the private sector. For developing countries like Indonesia, privatization of state companies is considered denationalization or the transfer of control to foreign investors. It differs from Western countries, which consider privatization only a domestic policy.[188] Developing countries view government control over state companies as necessary in national development strategies, providing public services, and safeguarding state ownership. Meanwhile, advanced industrial countries consider state ownership only to prevent market failure and provide goods or services that private companies do not provide.[189]

From an economic point of view, privatization has three functions. First, economic functions were relocated from government to private companies that worked more effectively in providing basic human needs. Second, privatization is a means of community empowerment. The government can provide opportunities for non-profit organizations to provide services to the community. Third, privatization functions to reduce the government's overloaded workload. With privatization, the private sector can strengthen its role in providing goods and services to the public.[190] These three functions are closely related to the aim of privatization, which, in general, is to increase state income from selling company shares to the public. Apart from that, the government hopes that many investors will buy company shares to expand their ownership. A government that succeeds in privatizing companies will be considered credible because of investors' trust. However, no

---

[187] Ma'arif, Syamsul. (2019). *Privatisasi BUMN dan Reorientasi Peran Negara di Sektor Bisnis Pasca Orde Baru: Studi Komparasi Studi Tiga Pemerintahan.* Jurnal Analisis Sosial Politik, Volume 5, Number 2, 45-58. DOI: https://doi.org/10.23960/jasp.v3i1.51 https://jasp.fisip.unila.ac.id/index.php/JASP/article/view/51.

[188] Starr, Paul. (1989). *The Meaning of Privatization*. Yale Law and Policy Review, Volume 6, Number 1, 6-41, https://www.jstor.org/stable/40239271.

[189] OECD. "Privatisation and the Broadening of Ownership of State-Owned Enterprises." (2018), https://doi.org/10.1787/2b94c510-en, p. 14.

[190] Starr, Paul. (1989). *The Meaning of Privatization*. Yale Law and Policy Review, Volume 6, Number 1, 6-41, https://www.jstor.org/stable/40239271.

less critical, privatization aims to encourage adequate company supervision due to the presence of private investors and their influence on company policies.[191]

Privatization clearly and explicitly appears in Law Number 19 of 2003 on State-Owned Enterprises and Government Regulation Number 33/2005 amended to Number 59 of 2009 on Procedures for the Privatization of Limited Liability Companies (PERSERO). In this legal policy, privatization aims to expand community ownership, increase company efficiency and productivity, create solid financial structures and management, create a competitive industry, create competitive and globally oriented companies, and grow the business climate, macroeconomy, and market capacity.[192] Practically, it can be carried out by three methods. First, an initial public offering refers to offering shares of a private corporation to the public in a new stock issuance. Second, a private placement is a sale of stock shares or bonds to pre-selected investors and institutions rather than on the open market. Third, an employee buyout occurs when employees purchase the company shares, they work for.[193]

Furthermore, Government Regulation Number 59 of 2009 states that the privatization process for PERSERO includes, among other things, selling shares based on capital market regulations, selling shares directly to investors, and selling shares to company management or employees.[194] Share sales based on capital market regulations include, among other things, sales of shares through a public offering, issuance of convertible bonds, and other equity securities. Direct shares to investors are sales to strategic partners or other investors. This method explicitly sells PERSERO shares that are not registered on the stock

[191] Jenkinson, Tim. "Corporate Governance and Privatisation Via Initial Public Offering (IPO)." (1998) in OECD Proceedings "Corporate Governance, State-Owned Enterprises and Privatisation," Paris, https://doi.org/10.1787/9789264162730-en, p. 87-118.
[192] Article 74 Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003, accessed 11 June 2024.
[193] Article 78 Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003, accessed 11 June 2024.
[194] Article 5 Government Regulation Number 59 of 2009 on Amendments to Government Regulation Number 33 of 2005 on Procedures for Privatization of Persero Companies, https://peraturan.bpk.go.id/Details/4985/pp-no-59-tahun-2009, accessed 16 July 2024.

exchange. Meanwhile, the sale of shares to management or employees is the sale of most or all of the shares directly to the management or employees of the PERSERO concerned.[195]

Even though it seems wide open, legal regulations regulate the criteria for privatization. Interestingly, Law Number 19 of 2003 introduces a positive and negative list model regarding business sectors that are allowed and prohibited to be privatized.[196] Only competitive business or industrial sectors and technological fields are open to privatization. The reason is that competitive business is open to state and private companies without legal restrictions. Likewise, the technology business sector requires significant investments to replace rapidly changing technology. Law Number 19 of 2003 does not allow privatization for State-Owned Enterprises that are expressly regulated in law not to be controlled by domestic and foreign private parties. For instance, companies in the defense and security sector, the natural resources sector, and those directly related to goods and services related to people's livelihoods.[197]

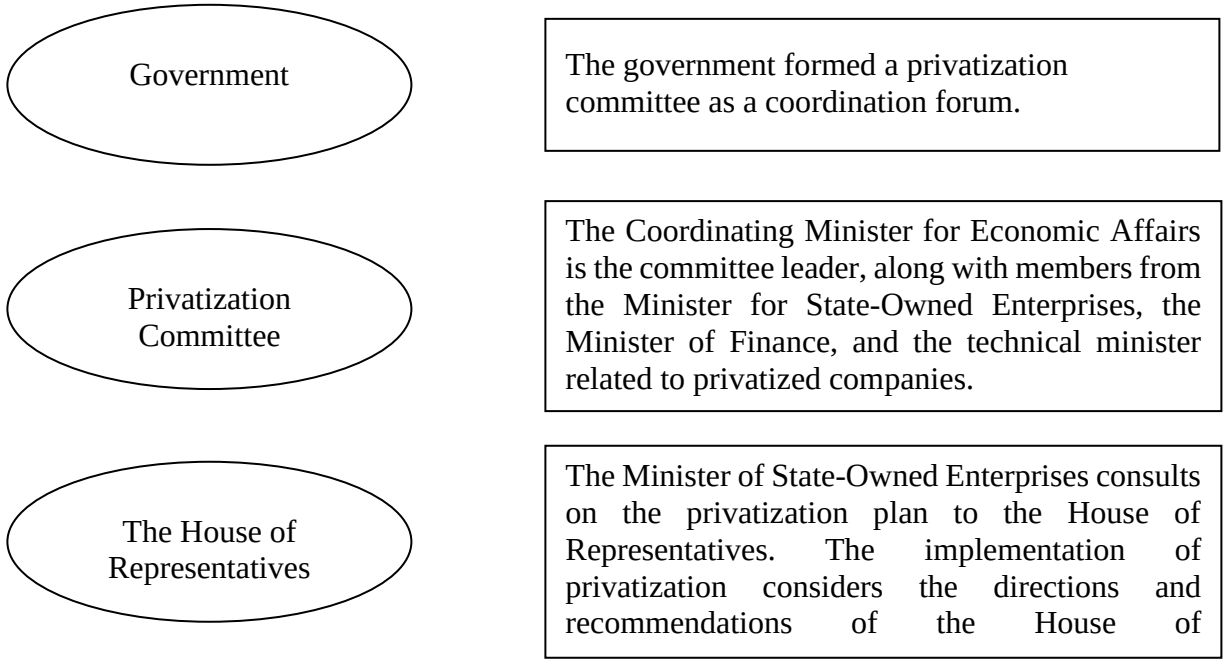
The prohibition of privatization in special sectors such as defence, energy, natural resources, and those related to public interest is in line with the concept of state property. It is property that is the right of all people, and its management is the authority of the state. The leader of the country has the right to give or specialize it to some of the people according to his policy. The meaning of management by the state is the existence of power owned by the government to manage it.[198]

---

[195] Explanation of Article 5 of Government Regulation Number 59 of 2009 on Amendments to Government Regulation Number 33 of 2005 on Procedures for Privatization of Persero Companies, https://peraturan.bpk.go.id/Details/4985/pp-no-59-tahun-2009, accessed 16 July 2024.
[196] Anggraeny, Isdian. "Analisis Hukum Privatisasi Badan Usaha Milik Negara Dalam Prespektif Pasal 33 ayat (4) UUD 1945." *Legality: Jurnal Ilmiah Hukum* 24, no. 1 (2016): 138-156, https://ejournal.umm.ac.id/index.php/legality/article/view/4262.
[197] Article 76 and 77 Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003, accessed 11 June 2024.
[198] An Nabhani, Taqiuddin. *Economic System of Islam*. Maktaba Islamia Publications, 2008, p. 246.

Figure 3.1

Privatization Process of State-Owned Enterprises



Source: Author

In the Figure 3.3., the Minister of State-Owned Enterprises has a prominent and significant role in privatization activities. He worked starting from preparing the annual privatization program, then submitting the program to the privatization committee for direction and consulting with the House of Representatives to get direction and recommendations. Finally, he is the implementer of privatization.[199]

Meanwhile, the Privatization Committee, chaired by the Coordinating Minister for Economic Affairs, who is responsible for the President, determines general policies and requirements for implementing privatization. Apart from that, this committee also provides solutions to strategic problems that arise in the privatization process. In carrying out its

[199] Article 81 Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003, accessed 11 June 2024.

duties, this committee can invite and ask for suggestions from government agencies or other parties.[200]

The privatization procedures regulated in Law Number 19 of 2003 are more similar to the privatization model in European countries than privatization practices in the United States. Most European countries privatize state companies that have businesses in various business sectors. At the same time, privatization in the United States focuses on privatizing public services that deal directly with the needs of society.[201]

Indonesia has recorded a successful history of privatization, especially when experiencing the economic crisis in 1998 and 2008. Privatization has saved the national economy by increasing performance and profits for State-Owned Enterprises.[202] In the aspect of good corporate governance, the Ministry of State-Owned Enterprises has achieved several main achievements. First, negotiate and sign an appointment agreement for all newly appointed directors and commissioners. Second, accept the Statement of Corporate Intents from 37 SOEs in 2002 and 46 SOEs in 2003. Third, they achieve the filing of annual reports which are in full compliance with the legal requirements. The Ministry of State-Owned Enterprises also implemented a performance incentive system in all profitable SOEs, assessed corporate governance in listed SOEs, and determined the quality and composition of the board of commissioners in about 30 SOEs. Moreover, public service obligations were identified in 15 SOEs and recommendations developed for their financing and sustained delivery.[203]

---

[200] Article 80 Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003, accessed 11 June 2024.
[201] Safri Nugraha, *Privatisasi di Berbagai Negara: Pengantar Untuk Memahami Privatisasi*, Jakarta: Lentera Hati, 2002, p. 64.
[202] Hidayatulloh, Hidayatulloh, and Éva Erdős. "The Legal Aspects of Privatization in Electricity Business Sector." *Jurnal Cita Hukum* 10, no. 2 (2022): 267-288, https://doi.org/10.15408/jch.v10i2.23540.
[203] Asian Development Bank. (2008). *Indonesia: State-Owned Enterprise Governance and Privatization Program.* Completion Report December 31st, 2009, Retrieved from https://www.adb.org/documents/indonesia-state-owned-enterprise-governance-and-privatization-program.

4. Centralized Authority of the Ministry of State-Owned Enterprises over the Management of State-Owned Enterprises

The Ministry of State-Owned Enterprises, headed by a Minister, is one of the state ministries, a government apparatus that works under and is responsible to the President of the Republic of Indonesia.[204] This ministry originated from 1973 to 1993 and was still the Directorate of Public Companies and State Company Financial Management under the Ministry of Finance. Then, in 1993-1998, this institution changed to the Directorate General of Development of State-Owned Enterprises due to the need to expand the organizational structure with an increasingly large workload. Finally, the President officially established the Ministry of State-Owned Enterprises in 1998-2000. This ministry was disbanded in 2000-2001 and returned to the Ministry of Finance, but from 2001 until now, this ministry has remained in every government cabinet.[205]

The Minister of State-Owned Enterprises is the only ministry tasked and authorized to develop and supervise State-Owned Enterprises based on Law Number 19 of 2003. All duties and responsibilities of the Minister of Finance relating to State-Owned Enterprises are transferred to the Minister of State-Owned Enterprises based on Government Regulation Number 41 of 2003. Therefore, the Minister of State-Owned Enterprises is the shareholder or a General Meeting of Shareholders at PERSERO and the government representative at PERUM.[206]

Based on Presidential Regulation Number 41 of 2015, the Ministry of State-Owned Enterprises is led by a Minister appointed and responsible to the President.[207] However, based on Presidential Regulation Number 81 of 2019, this ministry has changed its organizational structure with the positions of the First Vice Minister and the Second Vice Minister. The vice minister must assist the minister in carrying out his duties. The position

---

[204] Articles 1 and 3 of Law Number 39 of 2008 on State Ministries, https://peraturan.bpk.go.id/Details/39719/uu-no-39-tahun-2008, accessed 11 July 2024.
[205] The History of Ministry of State-Owned Enterprises, https://bumn.go.id/profil/peranan, accessed 11 July 2024.
[206] Government Regulation Number 41 of 2003 concerning Delegation of the Position, Duties and Authority of the Minister of Finance in Limited Liability Companies (Persero), Public Companies (Perum) and Bureaucratic Companies (Perjan) to the Minister of State-Owned Enterprises, https://peraturan.bpk.go.id/Details/52309/pp-no-41-tahun-2003, accessed 25 July 2024.
[207] Presidential Regulation Number 41 of 2015 on Ministry of State-Owned Enterprises, https://peraturan.bpk.go.id/Details/41774/perpres-no-41-tahun-2015, accessed 31 July 2024.

is below and responsible to the minister. The First Vice Minister will coordinate 48 state-owned companies, some operating in the pharmaceutical, mining, and energy sectors. In comparison, the Second Vice Minister will coordinate 73 state-owned companies, some operating in the banking, insurance, plantation, construction, and transportation sectors. Apart from two vice ministers, this ministry has other structures, such as the Ministry Secretariat, three deputies, and three expert staff. [208]

In government affairs in State-Owned Enterprises, the Minister of State-Owned Enterprises has the authority to appoint and dismiss directors and board of commissioners. The Minister forms a succession committee whose task is to examine the suitability and appropriateness of candidates for directors and candidates for the board of commissioners/supervisory board. Apart from being based on the requirements of ability and integrity, candidates for directors and the board of commissioners/supervisory board are not political party administrators or members of the People's Representative Council and are not regional head candidates.[209]

The authority of a minister subordinate to the president to appoint and dismiss directors and boards of commissioners at State-Owned Enterprises has attracted sharp criticism because it gives rise to patronage politics. The president, as the highest executive authority, strategically uses the positions of directors and boards of commissioners in State-Owned Enterprises as a tool for consolidating power and political stability. With a significant turnover of money and a vast network, high positions in State-Owned Enterprises have become a source of profit for political elites and the ruling party.[210]

In exercising its strong authority over the governance of State-Owned Enterprises, the Minister of State-Owned Enterprises issued a Guideline for Governance and Significant Corporate Activities of State-Owned Enterprises in 2023. The guideline regulates the principles of governance, implementation of risk management, assessment of the level of

---

[208] Presidential Regulation Number 81 of 2019 on Ministry of State-Owned Enterprises, https://peraturan.bpk.go.id/Details/127672/perpres-no-81-tahun-2019, accessed 31 July 2024.
[209] Minister of State-Owned Enterprises Regulation Number PER-3/MBU/03/2023 of 2023 on Organs and Human Resources of State-Owned Enterprises, https://peraturan.bpk.go.id/Details/270210/permen-bumn-no-per-3mbu032023-tahun-2023, accessed 31 July 2024.
[210] Apriliyanti, Indri Dwi. 2023. "Continuity and Complexity: A Study of Patronage Politics in State-Owned Enterprises in Post-Authoritarian Indonesia." *Critical Asian Studies* 55 (4): 516–37, https://doi.org/10.1080/14672715.2023.2257223.

company health, strategic planning, guidelines for significant corporate activities, implementation of information technology, and company reporting.[211]

In the guideline, the position of the Minister of State-Owned Enterprises is that of the state shareholder in PERSERO and the capital owner in PERUM. As a government representative who is a shareholder and owner of capital, the Minister has strong authority in determining the Board of Directors and Board of Commissioners. In developing State-Owned Enterprises, the Minister can request information on operational activities and act as a mediator at the request of the board of directors to resolve disputes between State-Owned Enterprises, Subsidiaries of State-Owned Enterprises, and Affiliated Companies of State-Owned Enterprises. Moreover, the Minister can form a special committee to collect company information.

[211] Minister of State-Owned Enterprises Regulation Number PER-2/MBU/03/2023 on Guideline for Governance and Significant Corporate Activities of State-Owned Enterprises, https://peraturan.bpk.go.id/Details/264291/permen-bumn-no-per-2mbu032023-tahun-2023, accessed 7 August 2024.

CHAPTER IV

RESTRUCTURING OF INDONESIAN STATE-OWNED ENTERPRISES

1. Indonesia's Economic Development in a Decade: A Short Story

Since leading Indonesia in 2014-2019 in his first and second periods 2019-2024, President Joko Widodo has used a new developmentalism approach focusing on infrastructure development and deregulation of regulations hindering investment and ease of doing business in Indonesia. Other government issues are placed under these two development goals. The main aim of the government's work is to catch up with developed countries' economies and put aside other agendas such as legal reform, good governance, and eradicating corruption.[212] The government is enthusiastic about building lighthouse infrastructure such as airports, ports, toll roads, fast trains, dams, and power plants. Still, it ignores human rights resolutions criticized by civil society and intellectual groups.[213]

Pragmatic economic development has been a characteristic of the government of the Joko Widodo era over the last ten years. One radical step is to reduce fuel subsidies for the poor and divert the funds to infrastructure projects. Next, reforming the rule of law is aligning the government's desire for massive development with an approach to bureaucratic efficiency and ease of investment.[214] Besides, the government is strengthening the state's role in national economic development, which is different from the initial period of the 1998 Reformation, which reduced the state's role and strengthened the role of the private sector and civil society.[215] As a result, the strengthening of the state's role in the economy is reflected in the involvement of State-Owned Enterprises in national strategic infrastructure projects, which are the ideals of a new developmentalism.

---

[212] Warburton, Eve. 2016. "Jokowi and the New Developmentalism." *Bulletin of Indonesian Economic Studies* 52 (3): 297–320, https://doi.org/10.1080/00074918.2016.1249262.

[213] Ekayanta, Fredick Broven. "Ideology and Pragmatism: Discourse Factors in Infrastructure Development in Indonesia's Jokowi-JK Era." *Jurnal Politik* 4.2 (2019): 297-328, https://doi.org/10.7454/jp.v4i2.1047.

[214] Salim, Wilmar A. and Siwage Dharma Negara. "Infrastructure Development under the Jokowi Administration: Progress, Challenges and Policies." *Journal of Southeast Asian Economies (JSEAE)* 35 (2018): 386 – 401, https://doi.org/10.1355/9789814695671-013.

[215] Sukmajati, Mada. "Ideologies of Joko Widodo and Indonesian political parties." *Continuity and change after Indonesia's reforms: Contributions to an ongoing assessment* (2019): 44-77, https://doi.org/10.1355/9789814843232-005.

This article analyzes the restructuring of State-Owned Enterprises to support the Joko Widodo government's economic development program from 2014 to 2024. Throughout that year, the government changed regulations to support its mission of making State-Owned Enterprises an essential instrument in developing the national economy. However, the restructuring program for State-Owned Enterprises experiences legal challenges and problems, which can be a valuable study.

2. The Meaning and Purpose of Restructuring Company

Restructuring is a form of corporate action that changes the business model, ownership composition, asset, and capital configuration.[216] On the other hand, restructuring is a way out for companies threatened with bankruptcy and liquidation due to the company's maturing debt and inability to pay creditors.[217] For instance, a company restructures its activities by reducing operational costs or selling company assets. In addition, companies can also restructure by merging with other companies, releasing part of their share ownership, and consolidating very diverse subsidiaries.[218]

A company's motivation to undertake restructuring varies according to the financial condition, organization, and corporate governance. However, in general, restructuring aims to remove the poor managers to increase efficiency, improve the operational and financial quality of the company, encourage growth, and strategically restructure the company's business.[219] Restructuring can include a wide range of operations, such as the sale of company segments or significant acquisitions, modifications to the firm's internal organization, and changes to the capital structure through the infusion of large amounts of debt. One way to restructure a business portfolio is to sell business lines deemed

---

[216] Silva, Vinicius Augusto Brunassi, and Richard Saito. "Corporate restructuring: empirical evidence on the approval of the reorganization plan." *RAUSP Management Journal* 53, no. 1 (2018): 49-62, https://doi.org/10.1016/j.rauspm.2017.12.008.

[217] Ghosh, Saibal. "Corporate distress, troubled debt restructurings and equity stripping: Analyzing corporate debt restructurings in India." *South Asian Journal of Business Studies* 8, no. 1 (2019): 105-126, https://doi.org/10.1108/SAJBS-05-2018-0059.

[218] Ray, Kamal Ghosh. *Mergers and acquisitions: Strategy, valuation and integration*. PHI Learning Pvt. Ltd., 2022.

[219] Weston, J. Fred, and Kwang S. Chung. "Takeovers and Corporate Restructuring: An Overview." *Business Economics* 25, no. 2 (1990): 6–11. http://www.jstor.org/stable/23485951.

unnecessary for the company's long-term goals. A series of acquisitions and divestitures may also be a part of restructuring to reorganize the company's business divisions. Changes in capital structure typically entail the infusion of substantial debt to pay sizable one-time dividends, finance leveraged buyouts, or repurchase stock from equity investors.[220]

In the context of State-Owned Enterprises, Law Number 19 of 2003 explains that restructuring is "efforts undertaken in the position of restructuring State-Owned Enterprises which is one of the strategic steps to improve the company's internal conditions in order to improve performance and increase company value."[221] Moreover, restructuring of State-Owned Enterprises is divided into sectoral and corporate restructuring. Sectoral restructuring is the improvement of business sectors that received protection in the past or experienced scientific monopoly to create a healthy business climate. Meanwhile, company restructuring includes increasing the intensity of business competition, structuring functional relations with the government as a regulator, and internal restructuring such as finance, management, operations, systems, and procedures.[222]

Based on agency theory, the leading cause of restructuring is poor corporate performance due to past governance errors such as excessive diversification, suboptimal research and development activities, investment failures or losses, and excessive use of debt. However, other opinions refute this theory and explain that restructuring attempts to fix direct corporate problems, such as poor performance, do not target the main problem, namely poor governance. Therefore, the main antecedents of restructuring are more related to inefficiency and managerial errors than weaknesses in modern corporate governance.[223]

Furthermore, many companies choose corporate structuring because they are motivated by internal and external factors. Internal factors are operational efficiencies, high operational costs that slowly erode company profits, changes in leadership and management

---

[220] Bowman, Edward H., and Harbir Singh. "Corporate Restructuring: Reconfiguring the Firm." *Strategic Management Journal* 14 (1993): 5–14. http://www.jstor.org/stable/2486417.
[221] Article 1 point 11 Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003, accessed 11 June 2024.
[222] Article 73 Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003, accessed 11 June 2024.
[223] Markides, Constantinos, and Harbir Singh. "Corporate restructuring: A symptom of poor governance or a solution to past managerial mistakes?." *European Management Journal* 15, no. 3 (1997): 213-219, https://doi.org/10.1016/S0263-2373(97)00002-9.

vision, financial pressures such as debt burdens, credit levels to loss of profit, employment problems, and cultural imbalances. External factors are global competition that drives companies to change business strategies, natural disasters or global pandemics, growing environmental concerns to minimize carbon footprint, and trade tariffs and relations between countries.[224]

3. Financial Burden of State-Owned Enterprises Due to a National Strategic Project

President Joko Widodo's government in the 2014-2024 period used and intensified State-Owned Enterprises for economic growth, especially in infrastructure development. This policy is based on two main reasons. First, the government must refrain from raising investment on its own. After cutting energy subsidies, the present administration did, in fact, significantly increase infrastructure expenditure and provide initial support to State-Owned Enterprises. During this time, global energy costs are declining, making the reduction of fuel subsidies relatively easy. Since then, however, the government has been under tremendous pressure to increase social expenditure in the face of extreme inequality. However, it has been restricted by a budgetary law that caps yearly fiscal deficits at 3% of GDP. With one of the lowest tax revenue ratios, Indonesia has attempted, albeit with limited success, to strengthen its fiscal position through several initiatives, including the tax amnesty program.[225]

Second, the development strategy has changed due to the private sector's scant involvement in infrastructure development over the past ten years. The sluggish pace of regulatory reform in Indonesia has made it challenging to pique the interest of private investors. Instead, Jokowi thinks SOEs can correct capital-market deficiencies and fund long-term initiatives. According to SOE experts, Jokowi's SOE policy is more pragmatic and less motivated by ideology.[226]

---

[224] Benu Singhal, Reasons for Corporate Restructuring, https://www.fe.training/free-resources/restructuring/reasons-for-corporate-restructuring/, accessed 6 September 2024.
[225] Kim, Kyunghoon. "Matchmaking: Establishment of state-owned holding companies in Indonesia." *Asia & the Pacific Policy Studies* 5, no. 2 (2018): 313-330, https://doi.org/10.1002/app5.238.
[226] Kim, Kyunghoon. "Matchmaking: Establishment of state-owned holding companies in Indonesia."

The use of State-Owned Enterprises for economic development is formulated in the National Strategic Project policy. It is Indonesian infrastructure projects during the administration of President Joko Widodo that are considered strategic in increasing economic growth, equitable development, public welfare, and regional development. It is regulated through a presidential regulation, while project implementation is carried out directly by the central government, regional governments, and business entities, as well as government-business cooperation, prioritizing the use of domestic components.[227] The legal basis for it is Government Regulation Number 42 of 2021 concerning Facilitation of National Strategic Projects and Presidential Regulation Number 3 of 2016, which was successively amended by Presidential Regulation Number 58 of 2017, Presidential Regulation Number 56 of 2018, and Presidential Regulation Number 109 of 2020.

To make the National Strategic Project a success, the government has formed the Priority Infrastructure Provision Acceleration Committee, which is tasked with providing priority infrastructure that is accountable to the President. Types of priority infrastructure include transportation, roads, irrigation, drinking water, wastewater, waste facilities, telecommunications and informatics, electricity, and oil and gas. Various types of priority infrastructure receive funding from various sources, including the State Budget, Regional Budget, business entities through government and business entity cooperation mechanisms, state-owned enterprises, regional-owned enterprises, and other legitimate sources of funds.[228]

The Coordinating Minister for Economic Affairs leads the Committee for the Acceleration of Priority Infrastructure Provision, with members being the Minister of Finance, Minister of National Development Planning/Head of the National Development Planning Agency, and Head of the National Land Agency. The duties of this committee are to determine strategies and policies, monitor and control the implementation of strategies and policies, facilitate the improvement of the capacity of apparatus and institutions, determine the quality standards of pre-feasibility studies and their evaluation procedures,

---

[227] Salim, Wilmar, and Siwage Dharma Negara. "Infrastructure development under the Jokowi administration: Progress, challenges and policies." *Journal of Southeast Asian Economies* 35, no. 3 (2018): 386-401, https://doi.org/10.1355/9789814843102-012.

[228] Article 1 and 6 Presidential Regulation Number 75 of 2014 on Acceleration of Provision of Priority Infrastructure, https://peraturan.bpk.go.id/Details/41567/perpres-no-75-tahun-2014, accessed 17 September 2024.

and resolve problems arising from the implementation of priority infrastructure provision. With this significant task, the committee can involve ministries, institutions, regional governments, business entities, and other parties. It can recruit individual experts, financial institutions, or business entities and form a consultant panel.[229]

The list of National Strategic Projects has undergone many changes in the last nine years. These changes include the number of projects, the number of programs, and the nominal budget. The legal regulations that form the basis for the changes to the list of National Strategic Projects are also inconsistent because from 2016 to 2020, it used a presidential regulation, while from 2021 to 2023, it used a regulation from the coordinating minister for the economy.

Based on Article 3 of Government Regulation Number 42 of 2021, the Presidential Regulation stipulates for the first time the list of National Strategic Projects. The Coordinating Minister for Economic Affairs can evaluate the list based on proposals from ministers/heads of institutions/regional heads and business entities. The authority of the Coordinating Minister for Economic Affairs in determining changes to the list of National Strategic Projects must obtain the approval of the President. Therefore, the regulation of the coordinating minister for economic affairs, which is the legal basis for changes to the list of National Strategic Projects from 2021 to 2023, is valid and binding because it was formed based on a higher law (Government Regulation Number 42 of 2021) which is called delegated legislation.[230]

One of the public criticisms of the National Strategic Projects is the number of projects that change almost every year. Based on the Report of Priority Infrastructure Provision Acceleration Committee 2023, the number of projects and budgets for the National Strategic Projects change every year in line with government policy. In 2016, the government set 225 projects and one program with a budget of 2.631 trillion rupiah. A year later, the policy changed to 245 projects and one program with a budget of 4.417.6 trillion rupiah. A drastic reduction in the number of projects occurred in 2022; the government set

---

[229] Article 7, 8, 9 and 10 Presidential Regulation Number 75 of 2014 on Acceleration of Provision of Priority Infrastructure.

[230] Dewansyah, Bilal. "Kedudukan Peraturan Menteri dalam Hierarki Peraturan Perundang-undangan," *Hukumonline*, 19 May 2014, https://www.hukumonline.com/klinik/a/kedudukan-peraturan-menteri-dalam-hierarki-peraturan-perundang-undangan-lt5264d6b08c174/, accessed 18 September 2024.

210 projects and 12 programs with a budget of 5.746.4 trillion rupiah. Finally, in 2023, the government again reduced the number of projects to 204 projects and 13 programs with a budget of 5.918.86 trillion rupiah. Based on the second-semester report of June 2023, the committee has recorded the completion of 190 projects since 2016 with an investment value of 1,514 trillion rupiah.[231] See Appendix 4: List of National Strategic Projects 2016-second semester June 2023.

In completing the National Strategic Project, besides using the State Budget, the government also assigns State-Owned Enterprises to complete several important projects. Based on the Ministry of State-Owned Enterprises report as of the second quarter of 2022, seventeen State-Owned Enterprises and three subsidiaries have contributed 81 projects with an investment value of more than 711 trillion rupiah.[232] See Appendix 5: List of State-Owned Enterprises and Subsidiaries Working on National Strategic Projects.

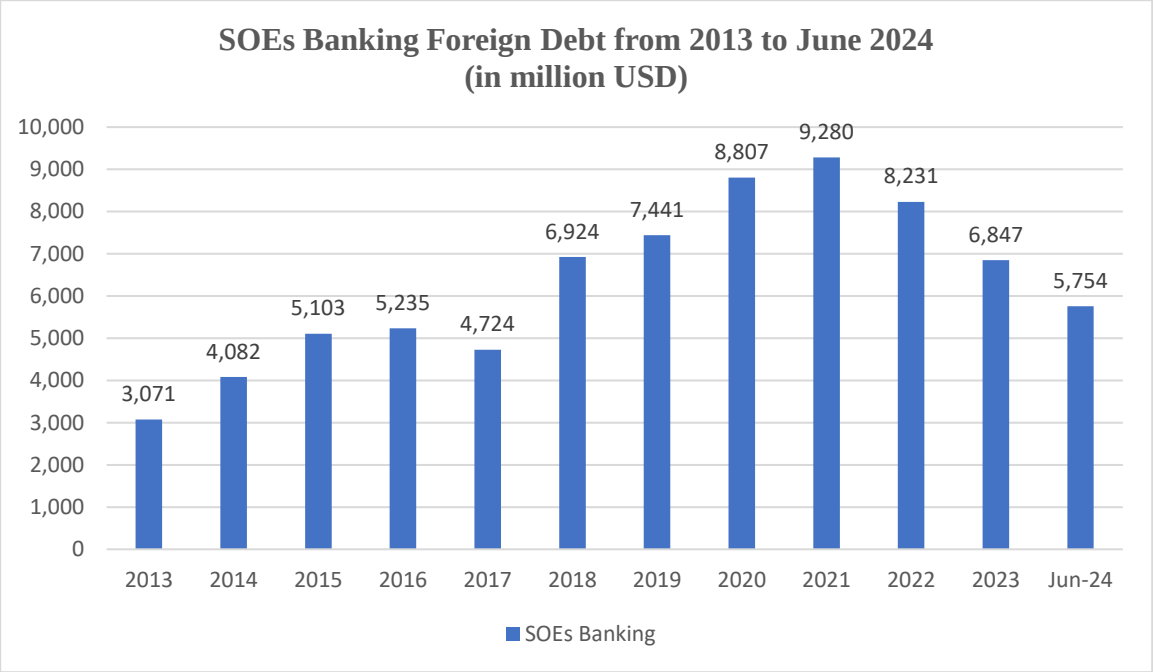
As a shareholder of State-Owned Enterprises, the government has great power and influence in assigning several companies, especially in the physical infrastructure sector, to support the National Strategic Project policy during the administration of President Joko Widodo from 2014 to 2024. With the agency theory approach, the government is the principal, and the State-Owned Enterprises are agents. This theory explains that the relationship between the company owner and the company creates a delegation of work between the parties. [233] State-owned enterprises, as agents, have an obligation to carry out the tasks and work ordered by the company owner, namely the state or government. Therefore, State-Owned Enterprises have no choice but to carry out their duties even though they often burden finances and are not by the company's goals of seeking profit.

The involvement of State-Owned Enterprises in developing national strategic projects has significantly affected the increase in foreign debt. Based on reports from Bank Indonesia and the Ministry of Finance, the foreign debt of State-Owned Enterprises has

[231] The Committee for Acceleration of Priority Infrastructure Delivery, Report of Priority Infrastructure Provision Acceleration Committee 2023. https://kppip.go.id/wp-content/uploads/filebase/laporan_semester_kppip/Laporan-KPPIP-2023-semester-02.pdf.
[232] Ministry of State-Owned Enterprises, "Akselerator Proyek Strategis Nasional," https://bumn.go.id/penggerak/detail/akselerator-proyek-strategis-nasional-1105670322, accessed 18 September 2024.
[233] Chris A. Mallin, *Corporate Governance*. (Oxford University Press, 2016), 15-16.

experienced a very fantastic increase. The following is data on the foreign debt of State-Owned Enterprises from 2013 to 2024.

Figure 4.1.

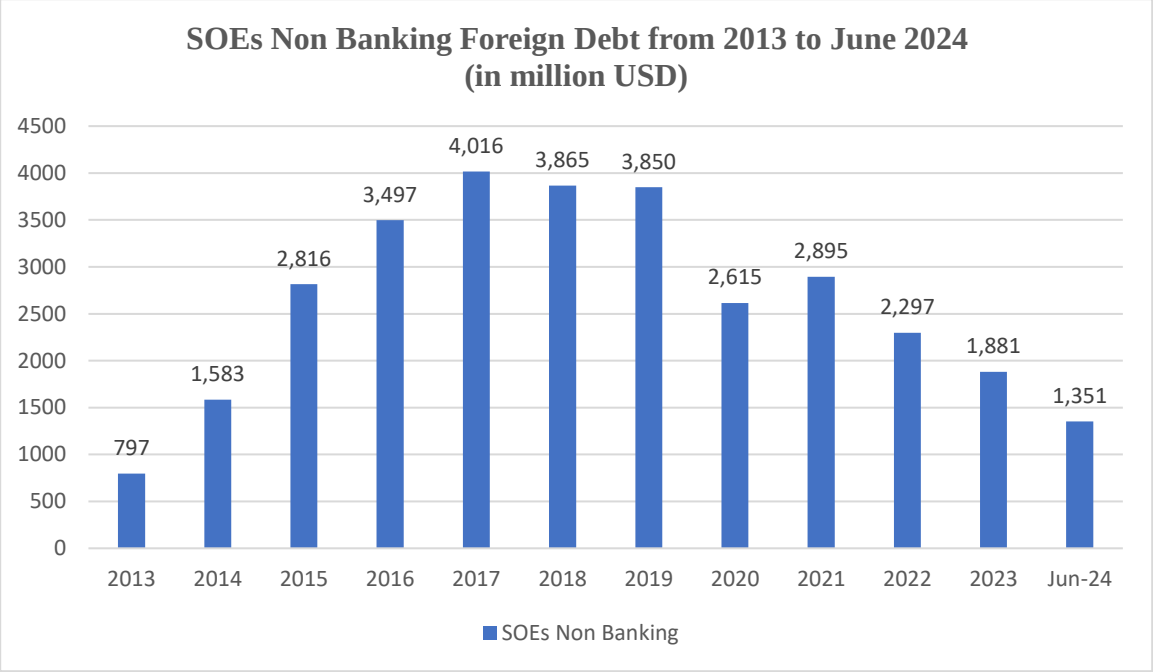


Source: Bank Indonesia, External Debt Statistics of Indonesia.[234]

Figure 4.1. presents data on the foreign debt of State-Owned Enterprises in the banking and financial sector from 2013 to June 2024 in USD valuation. The highest peak debt occurred in 2021 at 9,280 million USD, and the lowest value was in 2013 at 3,071 million USD. From 2013 to 2021, the amount of debt increased significantly every year except in 2017, which decreased slightly and then increased again. However, in the last three years, the amount of debt has decreased, although it has not reached a low point like in 2013.

[234] Bank Indonesia, External Debt Statistics of Indonesia, June 2024, accessed 13 December 2024, https://www.bi.go.id/en/statistik/ekonomi-keuangan/sulni/Pages/SULNI-Juni-2024.aspx.

Figure 4.2.



Source: Bank Indonesia, External Debt Statistics of Indonesia.[235]

Figure 4.2. shows the foreign debt of non-banking State-Owned Enterprises from 2013 to June 2024. In general, foreign debt has increased since 2013 until reaching its peak in 2017. Then, the foreign debt trend declined until June 2014, although it did not reach its lowest point in 2013.

Overall, the foreign debt of State-Owned Enterprises in the banking sector continues to increase due to the weakening of the rupiah in recent years, which is because the debt uses foreign currency valuation. In addition, the cause of the increasing debt is significant investments in economic, infrastructure, and social programs that generate low profits. Moreover, the involvement of State-Owned Enterprises in infrastructure development projects encourages increased debt and worsens corporate finances.[236]

---

[235] Bank Indonesia, External Debt Statistics of Indonesia, June 2024, accessed 13 December 2024, https://www.bi.go.id/en/statistik/ekonomi-keuangan/sulni/Pages/SULNI-Juni-2024.aspx.

[236] Indonesia News Cener, "Begini Postur Utang BUMN di Era Jokowi," 29 January 2019, https://www.djkn.kemenkeu.go.id/berita-media/baca/12849/Begini-Postur-Utang-Bumn-di-Era-Jokowi.html, accessed 21 September 2024.

The increase in debt of several State-Owned Enterprises in the banking sector, including PT Bank Tabungan Negara Tbk, PT Bank Mandiri Tbk, PT Bank Rakyat Indonesia Tbk, PT Bank Negara Indonesia Tbk and PT Bank Syariah Indonesia Tbk is the impact of providing credit to State-Owned Enterprises in the field of national infrastructure development. These banks are the main creditors of State-Owned Enterprises in the infrastructure sector that continue to experience losses, such as PT Adhi Karya Tbk, PT Pembangunan Perumahan Tbk, PT Wijaya Karya Tbk and PT Waskita Karya Tbk. The total debt of the four companies has increased twelvefold since President Joko Widodo's leadership in 2014.[237]

The high amount of debt of the four companies has caused a decline in the amount of company profits each year. PT Waskita Karya collected the most debt in the first quarter of 2023 with liabilities of 84.3 trillion rupiahs, followed by PT Wijaya Karya with 55.7 trillion rupiahs, PT Pembangunan Perumahan with 43.8 trillion rupiahs, and PT Adhi Karya with 30.2 trillion rupiahs. PT Waskita Karya suffered a loss of 521 billion rupiah in the first quarter of 2023. Meanwhile, PT Waskita Karya has been in the loss zone for two years. Meanwhile, PT Adhi Karya earned a net profit of 8.4 billion rupiah in that period, while PT Pembangunan Perumahan had 34.2 billion rupiah.[238]

In addition to the four State-Owned Enterprises in the infrastructure sector, another PT Hutama Karya has received public attention due to its deteriorating financial condition. Based on research results from 2019 to 2021, the five State-Owned Enterprises experienced financial distress in various ways. The Return on Investment (ROI) values of PT Waskita Karya and PT Hutama Karya are negative, meaning that the two companies did not achieve a return on investment or experienced losses due to sales results that did not cover investment costs. The two companies also have negative Return on Equity (ROE) values due to the company making losses, investments not meeting expectations, or not getting investors in their business. Moreover, the five companies have difficulty paying off short-

[237] Khairiyah, Ruisa. "Utang BUMN Hampir Rp800 T, Nasib BUMN Karya Menggantung," 15 June 2023, https://www.bloombergtechnoz.com/detail-news/8481/utang-bumn-hampir-rp800-t-nasib-bumn-karya-menggantung, accessed 21 Sepember 2024.
[238] Daelami, Muawwan. "Empat BUMN Karya Terlilit Utang Rp 214 Triliun, Sanggup Bayar?," 22 May 2023, https://investor.id/market/330021/empat-bumn-karya-terlilit-utang-rp-214-triliun-sanggup-bayar, accessed 21 Sepember 2024.

term and long-term debts. Overall, the financial distress conditions of the five companies appear to be pushing towards bankruptcy in the future if the financial condition cannot be improved.[239]

Table 4.1.

List of State-Owned Enterprises' Debt in the Construction Sector (as of Dec 2023) Compared to Their Equity (in trillion rupiah)

Company	Current Liabilities	Non-Current Liabilities	Total Liabilities	Total Equity
PT Adhi Karya	24.722	6.257	30.979	9.235
PT Hutama Karya	21.820	31.294	53.114	116.624
PT Pembangunan Perumahan	26.992	14.389	41.381	15.143
PT Waskita Karya	22.838	61.155	83.994	11.601
PT Wijaya Karya	38.437	17.972	56.409	9.571

Source: Financial Report of five SOEs modified by the author.

Table 4.1. describes the financial reports of five companies in the construction sector that were tasked with building infrastructure by the government until December 2023, their financial condition is unhealthy, with a massive burden of liabilities compared to the total equity owned. *Current liabilities* are debts that must be paid or matured within one accounting period or twelve months. In contrast, non-current liabilities are debts with a repayment period of more than one year. Usually, the period for paying off long-term debt is around 5 to 20 years.

PT Adhi Karya has a short-term debt of 24.722 trillion rupiah and a long-term debt of 6.257 trillion rupiah. So, the total of both is 30.979 trillion rupiah. However, the

[239] Esfandiatri, Yang Gisella Yulialistika. "Analisis Financial Distress pada Perusahaan Konstruksi BUMN Karya." *Syntax Idea* 5, no. 11 (2023): 2257-2276, https://doi.org/10.46799/syntax-idea.v5i11.2663.

company's total equity is very imbalanced with its liabilities, which are only 9.235 trillion rupiah.[240]

It contrasts with PT Hutama Karya, which is better. A total debt of 53.114 trillion rupiah consists of a short-term debt of 21.820 trillion rupiah and a long-term debt of 53.114 trillion rupiah. This company has a total equity of 116.624 trillion rupiah, higher than its liabilities.[241]

Meanwhile, what happened to PT Pembangunan Perumahan is that its total liabilities are twice as significant as its total equity. With a total equity of 15.143 trillion rupiah, this company has total liabilities of 41.381 trillion rupiah consisting of current liabilities of 26.992 trillion rupiah and non-current liabilities of 14.389 trillion rupiah.[242]

PT Waskita Karya is facing a financial condition that could be much better. The company recorded its total liabilities at the end of December 2023 of 83.994 trillion rupiah, consisting of current liabilities of 22.838 trillion rupiah and non-current liabilities of 61.155 trillion rupiah. Its equity of 11.601 trillion rupiah is very far from its total liabilities, making its financial condition unhealthy.[243]

Finally, PT Wijaya Karya needs better financial conditions. The company's equity of 9.571 trillion rupiah is in stark contrast to its total liabilities of 56.409 trillion rupiah. Most of its liabilities are current liabilities of 38.437 trillion rupiah; the rest are non-current liabilities of 17.972 trillion rupiah.[244]

---

[240] PT Adhi Karya, "Financial Report 2023," https://adhi.co.id/laporan-keuangan/, accessed 21 September 2024.
[241] PT Hutama Karya, "Financial Statement 2023," https://www.hutamakarya.com/en/financial-statement, accessed 21 September 2024.
[242] PT Pembangunan Perumahan, "Financial Report 2023," https://www.ptpp.co.id/en/investor/company-report/financial-report, accessed 21 September 2024.
[243] PT Waskita Karya, "Financial Statement 2023," https://investor.waskita.co.id/download.html, accessed 21 September 2024.
[244] PT Wijaya Karya, "Financial Statement 2023," https://investor.wika.co.id/financials.html?year=2023, accessed 21 September 2024.

4. Restructuring State-Owned Enterprises through a Financial Aid

4.1. State Equity Participation and State Financial Burden

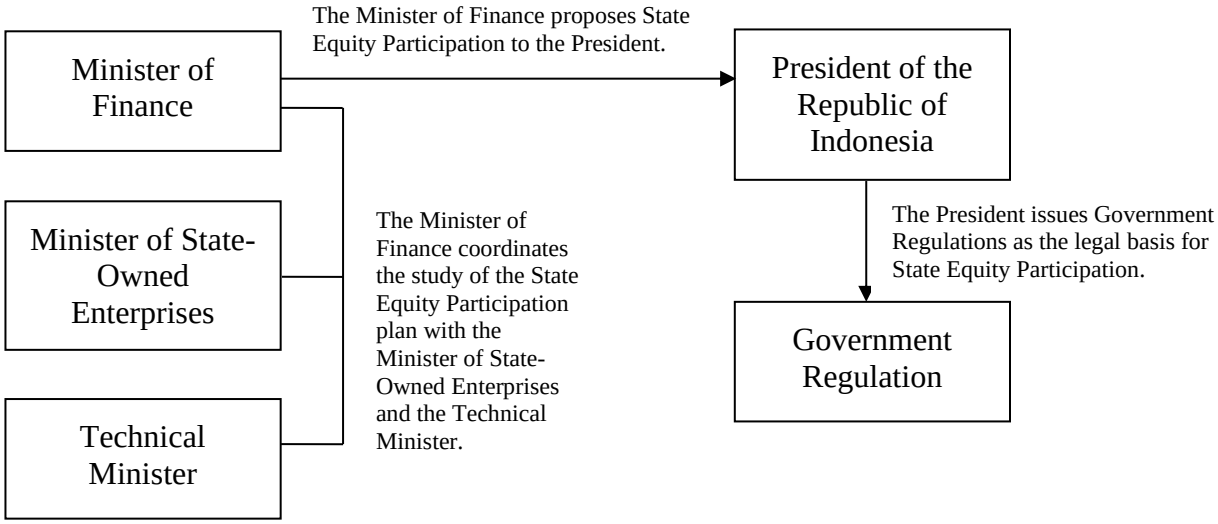
State equity participation is in two forms. First, the state provides capital for the establishment of a State-Owned Enterprise. Second, the state provides capital to increase the capital of an existing State-Owned Enterprise. The sources of state capital participation for State-Owned Enterprises are the State Revenue and Expenditure Budget, which also includes government projects carried out by State-Owned Enterprises and state receivables to State-Owned Enterprises, which are used as state capital participation, reserve capitalization or additional capital for companies originating from reserves, and other sources, namely asset revaluation profits.[245]

In the state equity participation to State-Owned Enterprises, the President is the highest executive official authorized to issue the policy with a Government Regulation.[246] It is a statutory regulation stipulated by the president to implement the law correctly. [247] Its function is as a legal basis for the implementation of the provisions of the law or further provisions or details of the provisions of the law. [248]

[245] Article 4 paragraph 2 Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003, accessed 11 June 2024.
[246] Article 4 paragraph 3 Law Number 19 of 2003 on State-Owned Enterprises, https://peraturan.go.id/id/uu-no-19-tahun-2003, accessed 11 June 2024.
[247] Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 1 number 5 of Law Number 12 of 2011 on the Formation of Legislation.
[248] Maria Farida Indrati Soeprapto, *Ilmu Perundang-undangan 1: Jenis, Fungsi dan Materi Muatan*, Yogyakarta: Kanisius Publishing, 2020, p. 243.

Figure 4.3.

Procedures for State Equity Participation in State-Owned Enterprises



Source: Government Regulation of the Republic of Indonesia Number 44 of 2005 modified by author.[249]

Figure 4.3. explains the mechanism of the state equity participation. In that process, the finance minister, as the state treasurer, has a strategic position as a coordinator among other ministers and a direct proposer to the president. The Minister of Finance is the authority that controls and understands the state's financial condition factually so that he or she can consider strategic policies regarding state finances. However, in practice, the Minister of State-Owned Enterprises or the Technical Minister can be the proposer if they understand the real needs of State-Owned Enterprises but remain under the coordination of the Minister of Finance. Next, the President, as the head of government with the highest executive power, decides on the Minister of Finance's proposal after carefully studying the plan review results. Government Regulations are the legal basis and technical guidelines for executing the State Equity Participation policy.

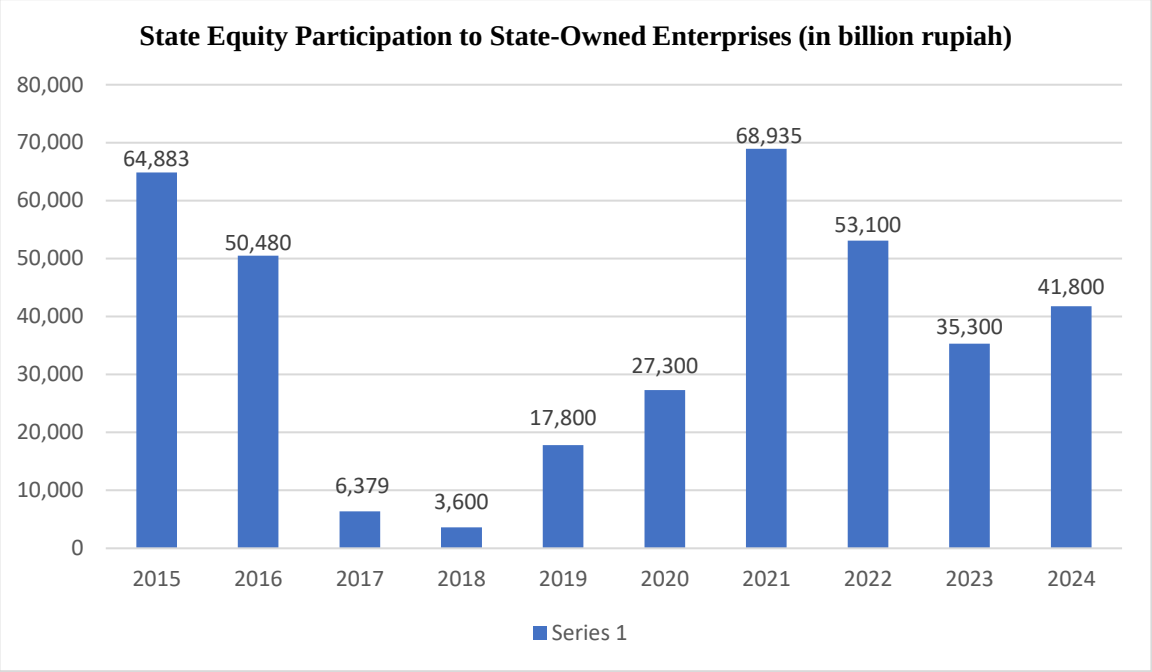
[249] Article 10 Government Regulation of the Republic of Indonesia Number 44 of 2005 on Procedures for State Capital Participation and Administration to State-Owned Enterprises and Limited Liability Companies, https://peraturan.bpk.go.id/Details/49641/pp-no-44-tahun-2005, accessed 6 September 2024.

Furthermore, to supervise and prevent abuse of power, the House of Representatives has the authority to supervise the State Equity Participation policy implemented by the President. This authority arises because the State Budget is the source of funds for State Equity Participation. The House of Representatives has a budget function to discuss and provide approval or rejection of laws on the State Budget submitted by the President.[250] However, for State Equity Participation that comes from sources other than the State Budget, the government can decide on its own without having to ask for the approval of the House of Representatives. For example, the source of funds for State Equity Participation is state-owned shares in State-Owned Enterprises or Limited Liability Companies.[251] In this case, state-owned shares are no longer included in the State Budget but are state assets separated due to the transfer of ownership to State-Owned Enterprises as independent legal subjects.

Based on the annual report of the Ministry of State-Owned Enterprises, State-Owned Enterprises receive State Equity Participation every year in large amounts as follows from the data for the last ten years:

[250] Article 70 paragraph 2 of Law Number 17 of 2014 on the People's Consultative Assembly, the House of Representatives, the Regional House of Representatives, and the Regional People's Representative Council, https://peraturan.bpk.go.id/Details/38643/uu-no-17-tahun-2014, accessed 7 September 2024.
[251] Article 2A of Government Regulation Number 72 of 2016 on Amendments to Government Regulation Number 44 of 2005 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies, https://peraturan.bpk.go.id/Details/5793/pp-no-72-tahun-2016, accessed 7 September 2024.

Figure 4.4.



Source: The Annual Report of the Ministry of State-Owned Enterprises 2015-2023 modified by author.

Figure 4.4. describes the State Equity Participation to State-Owned Enterprises. In the ten years from 2015-2024, the highest state cash expenditure for State Equity Participation to State-Owned Enterprises occurred in 2021 at 68.935 billion rupiah and the lowest in 2018 at 3.600 billion rupiah. There was a significant decline after 2016, which amounted to 50.480 billion rupiah, to 2017 at 6.379 billion rupiah, and in 2018 at 3.600 billion rupiah. After 2021, as the highest peak, there was a significant nominal decline, although it rose again in 2024 but did not exceed the highest nominal in 2021.[252]

In the Indonesian legal framework, state equity participation is a form of government investment that channels state finances to profitable business sectors. In Government Regulation Number 63 of 2019, Government Investment is the placement of several funds or financial assets in the long term for investment in shares, bonds, or direct

[252] Ministry of SOEs, The Annual Report of the Ministry of State-Owned Enterprises 2015-2023, accessed 15 October 2024, https://www.bumn.go.id/publikasi/laporan/laporan-tahunan?lang=id.

investment to obtain economic, social, and other benefits. The government invests state finances in shares, bonds, or direct investments.[253] The benefits of this investment include potential profits from the distribution of stock dividends, interest, profit sharing on the purchase of bonds, and other economic benefits from the direct and indirect investment.

However, the State Equity Participation policy has been criticized because it is considered a waste of state finances and not on target. For example, the government has provided State Equity Participation to PT. Hutama Karya (Indonesian state-owned construction company) five times in a row in the last few years. In 2023, the company received 28.884 billion rupiah; in 2022, 23.850 billion rupiah; 25.208 billion rupiah in 2021; 11.000 billion rupiah in 2020; and 10.500 billion rupiah in 2019.[254] The main reason the government routinely disburses State Equity Participation to PT. Hutama Karya is because the company is tasked with building toll road infrastructure in various regions of Indonesia. As a result, the company loses money every year and asks the government for financial assistance.

Another criticism of State Equity Participation is the state's financial burden, which is getting heavier yearly due to the State Budget deficit. A budget deficit occurs when government spending exceeds revenue. This situation means an imbalance exists between government revenue and spending, including capital revenue and capital expenditure.[255] The real impact of a budget deficit is the government's obligation to find other funding sources, such as debt, or reduce specific spending.[256] The following is the Indonesian Government's fiscal picture in the last five years:

---

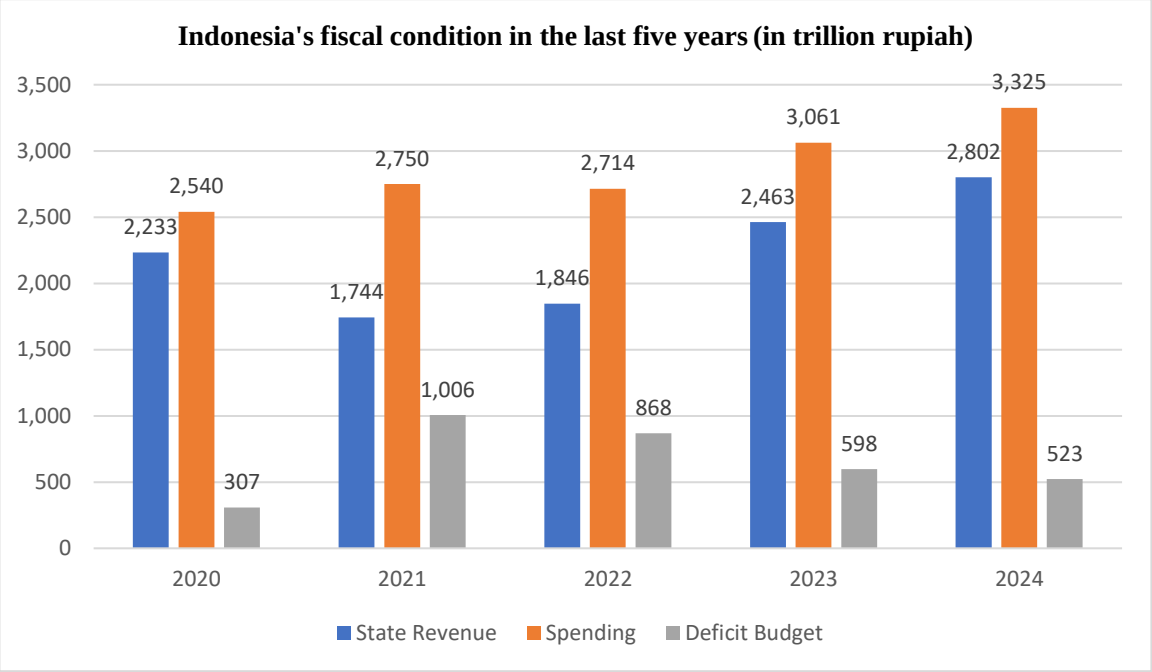
[253] Government Regulation Number 63 of 2019 on Government Investment, https://peraturan.bpk.go.id/Details/121675/pp-no-63-tahun-2019, accessed 7 September 2024.

[254] Government Regulation Number 55 of 2023 on the Addition of State Capital Participation of the Republic of Indonesia into the Share Capital of the Limited Liability Company (Persero) PT Hutama Karya, https://peraturan.bpk.go.id/Details/273449/pp-no-55-tahun-2023, accessed 7 September 2024. See also the Annual Report of State-Owned Enterprises 2019-2022, https://bumn.go.id/publikasi/laporan/laporan-tahunan, accessed 7 September 2024.

[255] OECD, "General government deficit," https://www.oecd.org/en/data/indicators/general-government-deficit.html, accessed 8 September 2024.

[256] The Investopedia Team, "Budget Deficit: Causes, Effects, and Prevention Strategies," https://www.investopedia.com/terms/b/budget-deficit.asp#:~:text=When%20a%20government%20spends%20more,spent%2C%20there%20is%20a%20surplus., accessed 8 September 2024.

Figure 4.5



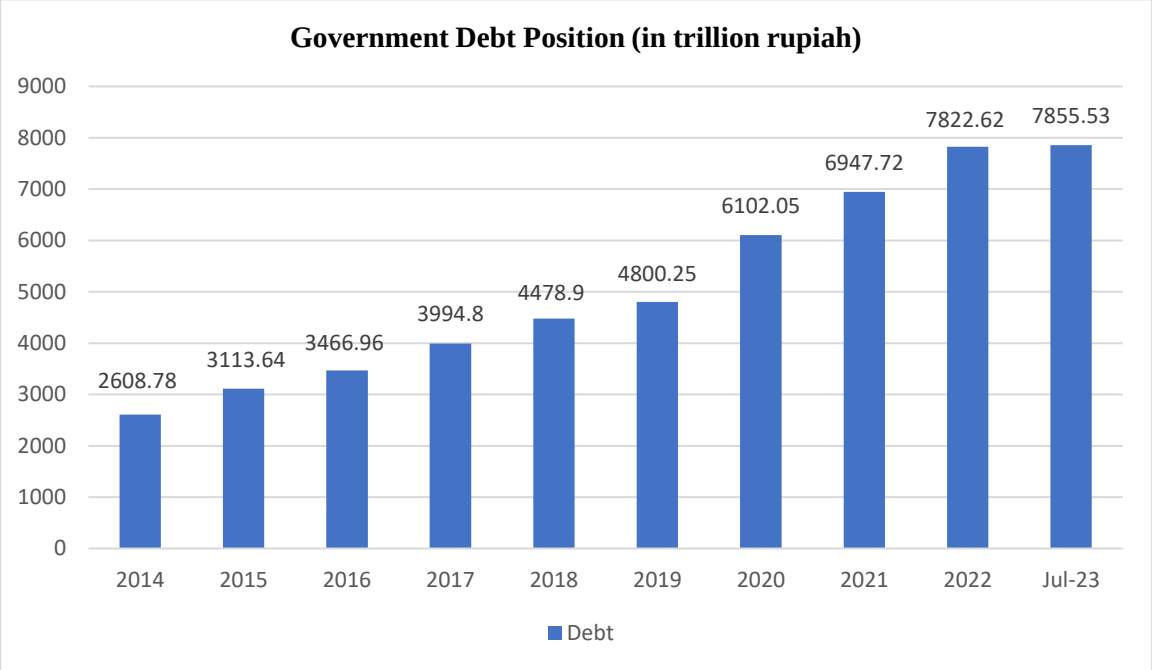
Source: Law on Indonesian State Budget 2019-2023 modified by author.[257]

Data Figure 4.5. shows that there has been a significant upward trend in Indonesia's state revenue in the last five years, although there was a slight decline in 2021 and 2022 when compared to 2020. However, state revenue increased again in 2023 and 2024. Then, related to government spending, there has been a consistent increase every year. The decrease in government spending figures only occurred once in 2022 compared to 2021, but the difference was manageable. Then, regarding the government budget deficit, data from 2021 to 2024 shows a consistent downward trend in the budget deficit every year.

[257] Law Number 20 of 2019 on the State Revenue and Expenditure Budget for the 2020 Fiscal Year, https://peraturan.bpk.go.id/Details/122744/uu-no-20-tahun-2019, accessed 8 September 2024. Law Number 9 of 2020 on the State Revenue and Expenditure Budget for the 2021 Fiscal Year, https://peraturan.bpk.go.id/Details/149747/uu-no-9-tahun-2020, accessed 8 September 2024. Law Number 6 of 2021 on the 2022 State Revenue and Expenditure Budget, https://peraturan.bpk.go.id/Details/185161/uu-no-6-tahun-2021, accessed 8 September 2024. Law Number 28 of 2022 on the State Revenue and Expenditure Budget for the 2023 Fiscal Year, https://peraturan.bpk.go.id/Details/232782/uu-no-28-tahun-2022, accessed 8 September 2024. Law Number 19 of 2023 on the State Revenue and Expenditure Budget for the 2024 Fiscal Year, https://peraturan.bpk.go.id/Details/267797/uu-no-19-tahun-2023, accessed 8 September 2024.

After reading Figure 4.5, the decline in the budget deficit indicates that the government's fiscal condition is still good. With the trend of increasing revenue, the decrease in deficits yearly shows an excellent fiscal condition. However, let us compare the condition of government debt (in the form of loans and government bonds) in several years as follows:

Figure 4.6



Source: Center for Budget Analysis and State Accountability, 2024, p. 1-15.[258]

Data Figure 4.6 shows a significant trend of increasing government debt every year. The very high debt increase appears from the comparison of data from 2019 and 2020. Then, the trend continues to increase every year. Although the 2023 data is not yet complete

[258] Center for Budget Analysis and State Accountability, "Potret Utang Pemerintah Periode 2015-2024: Risiko dan Capaiannya," https://berkas.dpr.go.id/pa3kn/analisis-apbn/public-file/analisis-apbn-public-93.pdf, accessed 8 September 2024.

because the availability is only until July 2024, the picture of the increase in government debt every year cannot be denied.

Based on a study by the Center for Budget Analysis and State Accountability, the increase in government debt is one of the impacts of fantastic government spending every year. During President Joko Widodo's leadership from 2014 to 2024, the government has spent a huge budget on infrastructure development in all regions, such as toll roads, ports, airports, reservoirs, and power plants, and constructing a new capital city in Borneo Island. As of 2014, the outstanding debt was 2,608 trillion rupiah, which then increased significantly to 7,855.53 trillion rupiah in July 2023, or a 201% increase in debt.[259]

Based on the theory of economic analysis of law,[260] the government's policy of providing State Equity Participation to State-Owned Enterprises every year, which causes a significant increase in government debt, can be tested using the approach of three basic concepts: value, utility, and efficiency. A value can be interpreted as something meaningful or essential (significance), desire, or desirability towards something, either monetary or non-monetary, so the nature attached to it is in the form of human self-interest to achieve satisfaction.[261] At the same time, utility is the benefit obtained because of decision-making when choosing options with alternative uses.[262] The concept of efficiency offers two concepts of profit allocation to measure efficiency: Pareto Optimality and Pareto Superiority. Pareto Optimality occurs if the distribution of profits can reach a level that makes everyone happy. If this is not possible, then Pareto Superiority can be applied where at least one person feels happier without another person feeling more miserable than him/her. The application in legal provisions is that all legal provisions are considered good

---

[259] Center for Budget Analysis and State Accountability, "Potret Utang Pemerintah Periode 2015-2024: Risiko dan Capaiannya," https://berkas.dpr.go.id/pa3kn/analisis-apbn/public-file/analisis-apbn-public-93.pdf, accessed 8 September 2024.

[260] This theory is a legal analysis that uses economic concepts. It is recorded that in 1949, an attempt was made to analyze the law with economic theory. It began at the University of Chicago under an antitrust regulatory research program called the Antitrust Project. In 1960, the Journal of Law and Economics published an article entitled "The Problem of the Social Cost" by Ronald Coase. The article reviews laws and regulations and how both affect the economy. See Law and Economics: A Reader, Ed. Alain Marciano, (London and New York: Routledge, 2009), p. 3-4.

[261] Richard A. Posner, Economic Analysis of Law, Seventh Edition, (New York: Aspen Publishers, 2007), p. 10, 70, and 271.

[262] Robert Cooter & Thomas Ulen, Law & Economics, 5th Edition, (London: Pearson Addison Wesley, 2008), p. 9.

if the legal provisions increase collective welfare (Pareto optimality), or at least the legal provisions bring about better changes for one group without reducing the welfare of other groups (Pareto superiority).[263]

In the concept of value, for instance, the policy of granting State Equity Participation to State-Owned Enterprises continuously every year provides monetary value to State-Owned Enterprises on the one hand. However, with the utility concept approach, the policy hurts state finances with a massive increase in government debt every year. Moreover, in terms of efficiency, government policies need to be evaluated because there is a threat of state financial burden in the future due to the accumulation of large debts. Therefore, the evaluation of State Equity Participation in State-Owned Enterprises needs to be reviewed and reconsidered for the good of state finances.

4.2. The Establishment of the National Asset Management Company

In 2004, the Indonesian Government established PT Perusahaan Pengelola Aset (PPA, The National Asset Management Company) based on the provisions of Government Regulation Number 10 of 2004 on the Establishment of Limited Liability Companies (Persero) in the Field of Asset Management. This company is a State-Owned Enterprise tasked with managing state assets in the form of, among others, asset restructuring, cooperation with other parties to increase asset value, collection of receivables, and sales.[264] This company replaced the duties of the National Bank Restructuring Agency, which the government dissolved.[265]

---

[263] The Investopedia Team, "Pareto Efficiency Examples and Production Possibility Frontier," https://www.investopedia.com/terms/p/pareto-efficiency.asp#:~:text=An%20economy%20is%20said%20to,major%20pillar%20of%20welfare%20economics., accessed 8 September 2024.

[264] Government Regulation Number 10 of 2004 on the Establishment of Limited Liability Companies (Persero) in the Field of Asset Management, https://peraturan.bpk.go.id/Details/51779/pp-no-10-tahun-2004, accessed 8 September 2024.

[265] The National Bank Restructuring Agency is a state institution tasked with managing problematic bank assets, seeking to return state funds to problematic banks, and resolving bankrupt bank assets. See Government Regulation Number 17 of 1999 on the National Bank Restructuring Agency, https://peraturan.bpk.go.id/Details/54242/pp-no-17-tahun-1999, accessed 8 September 2024.

PPA is a state-owned asset management company specializing in restructuring and revitalizing State-Owned Enterprises, investment, asset management, and advisory. PPA is transforming into a National Asset Management Company (NAMCO), which focuses on turnaround strategies for SOEs Titip Kelola (management deposit), management of banking Non-Performing Loans (NPLs), and Special Situations Fund (SSF).

Figure 4.7.

Three Pillars of PPA

SOEs Management Deposit

Management of banking Non-Performing Loans

Special Situations Fund

Source: The National Asset Management Company[266]

Figure 4.7. shows the pillars of PPA. The first pillar is SOEs Management Deposit. PPA is tasked with restructuring and revitalizing State-Owned Enterprises that are financially and operationally "sick." Through the Ministry of State-Owned Enterprises, the Indonesian government grants PPA a Special Power of Attorney to hold the authority and rights of shareholders. PPA is tasked with improving the financial and operational structure of State-Owned Enterprises that continue to experience financial and business problems. In addition, PPA acts as a settlement tool for distressed assets in implementing turnaround strategies and asset management.[267]

The second pillar is the management of non-performing loans (NPLs) in banking. PPA cooperates with state-owned and private banks in handling NPLs and improving the

[266] The National Asset Management Company, https://www.ptppa.com/id/bumn-titip-kelola/, accessed 13 September 2024.
[267] The National Asset Management Company, https://www.ptppa.com/id/bumn-titip-kelola/, accessed 13 September 2024.

financial capacity of bank debtors. PPA handles and manages NPL assets of banking companies in order to assist banks in divesting credit that can hinder their operational and financial performance. The Cooperation Agreement between PPA and banks is business to business (B2B).[268]

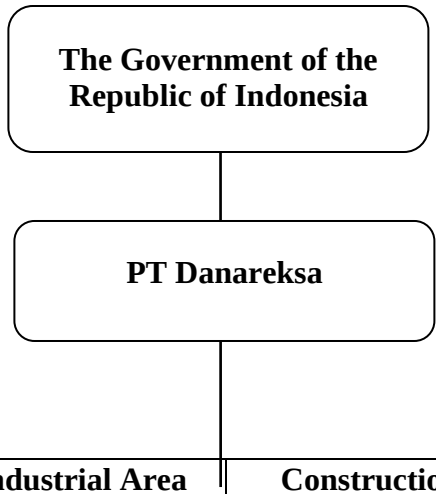
The third pillar is the Special Situations Fund (SSF). PPA provides investment solutions in various capital structures for State-Owned Enterprises according to the needs and challenges faced. In addition, PPA also provides advisory services to complement its investment activities.[269]

Furthermore, on January 24, 2022, the government issued Government Regulation Number 7 of 2022 as the basis for establishing PT Danareksa as a holding company and PPA as a subsidiary with several other State-Owned Enterprises. PT Danareksa is a holding company tasked explicitly with transforming and investing in State-Owned Enterprises so that their businesses are optimal and increase in value. In addition, this holding company also oversees several State-Owned Enterprises that are not included in the 12 clusters that have been determined and manages several State-Owned Enterprises that are experiencing financial and operational problems. The following is a division of the various industrial sectors of PT Danareksa's subsidiaries:[270]

[268] The management of non-performing loans, https://www.ptppa.com/id/pengelolaan-non-performing-loan-npl-perbankan/, accessed 13 September 2024.
[269] Special Situations Fund, https://www.ptppa.com/id/special-situations-fund-ssf-2/, accessed 13 September 2024.
[270] Government Regulation Number 7 of 2022 on the Addition of State Capital Participation of the Republic of Indonesia into the Share Capital of the Limited Liability Company (Persero) PT Danareksa, https://peraturan.bpk.go.id/Details/196918/pp-no-7-tahun-2022, accessed 14 September 2024.

Figure 4.8.

Structure of Danareksa Holding Company



Financial Services Sub Cluster	Industrial Area Sub Cluster	Construction Services and Consulting Sub Cluster	Media and Technology Sub Cluster
PT Perusahaan Pengelola Aset	PT Kawasan Berikat Nusantara	PT Nindya Karya	PT Balai Pustaka
PT Danareksa Finance	PT Kawasan Industri Medan	PT Indra Karya	PT Kliring Berjangka Indonesia
PT Danareksa Capital	PT Kawasan Industri Makassar	PT Virama Karya	PT Jalin Pembayaran Nusantara
PT BRI Danareksa Sekuritas	PT Kawasan Industri Wijayakusuma	PT Yodya Karya	
PT BRI Manajemen Investasi	PT Surabaya Industrial Estate Rungkut		

	PT Jakarta Industrial Estate Pulogadung
	PT Kawasan Industri Terpadu Batang

Source: Danareksa Company[271]

Figure 4.8. describes the structure of Danareksa company. Of all the subsidiaries, not all are under the complete control of PT Danareksa or the majority of ownership. For instance, PT BRI Danareksa Sekuritas and PT BRI Manajemen Investasi. PT Danareksa only controls 33% of PT BRI Danareksa Sekuritas shares, and PT Bank Rakyat Indonesia owns the remaining 67%. In addition, PT Danareksa only controls 35% of PT BRI Manajemen Investasi shares because PT Bank Rakyat Indonesia owns 65% of its shares. Another example is PT Jakarta Industrial Estate Pulogadung, half of whose shares are owned by PT Danareksa, and the rest are owned by the DKI Jakarta Provincial Government.[272]

Not only sharing ownership of subsidiaries with other State-Owned Enterprises, PT Danareksa also received a Special Power of Attorney from the Ministry of State-Owned Enterprises to manage State-Owned Enterprises that have financial and operational problems, such as PT Indra Karya, PT Virama Karya, and PT Yodya Karya. PT Danareksa has the task of restructuring and revitalizing the three companies as ordered by the Ministry of State-Owned Enterprises.[273]

In restructuring and revitalization of State-Owned Enterprises, PT Danareksa, as a holding company, assigns PPA as one of its subsidiaries working in the sector. Regarding

[271] The Structure of Danareksa Holding Company, https://danareksa.co.id/tentang/struktur-grup, accessed 14 September 2024.
[272] The Structure of Danareksa Holding Company, https://danareksa.co.id/tentang/struktur-grup, accessed 14 September 2024.
[273] The Profile of Danareksa Holding Company, https://danareksa.co.id/tentang/pt-danareksa, accessed 14 September 2024.

the restructuring and revitalization process requiring cooperation and collaboration with other subsidiaries, PT Danareksa becomes an instructor and leader among its subsidiaries or communicates with other parties.

4.3. Restructuring and Revitalization of State-Owned Enterprises through The National Asset Management Company

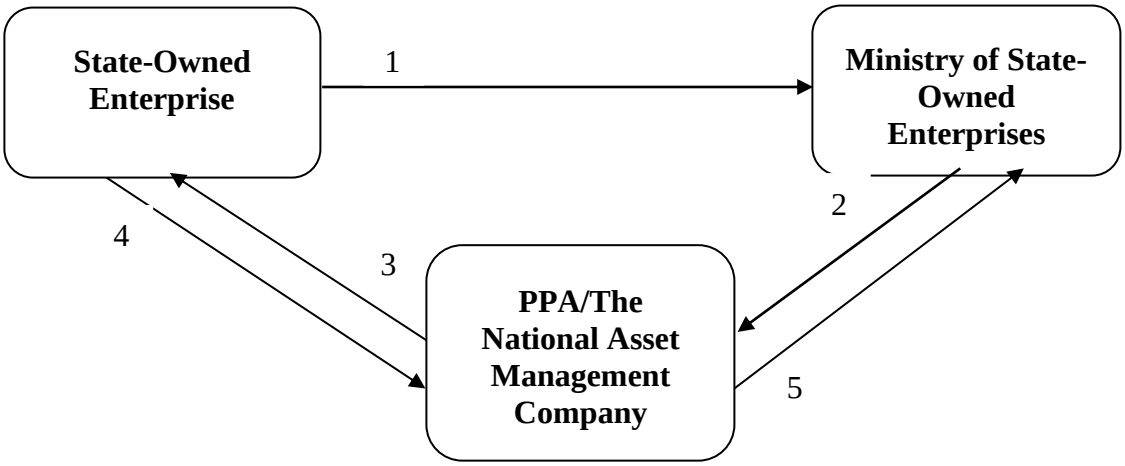
Regulation of the Minister of State-Owned Enterprises Number 01 of 2009 defines restructuring as "an effort made in order to improve the health of State-Owned Enterprises which is one of the strategic steps to improve the internal conditions of the company in order to improve performance and increase the value of the company." While the definition of *revitalization* is "an effort made in order to improve the health of State-Owned Enterprises by providing loans and or additional capital deposits in order to improve performance and increase the value of the company."[274]

[274] Regulation of the Minister of State-Owned Enterprises Number 01 of 2009 on Guidelines for Restructuring and Revitalization of State-Owned Enterprises by the Limited Liability Company (Persero) PT Perusahaan Pengelola Aset, https://www.hukumonline.com/pusatdata/detail/lt4a094bce2d836/peraturan-menteri-negara-badan-usaha-milik-negara-nomor-per01mbu2009-tahun-2009/document/, accessed 14 September 2024.

Figure 4.9.

Preparation Process for Restructuring and Revitalization

of a State-Owned Enterprise



Source: Author

In Figure 4.9., Regulation of the Minister of State-Owned Enterprises Number 01 of 2009 explains of the preparation process for the restructuring and revitalization of State-Owned Enterprises. First, a State-Owned Enterprise submits a proposal to the Minister of State-Owned Enterprises. The Board of Directors and Commissioners/Supervisory Board signed the Statement of Commitment and the restructuring and revitalization plan document. The Statement of Commitment is a written statement by the Board of Directors and Commissioners/Supervisory Board stating that they support and enforce the decisions of the General Meeting of Shareholders regarding the restructuring and revitalization of the company. In addition, the Board of Directors, and Commissioners/Supervisory Board state their willingness to provide and explain all information and company documents requested by the PPA to execute the company's restructuring and revitalization.[275]

[275] Regulation of the Minister of State-Owned Enterprises Number 01 of 2009.

Next, the Minister of State-Owned Enterprises assigns PPA to carry out a feasibility study/due diligence related to the restructuring and revitalization of a State-Owned Enterprise proposed by the Minister.

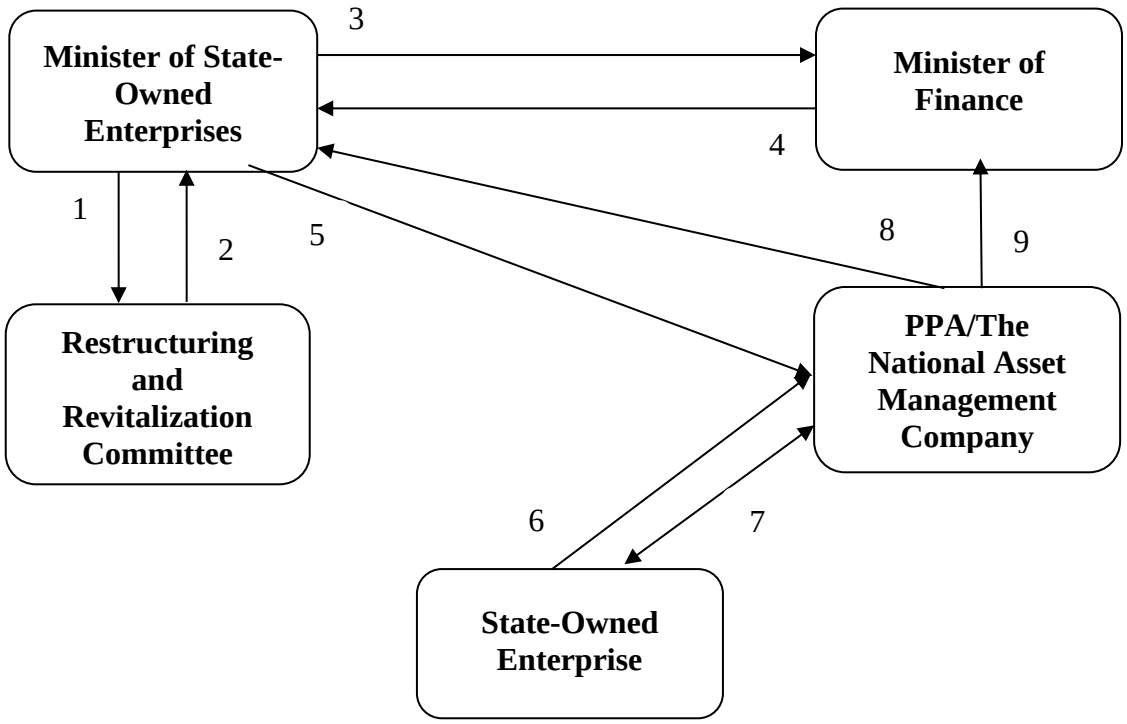
Then, PPA conducts due diligence/feasibility studies for company restructuring and revitalization. PPA maps out problems and potential problems the company faces, examines the company's potential resources, identifies business development opportunities or alternatives for improving business activities, and formulates restructuring and revitalization options. The restructuring and revitalization options consist of one or a combination of the financial, organizational/management, operational, and system and procedure fields. More importantly, in carrying out its duties, PPA must maintain the company's data and information confidentiality.

In addition, a State-Owned Enterprise that is in the process of restructuring and revitalization provides information and data required by PPA. All costs incurred in the restructuring and revitalization process are the obligations and responsibilities of the company.

Finally, PPA submits the results of the restructuring and revitalization study to the Minister of State-Owned Enterprises with a copy to the Minister of Finance within 60 working days. The study results contain recommendations for the best options for State-Owned Enterprises.

Figure 4.10.

Process of Executing Restructuring and Revitalization of a State-Owned Enterprise



Source: Author

Furthermore, Figure 4.10. describes the implementation of restructuring and revitalization activities for a State-Owned Enterprise. First, the Minister of State-Owned Enterprises forms and leads the Restructuring and Revitalization Committee, which consists of the Minister of State-Owned Enterprises, the Minister of Finance, the Minister related to the business activities of a State-Owned Enterprise to be restructured and revitalized, representatives of the Ministry of State-Owned Enterprises, representatives of the Ministry of Finance, related government agencies, and experts in the field of a State-Owned Enterprise to be restructured and revitalized. This committee discusses the results of the

PPA's study and recommendations on the due diligence of a State-Owned Enterprise to be restructured and revitalized.[276]

Second, the Restructuring and Revitalization Committee submits the determination results to the Minister of State-Owned Enterprises.

Third, the Minister of State-Owned Enterprises requests the approval of the Minister of Finance by submitting the Determination of the Restructuring and Revitalization Committee.

Fourth, the Minister of Finance submits written approval to the Minister of State-Owned Enterprises.

Fifth, the Minister of State-Owned Enterprises assigns PPA to restructure and revitalize a State-Owned Enterprise. In addition, the Minister of State-Owned Enterprises, as the General Meeting of Shareholders or capital owner of the State-Owned Enterprise to be restructured and revitalized, can grant power of attorney or delegate certain authorities to PPA.

Sixth, the General Meeting of Shareholders or capital owners of State-Owned Enterprises to be restructured and revitalized submits a decision on approving the scheme, terms, and central conditions of restructuring and revitalization and approval of costs related to restructuring and revitalization to the PPA. Moreover, the Board of Commissioners submits approval for restructuring and revitalization activities.

Seventh, PPA and the restructured and revitalized State-Owned Enterprise sign the Restructuring and Revitalization Agreement. In addition, both parties also agree and sign the credit agreement documents, guarantee agreements, debt securities, and share issuance agreements. Both parties must implement the contents of the agreement in restructuring and revitalization.

Eight, PPA reports on the progress of restructuring and revitalization every three months or at any time, if necessary, to the Minister of State-Owned Enterprises.

[276] Regulation of the Minister of State-Owned Enterprises Number 01 of 2009.

Finally, PPA also reports on the progress of restructuring and revitalization every three months or at any time, if necessary, to the Minister Finance.

Based on the description of the process of implementing the restructuring and revitalization of a State-Owned Enterprise, the role of the Minister of State-Owned Enterprises and the Minister of Finance is very important. These two ministries have great responsibility in deciding and overseeing the restructuring and revitalization process of a State-Owned Enterprise. PPA as the implementing party for the restructuring and revitalization of a State-Owned Enterprise is responsible to these two ministries.

However, the Minister of State-Owned Enterprises and the Minister of Finance supervise the technical issues of implementing the restructuring and revitalization of a State-Owned Enterprise and the issue of funding sources. In restructuring and revitalization activities, funding sources can come from the State Budget, PPA/National Asset Management Company Funds, and funds from third parties. Specifically for funding sources from PPA, legal regulations limit only a maximum of 15% of PPA's paid-up capital, which is allocated for restructuring and revitalization. If the use of these funds exceeds the limit, PPA is required to request permission from the Minister of Finance.[277]

In PPA's journey as the National Asset Management Company since 2004, many State-Owned Enterprises have entered the restructuring and revitalization program. However, most have not returned to being financially and operationally healthy companies. One of the main factors causing the failure of restructuring and revitalization is the poor financial condition and operational activities that have stopped when entering the restructuring and revitalization program. Although the government has provided State Equity Participation, the condition of a company cannot improve because it cannot fulfil its financial obligations.[278]

[277] Regulation of the Minister of State-Owned Enterprises Number 01 of 2009.
[278] PT Perusahaan Pengelola Aset, "Dua Windu Sang Dokter Korporasi," https://www.ptppa.com/id/buku-sang-dokter-korporasi/, accessed 16 September 2024.

5. Restructuring State-Owned Enterprises through Reorganization of Company

5.1. The Establishment of Holding Company for State-Owned Enterprises

A holding company, in the definition of a Belgian holding company, is a financial institution that has the task of managing the stock portfolio of several companies by having a control function over these companies due to the control of the company's shares. This control differs from financial institutions such as mutual funds, which only act as investment managers.[279]

In other definition, a holding company is not a specific financial institution but a business entity, usually in the form of a company or limited liability company, that does not manufacture any commodities, sell, or produce goods and services, or manage certain businesses. In addition, a holding company controls shares in other companies and exercises control over them.[280]

The control function over other companies is identical to that of a holding company because of the purpose of its establishment. There are two types of holding companies based on their control function. The first holding company is purely a parent company for several other companies because of the majority ownership of the company's shares. Furthermore, a second holding company has a control function over other companies, but it continues to run its own business. Therefore, this second type is a holding-operating company.[281]

In relation to holding company in State-Owned Enterprises, the government has reasons or objectives for establishing a holding company for State-Owned Enterprises. There are seven reasons or objectives for a government to issue a policy to transform State-Owned Enterprises into a holding company in various countries:[282]

First, the government wants to control several State-Owned Enterprises for efficiency and effectiveness in several direct agreements. The holding company in this

---

[279] Daems, Herman P. *The holding company and corporate control*. Vol. 3. Springer Science & Business Media, 2012, p. 2, https://doi.org/10.1007/978-1-4613-4056-0.
[280] Amy Fontinelle, "Holding Company: What It Is, Advantages and Disadvantages," Investopedia, https://www.investopedia.com/terms/h/holdingcompany.asp, accessed 10 September 2024.
[281] Britannica Money, "Holding Company," https://www.britannica.com/money/holding-company, accessed 10 September 2024.
[282] Kumar, Anjali. "The state holding company." *World Bank Discussion Paper* l87 (1992), https://documents.worldbank.org/curated/en/853961468740448292/pdf/multi-page.pdf.

model plays a more significant role as a facilitator of government control than as a goal of ease of control.

Second, the government expects partnerships through integration between State-Owned Enterprises and business sectors. Besides, the government aims to establish a holding company to enhance corporate governance reform so that it is integrated vertically and horizontally.

Third, the government promotes excellent economic efficiency so that State-Owned Enterprises work more competitively in the global market. This policy model tends to decentralize government authority and operational cost efficiency.

Fourth, the government can increase financial returns on its investments in State-Owned Enterprises. The holding company manages government assets in various companies with the aim of financial gain.

Fifth, the government forms a holding company to save State-Owned Enterprises from continuous losses to the threat of bankruptcy. The holding company is tasked with restructuring the company and restoring its financial health.

Sixth, the government establishes a holding company to transfer or return State-Owned Enterprises to private ownership with or without prior restructuring. Holding companies can save the financial health of private companies by acquiring them and returning them to private ownership after the company's condition improves.

Seventh, the government initiates a holding company to manage state-owned shares in State-Owned Enterprises until it sells its shares to private companies. This policy model combines independent management, asset management, and recovery with private ownership. Holding companies can also play a role in managing private shares in State-Owned Enterprises.

In the context of Indonesia, the establishment of a holding company has strategic objectives, including strengthening and expanding State-Owned Enterprises from a financial aspect, increasing the company's competitiveness and bargaining position nationally and globally, encouraging efficiency and effectiveness to achieve economies of scale, creating a partnership between holding companies and subsidiaries, and improving

the company's capital structure and funding capabilities.[283] Moreover, the establishment of holding company strengthens the structure of State-Owned Enterprises competitively and effectively, supports the improvement of public service, and builds company's capabilities to increase cooperation among State-Owned Enterprises.[284]

There are no explicit and specific rules in Law Number 19 of 2003 on State-Owned Enterprises and Law Number 17 of 2003 on State Finance, which regulates the formation and governance of a holding company. However, the government implemented the holding company process by issuing Government Regulation Number 72 of 2016, which revised the previous Regulation Number 44 of 2005 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies.

Forming a holding company based on Government Regulation Number 72 of 2016 involves transferring one company's shares to another. The government transfers shares without going through the State Budget mechanism because the position of state assets in the form of shares has changed ownership from the State Treasury to State-Owned Enterprises.[285] Therefore, the transfer of shares from one company to another in the process of forming a holding company occurs only between companies, without the mechanism or procedure of the State Budget, which requires legal products such as Laws.

The transfer of shares does not cause an absolute reduction or loss of state shares in State-Owned Enterprises. Unlike privatization, which sells company shares to the private sector, the holding company process only transfers shares from one company to another. Some companies act as holding companies, and others act as subsidiaries. The government still has control over subsidiaries of holding companies because the government has special

---

[283] Usman, Dedi Syarif. "Pembentukan Holding Bumn Harus Mempunyai Dampak Manfaat Pada Negara Dan Masyarakat." Interview in Media Kekayaan Negara, Ministry of Finance of the Republic of Indonesia, No. 28, 2018, https://www.djkn.kemenkeu.go.id/files/mediakn/MKN_28.pdf, accessed 11 September 2024.

[284] Arinanto, Satya, and Dian Parluhutan. "Holding of the Indonesian State-Owned Enterprises and Analysis of the Judicial Review Over the Government Regulation Number 47/2017 Juncto Law Number 19 Year 2003 on the BUMN." In *3rd International Conference on Law and Governance (ICLAVE 2019)*, pp. 254-261. Atlantis Press, 2020, https://doi.org/10.2991/aebmr.k.200321.034.

[285] Explanation of Government Regulation Number 72 of 2016 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies, https://peraturan.bpk.go.id/Details/5793/pp-no-72-tahun-2016, accessed 11 September 2024.

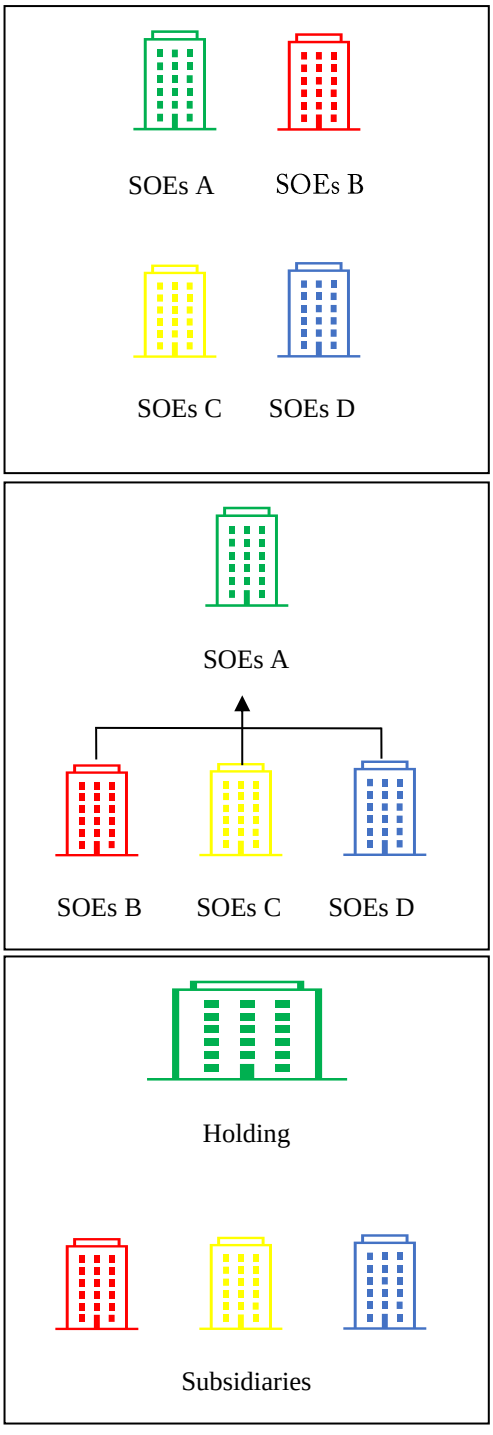
shares (series A two-color), which allow the state to control strategic policies in subsidiaries directly.[286]

Moreover, state-owned enterprises that become holding companies must have the majority of their shares in subsidiaries (minimum 51% share ownership).[287] Holding companies are State-Owned Enterprises that are required to submit to the government based on the provisions of Law Number 19 of 2003 on State-Owned Enterprises and Law Number 17 of 2003 on State Finance. Therefore, the holding company represents government supervision and control over subsidiaries. See Appendix 6: List of State-Owned Holding Company and Appendix 7: List of Indonesian State-Owned Enterprises based on the Value Chain and Business Ecosystem.

The following is a description of the before, during, and after formation of the State-Owned Enterprise holding company:

[286] Article 2A paragraph (2) Government Regulation Number 72 of 2016 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies, https://peraturan.bpk.go.id/Details/5793/pp-no-72-tahun-2016, accessed 11 September 2024.
[287] Article 2A paragraph (6) Government Regulation Number 72 of 2016 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies, https://peraturan.bpk.go.id/Details/5793/pp-no-72-tahun-2016, accessed 11 September 2024.

Figure 4.11.



Before Holding

SOEs A, SOEs B, SOEs C, and SOEs D are legal entities that carry out business activities as stipulated in Law Number 19 of 2003 on State-Owned Enterprises.

Holding Process

Transfer of state shares in SOEs B, SOEs C, and SOEs D to SOEs A through State Equity Participation. The government issues Government Regulations for each State Equity Participation as part of the process of forming a holding company.

After Holding

SOEs B, SOEs C, and SOEs D become subsidiaries of SOEs Holding and their status becomes a State-Owned Enterprise/Public Company.

Source: Author

However, in the formation of the holding company, a group of scholars sued Government Regulation Number 72 of 2016, which is the legal basis for government policy. The National Assembly of the Alumni Corps of the Islamic Student Association, the RE-IDE Indonesia Foundation, Ahmad Redi, and Supardi filed a judicial review of the regulation to the Supreme Court. They submitted several reasons: First, State Capital Participation in State-Owned Enterprises in forming a holding company eliminates the State Budget mechanism stipulated in Law Number 19 of 2003.[288]

Next, the elimination of the authority of the House of Representatives to supervise and follow the process of transferring shares of State-Owned Enterprises in the formation of a holding company because the process is only between the Ministry of Finance, the Ministry of State-Owned Enterprises, and the Technical Ministry.

Then, the formulation of Government Regulation Number 72 of 2016 violates the norms of the 1945 Constitution concerning the management of state assets.

In addition, Government Regulation Number 72 of 2016 contradicts Law Number 17 of 2003 on State Finance, which states that the provision of loans, grants, and state capital participation must be made through the State Budget mechanism.

Finally, establishing a holding company is the latest privatization model that transfers state assets to State-Owned Enterprises without going through the legislative process in parliament.

Furthermore, the Indonesian Forum for Transparency also criticized Government Regulation Number 72 of 2016 and asked the government to revoke it. They argued that capital participation in State-Owned Enterprises is prohibited without going through the State Budget mechanism. The role of the House of Representatives was also lost in this policy. In addition, they argued that there was an attempt to separate the wealth of State-Owned Enterprises from state finances/State Budget structure. Besides, this legal regulation avoids the process of transparency and accountability if it is not included in the State Budget

[288] Supreme Court Decision on Judicial Review of Government Regulation Number 72 of 2016 on Amendments to Government Regulation Number 44 of 2005 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies, https://jdih.kemenkeu.go.id/in/dokumen/putusan/2796dda5-2a69-4343-3915-08d8667b5760, accessed 11 September 2024.

scheme and eliminates the role of the Audit Board of the Republic of Indonesia. Moreover, this regulation contradicts the Law, which is hierarchically higher in position. There is also concern that subsidiaries of State-Owned Enterprises can quickly transfer shares through buying and selling and so on because they need to follow the State Budget mechanism and supervision from other institutions.[289]

In its decision, the panel of judges of the Supreme Court did not grant material review of the plaintiffs. The panel of judges thought that Government Regulation Number 72 of 2016, as a technical regulation under the Law, does not conflict with the legal norms in Law Number 19 of 2003 on State-Owned Enterprises and Law Number 17 of 2003 on State Finance. In addition, the phrase "State Property," which is the object of State Equity Participation in the process of forming a holding company, is in accordance with the legal provisions in the Law on the State Budget.[290]

In the lawsuit regarding the process of forming a holding company without going through the State Budget mechanism, the panel of judges believes that the shares of State-Owned Enterprises are state assets that have been separated from the State Budget and transferred to State-Owned Enterprises. In addition, State Equity Participation, sourced from the State Budget, has been transformed into state shares managed based on the principles of good corporate governance. Therefore, transferring shares in forming a holding company is correct without going through the State Budget mechanism and without the legislative process in the House of Representatives.[291]

Furthermore, the panel of judges also emphasized that forming a holding company differs from privatization. Privatization aims to expand public ownership of State-Owned

---

[289] Hukumonline, "7 Points of FITRA's Notes on Government Regulations on Capital Participation in State-Owned Enterprises," https://www.hukumonline.com/berita/a/7-poin-catatan-fitra-terhadap-pp-penyertaan-modal-bumn-lt58854ff509f13/, accessed 11 September 2024.
[290] Supreme Court Decision Number 21 P/HUM/2017 on Judicial Review of Government Regulation Number 72 of 2016 on Amendments to Government Regulation Number 44 of 2005 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies, https://jdih.kemenkeu.go.id/in/dokumen/putusan/2796dda5-2a69-4343-3915-08d8667b5760, accessed 11 September 2024.
[291] Supreme Court Decision on Judicial Review of Government Regulation Number 72 of 2016.

Enterprises. At the same time, a holding company does not reduce state ownership of State-Owned Enterprises because the state still controls the majority of share ownership.[292]

The difference of opinion between groups of scholars and the government regarding forming a holding company for State-Owned Enterprises is a debate that cannot be separated from the conceptual framework of the Indonesian economic constitution. Scholars who reject holding companies argue that state assets must be allocated for the greatest possible prosperity and social justice. The process of forming a holding company that eliminates the supervisory role of the House of Representatives and the Audit Board raises concerns about state share transactions without checks and balances. The government and State-Owned Enterprises can quickly transfer ownership of state shares to other parties without the State Budget mechanism. The government's authority in Government Regulation Number 72 of 2016 over state shares in State-Owned Enterprises is powerful without balance from other state institutions.

Meanwhile, the government firmly argues that state shares in State-Owned Enterprises are state assets separated from the State Budget. Therefore, the transfer of state shares between State-Owned Enterprises in forming a holding company does not violate the Indonesian constitution and is by the principles of good corporate governance. Moreover, the government believes that forming a holding company is one way to strengthen work effectiveness, improve financial conditions, and increase the competitiveness of State-Owned Enterprises at the national and international levels.

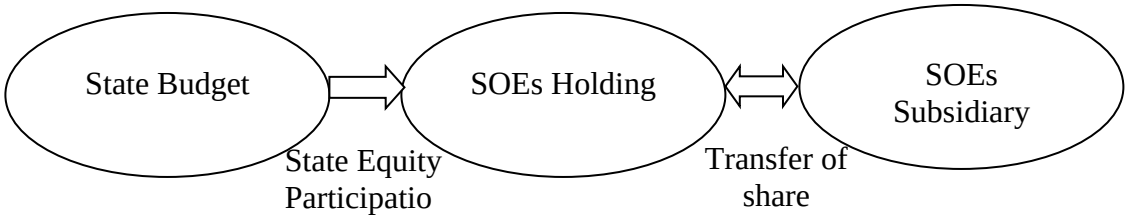
[292] Supreme Court Decision on Judicial Review of Government Regulation Number 72 of 2016.

1.2. The Convoluted Legal Relationship between Holding and Subsidiaries

After the government succeeded in forming a holding company and subsidiaries in a State-Owned Enterprise, new problems arose related to the legal relationship between the holding company and subsidiaries, primarily related to separated state assets, supervision by the Audit Board and the House of Representatives, and the settlement of subsidiary bankruptcies in court.

Figure 4.12

Transfer of State Assets to State-Owned Enterprises



Source: Author

Figure 4.12. explains that based on the provisions of Law Number 19 of 2003, the state establishes a State-Owned Enterprise through direct participation or providing capital in full (100%) or majority (more than 51%) of the separated state assets. State Equity Participation is a fund from the State Budget specifically allocated to establish or increase the capital of a State-Owned Enterprise. Therefore, transferring state assets to a State-Owned Enterprise through the State Budget mechanism follows the legislative process in the House of Representatives. The government does not decide the State Equity Participation policy alone but under the supervision of the House of Representatives, which has a budget function in government. As a result, assets separated from the State Budget become the property of the State-Owned Enterprise as a legal entity separate from the state.

Furthermore, based on the provisions of Government Regulation Number 72 of 2016, the transfer of share ownership between several State-Owned Enterprises in forming

a holding company does not constitute a separation of state assets as in the State Budget mechanism. However, the transfer of share ownership between several State-Owned Enterprises constitutes a transfer of ownership between independent legal entities with the concept of separation between ownership and control. Therefore, the government does not need to use the State Budget mechanism.

From this legal case, a new issue arose regarding the status of subsidiaries of State-Owned Enterprises. Regulation of the Minister of State-Owned Enterprises Number PER-15/MBU/2012 mentions three categories of subsidiaries of State-Owned Enterprises. First, companies whose shares are at least 90% owned by the State-Owned Enterprise concerned. For example, a holding company owns 90% of the shares of a subsidiary. Both businesses are interrelated and synergize with each other. Second, companies whose shares are at least 90% owned by another State-Owned Enterprise. For example, a State-Owned Enterprise owns 90% of the shares of a company, but the business activities of both are different and unrelated to each other. Third, a joint venture company whose share ownership is 90% is jointly owned by State-Owned Enterprises. For example, two or more state-owned enterprises jointly control a company's shares, which are combined to become 90% ownership.[293] More clearly in the Regulation of the Minister of State-Owned Enterprises Number PER-03/MBU/2012, a subsidiary of a State-Owned Enterprise is a limited liability company whose shares are owned mainly by a State-Owned Enterprise or a limited liability company controlled by a State-Owned Enterprise.[294] As a result, a subsidiary of a State-Owned Enterprise is not a State-Owned Enterprise as stipulated in Law Number 19 of 2003 because its capital does not come from state assets (State Budget) but from the State-Owned Enterprise, which is the holding company.

---

[293] Regulation of the Minister of State-Owned Enterprises Number PER-15/MBU/2012 of 2012 on Amendments to the Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/2008 on General Guidelines for the Implementation of Procurement of Goods and Services by State-Owned Enterprises, https://peraturan.bpk.go.id/Details/146705/permen-bumn-no-per-15mbu2012-tahun-2012, accessed 12 September 2024.

[294] Regulation of the Minister of State-Owned Enterprises Number PER-03/MBU/2012 of 2012 on Guidelines for the Appointment of Members of the Board of Directors and Members of the Board of Commissioners of Subsidiaries of State-Owned Enterprises, https://peraturan.bpk.go.id/Details/146603/permen-bumn-no-per-03mbu2012-tahun-2012, accessed 12 September 2024.

However, the status of a subsidiary of a State-Owned Enterprise raises the dualism of opinion between the Supreme Court and the Constitutional Court. The Supreme Court, based on Decision Number 21 P/HUM/2017, thinks that the wealth of a State-Owned Holding Company is part of the state's wealth. Likewise, the wealth of a subsidiary of a State-Owned Enterprise is part of the wealth of the State-Owned Holding Company. Therefore, the wealth of a subsidiary is also part of the state's wealth transferred through the holding company. The panel of judges offered logical thinking about the nature of a subsidiary, which is an extension of the holding company. The status of state assets in the form of shares, which are transferred from the holding company to the subsidiary, is not lost due to the transfer of ownership.[295]

The consequences of the subsidiary status as a State-Owned Enterprise are equal rights and obligations as per the applicable laws for State-Owned Enterprises. First, establishing a State-Owned Enterprise subsidiary must obtain approval from the government as a shareholder, in whole or in majority. Besides, the House of Representatives can supervise the establishment of a subsidiary because of the budget function inherent in its institution. If the government does not agree with the proposal to establish a subsidiary, then the capital for establishing the subsidiary can become dividends for the government as a shareholder. Second, the government can divest the State-Owned Enterprise subsidiary. Then, the money from the divestment can be submitted as dividends to the state treasury through the State Revenue and Expenditure Budget as part of state assets.[296] Third, the Audit Board supervises the State-Owned Enterprise subsidiary as its function is to supervise state institutions.[297] Fourth, related to the bankruptcy of subsidiaries of State-Owned Enterprises, the bankruptcy procedure follows the exact mechanism of limited liability companies in general. Specifically for State-Owned Enterprises with the legal status of a General Company (PERUM), only the Minister of Finance has the right to file for bankruptcy. The

[295] Supreme Court Decision Number 21 P/HUM/2017 on Judicial Review of Government Regulation Number 72 of 2016.
[296] Government Regulation Number 44 of 2005 on Procedures for State Capital Participation and Administration in State-Owned Enterprises and Limited Liability Companies, https://peraturan.bpk.go.id/Details/49641/pp-no-44-tahun-2005, accessed 13 September 2024.
[297] Article 23 paragraph (5) of the 1945 Constitution and Law Number 15 of 2006 concerning the Audit Board, https://peraturan.bpk.go.id/Details/40184/uu-no-15-tahun-2006, accessed 13 September 2024.

bankruptcy process must be subject to the state financial system related to company assets that are part of state assets.[298]

Meanwhile, the Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019 stated that subsidiaries of State-Owned Enterprises are independent business entities separate from State-Owned Enterprises. The panel of judges noted that "subsidiaries of State-Owned Enterprises cannot be defined as State-Owned Enterprises, but rather retain the status of subsidiaries of State-Owned Enterprises (ordinary Limited Liability Companies) because they are established through the participation of shares owned by State-Owned Enterprises."[299]

The argument of the Constitutional Court panel of judges stating that subsidiaries of State-Owned Enterprises are different from State-Owned Enterprises is based on separating legal entities from ownership entities in a limited liability company legal entity. State assets separated into State-Owned Enterprises are transformed into company assets. When a State-Owned Enterprise transfers its shares to a subsidiary, the status of the assets belongs to the State-Owned Enterprise as an independent legal entity.[300]

Another argument is based on the authority of the Minister of State-Owned Enterprises regarding the appointment of directors and commissioners in subsidiaries of State-Owned Enterprises. The procedures for appointing and dismissing directors and commissioners in subsidiaries follow the provisions of limited liability companies. As a state representative, the Minister only acts as a shareholder in the General Meeting of Shareholders as a limited liability company in general.[301]

Until now, the debate on the status of subsidiaries of State-Owned Enterprises has not been resolved because the government has not issued a precise regulation on this issue. In addition, forming a holding company continues to roll, and the government is still trying to restructure State-Owned Enterprises.

---

[298] Article 2 paragraph (5) of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, https://peraturan.bpk.go.id/Details/40784, accessed 13 September 2024.
[299] The Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019, https://jdih.kpu.go.id/detailputusan-424a545770544e45, accessed 13 September 2024.
[300] Article 2A paragraph (3) and (4) of Government Regulation Number 72 of 2016.
[301] Regulation of the Minister of State-Owned Enterprises Number PER-03/MBU/2012 of 2012.

2. Dissolution of Bankrupt State-Owned Enterprises

The Indonesian government has issued a policy to dissolve several State-Owned Enterprises that cannot be saved even though they have implemented restructuring and revitalization programs. The policy to dissolve a State-Owned Enterprise uses a legal instrument in the form of a Government Regulation issued based on a court decision regarding the bankruptcy of a State-Owned Enterprise. Based on considerations of the court decision and the failure of efforts to improve the company through restructuring and revitalization, the government issues a Government Regulation to dissolve a State-Owned Enterprise officially. The Minister of State Enterprises will oversee the bankruptcy process, and all remaining assets from the company's liquidation will go to the state treasury. See Appendix 8: List of Dissolved State-Owned Enterprises.

For instance, PT Merpati Nusantara Airlines (Indonesian flag carrier) is a State-Owned Enterprise established based on Government Regulation Number 70 of 1971.[302] This company was dissolved because it was declared bankrupt based on the decision of the Commercial Court at the Surabaya District Court Number 5/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga Sby Jo Number 4/Pdt.Sus-PKPU/2018/PN.Niaga Sby, dated June 2, 2022, so that the bankrupt assets are in insolvency.[303]

The company's financial condition began to deteriorate in 2008 due to debts reaching 2.8 trillion rupiah and losses reaching 642 billion rupiah, while its assets were only worth 999 billion rupiah. The government finally assigned PPA to carry out restructuring and revitalization. PPA supplied 300 billion rupiah to help PT Merpati Nusantara Airlines.[304]

PT Merpati Nusantara Airlines experienced bankruptcy lawsuits in the following years from many parties. Thousands of its employees filed for bankruptcy in court after

---

[302] Government Regulation Number 70 of 1971 on the Change of Form of the State-Owned Enterprise (P.N.) Regional Air Transportation and Multipurpose Aviation "Merpati Nusantara" into a Limited Liability Company (Persero), https://peraturan.bpk.go.id/Details/69562/pp-no-70-tahun-1971, accessed 16 September 2024.
[303] Government Regulation Number 8 of 2023 concerning the Dissolution of the Limited Liability Company (Persero) PT Merpati Nusantara Airlines, https://peraturan.bpk.go.id/Details/243772/pp-no-8-tahun-2023, accessed 16 September 2024.
[304] CNN Indonesia, "Kronologi Pembubaran Merpati, dari Merugi, Digugat Hingga Pailit, 22 February 2023, https://www.cnnindonesia.com/ekonomi/20230222180839-92-916559/kronologi-pembubaran-merpati-dari-merugi-digugat-hingga-pailit, accessed 16 September 2024.

termination of employment in 2012. The company also stopped operating due to debt burdens reaching 7.29 trillion rupiah. Then PT Prathita Titian also sued for a case of delay in debt payment obligations in 2016. The following year, PT Parewa Catering, a food provider that supplies the needs of airline passengers, also sued the company for unpaid debts. At that time, the company's debt increased to 10.72 trillion rupiah. Finally, the Surabaya District Court declared the company bankrupt in 2022.[305]

Another State-Owned Enterprise that was dissolved was PT Kertas Leces, a paper production company established in 1982 based on Government Regulation Number 14 of 1982.[306] This company went bankrupt based on the decision of the Commercial Court at the Surabaya District Court Number 1/Pdt.Sus-Pembanalan Perdamaian/2018/PN.Niaga Sby. Jo Number 5/Pdt.Sus-PKPU/2014/PN.Niaga Sby., dated September 25, 2018, so that the company's bankruptcy assets are in a state of insolvency.[307]

When declared bankrupt by the court, PPA, a creditor of PT Kertas Leces with a loan of 50 billion in 2012, sued for a mortgage on the company's assets in the form of a plot of land and a building measuring 623 square meters owned by Kertas Leces in South Jakarta. According to the agreement, PPA pocketed the mortgage on the assets worth 9.5 billion rupiah. The Jakarta V State Asset and Auction Service Office (KPKNL) executed the assets, and the winner was PPA with a value of 11.4 billion rupiah on 11 December 2018. However, the Bankruptcy Asset Distribution List released by the Curator Team on 26 April 2019 stated that PPA was only given 1,2 billion rupiah from the auction results.[308]

The case of the feud between PT Kertas Leces and PPA, the National Asset Management Company assigned by the government to restructure and revitalize a State-

---

[305] Heriani, Fitri Novia, "Merpati Airlines resmi pailit," *Hukumonlie*, 7 June 2022, https://www.hukumonline.com/berita/a/merpati-airlines-resmi-pailit-lt629f329c11f05/?page=1, accessed 16 September 2024.

[306] Government Regulation Number 14 of 1982 on the Change of Form of the State-Owned Company Kertas Leces to a Limited Liability Company (Persero), https://peraturan.bpk.go.id/Details/65021/pp-no-14-tahun-1982, accessed 16 September 2024.

[307] Government Regulation Number 9 of 2023 on the Dissolution of the Limited Liability Company (Persero) PT Kertas Leces, https://peraturan.bpk.go.id/Details/243776/pp-no-9-tahun-2023, accessed 16 September 2024.

[308] CNN Indonesia, "PPA Protes Jatah Bagi Harta Pailit Kertas Leces Hanya Rp1,2 M," 9 September 2019, https://www.cnnindonesia.com/ekonomi/20190909163446-92-428837/ppa-protes-jatah-bagi-harta-pailit-kertas-leces-hanya-rp12-m, accessed 16 September 2024.

Owned Enterprise, is proof that efforts to save a State-Owned Enterprise are not always successful and instead harm PPA.

Another state-owned enterprise that went bankrupt is PT Istaka Karya, a company in the construction sector that participated in the restructuring program under the PPA in 2013. The Central Jakarta District Court declared the company bankrupt because it could not meet its obligations due at the end of 2021. However, the company's financial condition has not improved because it has total liabilities of 1.08 trillion rupiah, with its equity recorded at minus 570 billion rupiah. Meanwhile, the company's total assets are recorded at 514 billion rupiah. Finally, the government dissolved this company by issuing Government Regulation Number 13 of 2023.[309]

Large debts and improper company management cause the termination of State-Owned Enterprises. For instance, the government dissolved PT Industri Sandang Nusantara, a textile company, due to its inability to compete with private companies and keep up with global textile developments. The company has continued to experience losses since 2018 and cannot finance operational activities. After being dissolved, the company will undergo a liquidation process six years after issuing Government Regulation Number 14 of 2023.[310]

PT Kertas Kraft Aceh also has the same fate. The paper company, established in 1985 on 219 hectares of land, has been shut down since 2007 due to the policy of stopping gas supplies, the inability of management to compete in the national market, and obsolete production technology. Finally, the government dissolved the company by issuing Government Regulation Number 17 of 2023.[311]

Next is PT Industri Gelas, a state-owned enterprise that produces goods and equipment made of glass. It is experiencing continuous losses due to its higher operational costs than its business profits. The main factors causing the failure of this company were

---

[309] Government Regulation Number 13 of 2023 concerning the Dissolution of the Limited Liability Company (Persero) PT Istaka Karya, https://peraturan.bpk.go.id/Details/245518/pp-no-13-tahun-2023, accessed 22 September 2024.
[310] Government Regulation Number 14 of 2023 on the Dissolution of the Limited Liability Company (Persero) PT Industri Sandang Nusantara, https://peraturan.bpk.go.id/Details/245519/pp-no-14-tahun-2023, accessed 22 September 2024.
[311] Government Regulation Number 17 of 2023 on the Dissolution of the Limited Liability Company (Persero) PT Kertas Kraft Aceh, https://peraturan.bpk.go.id/Details/246825/pp-no-17-tahun-2023, accessed 22 September 2024.

fraudulent actions committed by management and a dispute over factory land with the local government. Ultimately, the government dissolved this company based on Government Regulation Number 18 of 2023.[312]

In addition to the six State-Owned Enterprises dissolved by the government in 2023, PT Pembangunan Armada Niaga Nasional, a national commercial fleet development company, dissolved in 2022 based on Presidential Decree Number 25 of 2022. Despite participating in a debt restructuring program and obtaining State Equity Participation, the company could still overcome the financial crisis and failure of good corporate governance once it was finally dissolved.[313]

[312] Government Regulation Number 18 of 2023 on the Dissolution of the Limited Liability Company (Persero) PT Industri Gelas, https://peraturan.bpk.go.id/Details/246826/pp-no-18-tahun-2023, accessed 23 September 2024.
[313] Presidential Decree Number 25 of 2022 concerning the 2023 Government Regulation Preparation Program, https://peraturan.bpk.go.id/Details/233928/keppres-no-25-tahun-2022, accessed 23 September 2024.

CHAPTER V

OMNIBUS LAW ON STATE-OWNED ENTERPRISES:

LEGAL ISSUES AND CHALLENGES

1. The History of the Omnibus Law on State-Owned Enterprises

On March 27, 2023, the Minister of State-Owned Enterprises introduced the regulation arrangement, simplification, and adjustment of the Regulation of the Minister of State-Owned Enterprises with national and global business challenges. This new policy has combined forty-five Ministerial Regulations into only three using the omnibus law method. The Board of Directors and the Board of Commissioners will find it easier to understand the regulations because they only refer to three regulations compared to dozens of previously abundant regulations.[314]

The process of drafting the omnibus law on State-Owned Enterprises has been ongoing since May 2022 within the ministry. The results of the internal study were then received with suggestions and input so that harmonization could occur with the Ministry of Law and Human Rights and academics and professionals. Finally, the Ministry of State-Owned Enterprises presented the study results and harmonization in a public test at Gadjah Mada University on December 28, 2022.[315]

Finally, three regulations were issued and became the legal basis for the business activities of State-Owned Enterprises in early 2023. The three are Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities, Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporate Activities, and Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 on Organs and Human Resources.

---

[314] Ministry of State-Owned Enterprises, "Tiga Omnibus Peraturan Menteri BUMN telah Diundangkan," https://bumn.go.id/publikasi/berita/rilis/detail/tiga-omnibus-peraturan-menteri-bumn-telah-diundangkan-2r?lang=id, accessed 30 September 2024.

[315] Ministry of State-Owned Enterprises, "Tiga Omnibus Peraturan Menteri BUMN telah Diundangkan."

This chapter analyzes the new method of legislation with omnibus law in regulating State-Owned Enterprises. Omnibus law is a method commonly used by countries that adopt the common law system, while Indonesia adopts the civil law system. In addition, this article explores the contents of the new regulation of state-owned enterprises and the legal issues emerged from those new laws.

2. Understanding the Concept of Omnibus Law

Omnibus Law or Omnibus Bill is an extensive draft regulation that includes several other minor regulations. For example, the Omnibus draft on taxes covers various tax law issues such as income tax, corporate tax, and sales tax.[316] In legislative practice, Omnibus Law eliminates old and separate legal regulations by issuing new legal regulations that cover broad issues.[317]

In modern developments, Omnibus Law is a phenomenon at the intersection of law, politics, public policy, governance, and economics. This practice is a mechanism to facilitate and accelerate the path of faster and more effective legislation. Besides, Omnibus Law is the most potent fiscal policy tool in various countries and a governance tool for democratic governments with separation of powers.[318]

The use of the Omnibus Law legislative model is a tradition of the common law system. For instance, the United States is an example of a country that uses this model. The use of the Omnibus model encourages positive and significant legislative productivity in the United States, especially when there is a deadlock in the law-making process. The Omnibus model can prevent legislative deadlock due to disagreements among elite legislators in Congress.[319] Almost all Omnibus Bills passed the United States Congress. Therefore, the Omnibus model is an alternative legislative route for policy entrepreneurs

---

[316] The Law Dictionary, "Omnibus Bill," https://thelawdictionary.org/omnibus-bill/, accessed 16 October 2024.
[317] Minnesota Legislature, "Omnibus Bill," https://www.leg.mn.gov/leg/faq/faq?id=147, accessed 16 October 2024.
[318] Bar-Siman-Tov, I. "An Introduction to the Comparative and Multidisciplinary Study of Omnibus Legislation (pp. 1–31)." (2021), https://ssrn.com/abstract=3770028.
[319] Krutz, Glen S. "Getting around Gridlock: The Effect of Omnibus Utilization on Legislative Productivity." *Legislative Studies Quarterly* 25, no. 4 (2000): 533–49. https://doi.org/10.2307/440433.

who encourage legislation. Members of Congress choose legislative packages with the concept of "take it" or "leave it" and rarely focus on details.[320]

In the context of Indonesia, the process of forming the Omnibus Law goes through the stages of planning, drafting, discussion, ratification, and promulgation. Planning requires a document called a national legislative program, which is a priority scale of the program for forming laws in order to realize the national legal system. The House of Representatives, the Regional Representative Council, and the government are the drafters of the program. Next, the drafting of the bill is based on a priority scale to then proceed to the discussion stage by the House of Representatives and the government. The discussion includes an introduction to the deliberation, a list of inventories of problems, and a mini opinion submission. In the discussion, there is also a statement of approval or rejection from the factions and members of the House of Representatives representing their respective political parties. In addition, the ratification stage. The House of Representatives, together with the President, ratify the law—finally, the promulgation stage. The law is promulgated in the State Gazette of the Republic of Indonesia. At the same time, the explanation is promulgated in the Supplement to the State Gazette of the Republic of Indonesia.[321]

3. Omnibus Law in Indonesian Legal Policy: Aims and Strategies

In recent years, Indonesia's legislative productivity has experienced a very sharp decline. The main factor is the shift in legislative power from the President to the House of Representatives. As a legislative institution, the House of Representatives is tasked with drafting legislation for the ratification process at a plenary session. However, data, information, experts, and funding are more fully available in government institutions that function as executive institutions daily. Next, the existence of the Regional Representative Council adds to the bureaucratic burden of drafting legislation. The House of Representatives needs to discuss and debate with the Regional Representative Council,

---

[320] Krutz, Glen S. "Tactical Maneuvering on Omnibus Bills in Congress." *American Journal of Political Science* 45, no. 1 (2001): 210–23. https://doi.org/10.2307/2669368.
[321] Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Formation of Legislation, https://peraturan.bpk.go.id/Details/212810/uu-no-13-tahun-2022, accessed 16 October 2024.

which, of course, increases the length of the legislative process. In addition, the activities of members of the House of Representatives other than legislative duties are abundant, resulting in a reduction in legislative work. They have a lot of non-legislative activities such as work visits, comparative studies, public aspiration absorption activities, and other political work. Finally, the system and procedures for drafting legislation in Indonesia adhere to the rigid civil law system tradition. Whereas in modern times, the combination and convergence of the civil law system with the common law system can accelerate the slow and sluggish legislative process.[322]

The Indonesian government issued the Omnibus Law with the aim of overcoming the complexity of the very abundant and diverse legal regulations. Often, many conflicting or overlapping legal regulations restrain an issue. Moreover, a legal issue has many different rules and is spread across various laws and regulations.[323] The implementation of the Omnibus Law can resolve conflicts of laws and regulations quickly, effectively, and efficiently because of the harmonization of regulations at the central and regional levels. In addition, the Omnibus Law supports a good investment climate in the eyes of the international public because of the integrated, effective, and efficient management of permits, which breaks the chain of complicated and lengthy bureaucracy.[324]

The Omnibus Law model is a form of legislative reform in several developing countries such as Indonesia to create a framework for drafting effective, efficient, and comprehensive laws and regulations.[325] However, the government and parliament's policy of passing the Omnibus Law, as in the case of the Omnibus Law on Job Creation, has drawn sharp criticism from the public. Parliament is considered to need more time to review the

---

[322] Asshiddiqie, Jimly. "UU Omnibus (Omnibus Law), Penyederhanaan Legislasi, dan Kodifikasi Administratif," https://www.jimlyschool.com/baca/34/uu-omnibus-omnibus-law-penyederhanaan-legislasi-dan-kodifikasi-administratif, accessed 15 October 2024.

[323] Anggraeni, Ricca, and Cipta Indra Lestari Rachman. "Omnibus Law in Indonesia: Is That the Right Strategy?." In *International Conference on Law, Economics and Health (ICLEH 2020)*, pp. 180-182. Atlantis Press, 2020, https://doi.org/10.2991/aebmr.k.200513.038.

[324] Busroh, Firman Freaddy. "Konseptualisasi omnibus law dalam menyelesaikan permasalahan regulasi pertanahan." *Arena Hukum* 10, no. 2 (2017): 227-250, Busroh, Firman Freaddy. "Konseptualisasi omnibus law dalam menyelesaikan permasalahan regulasi pertanahan." *Arena Hukum* 10, no. 2 (2017): 227-250, https://doi.org/10.21776/ub.arenahukum.2017.01002.4.

[325] Hermanto, Bagus, and Nyoman Mas Aryani. 2021. "Omnibus Legislation as a Tool of Legislative Reform by Developing Countries: Indonesia, Turkey and Serbia Practice." *The Theory and Practice of Legislation* 9 (3): 425–50, https://doi.org/10.1080/20508840.2022.2027162.

substance of the articles in the Omnibus Law, which contains thousands of articles. Worse still, the government and parliament should have addressed public participation in reading and criticizing the draft before it was passed into law. Therefore, the Omnibus Law on Job Creation is a lousy example of Indonesian democracy.[326]

4. Transformation of Legal Governance through Omnibus Law on State-Owned Enterprises

4.1. Ministry Regulation on Special Assignments and Social and Environmental Responsibility Programs

The definition of a special assignment is mentioned in Article 1 paragraph (11): "A Special Assignment is a particular assignment from the Central Government to State-Owned Enterprises to carry out general benefit functions and national research and innovation."[327]

The Central Government provides special assignments to State-Owned Enterprises by the provisions of Article 66 of Law Number 19 of 2003. The government may give special assignments to State-Owned Enterprises to carry out public benefit functions while still paying attention to the intent and purpose of the State-Owned Enterprise's activities. Every assignment must first obtain approval from the General Meeting of Shareholders/Minister.[328]

In the explanation of paragraph (1), Law Number 19 of 2003 emphasizes that State-Owned Enterprises are companies that aim to generate profits. However, urgent matters, such as State-Owned Enterprises, can receive special assignments from the government. According to the study, the government must compensate for all costs incurred by the State-

[326] Arifin, Saru. 2021. "Illiberal Tendencies in Indonesian Legislation: *The Case of the Omnibus Law on Job Creation*." *The Theory and Practice of Legislation* 9 (3): 386–403, https://doi.org/10.1080/20508840.2021.1942374.
[327] Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities.
[328] Law Number 19 of 2003 on State-Owned Enterprises.

Owned Enterprises, including the expected margin if the assignment is financially infeasible.[329]

Furthermore, as explained in paragraph (2), in principle, special assignments for State-Owned Enterprises change the company's work plan and budget. Therefore, every assignment must obtain approval from the General Meeting of Shareholders/Minister.

In the context of a modern state, the paradigm of the government as the ruler of the state and the people as the ones who are controlled has shifted or changed. The government acts as a servant of the people, so government activities are to serve the needs of the people. In addition, the government becomes a provider of goods and services on par with private companies.[330] However, the roles of the government and private companies are different. The government has the authority to regulate by issuing legal regulations that the community must obey. At the same time, private companies are subject to and comply with the rules made by the government in business activities. The government must serve the needs of goods and services while creating fair regulations and protecting all parties. [331]

In the special assignment policy for State-Owned Enterprises, four stages are carried out sequentially. The first is the planning stage by the directors of the State-Owned Enterprises, which includes studies related to technical aspects, legal aspects, commercial aspects, and financial aspects, including funding sources. The second is the determination, which can be in the form of a Government Regulation, Presidential Regulation, or Regulation/Decree of the minister granting the Special Assignment. The third is implementation. A State-Owned Enterprise that receives a determination regarding a particular assignment can collaborate with other State-Owned Enterprises, private companies, regional companies, cooperatives, research and development institutions, assessment and application institutions, and universities. The fourth is reporting. A State-Owned Enterprise reports the implementation of the special assignment to the Minister of

[329] Law Number 19 of 2003 on State-Owned Enterprises.
[330] Nugraha, Safri. "Hukum Administrasi Negara dan Good Governance." *Pidato Pengukuhan Guru Besar Tetap Fakultas Hukum Universitas Indonesia* (2006), p. 2.
[331] Silalahi, M. Udin. "Analisis Hukum Privatisasi BUMN (UU No. 19 Tahun 2003)." *Jurnal Hukum Bisnis* 26, no. 1 (2007): 18-25.

State-Owned Enterprises, the Technical Minister, the Minister, and the grantor of the special assignment periodically once a year or at any time if necessary.[332]

In addition to regulating special assignments, this regulation also explains the Social and Environmental Responsibility Program. In Article 1 paragraph (19), the Social and Environmental Responsibility Program is "an activity that is a commitment and devotion of State-Owned Enterprises to sustainable development by providing benefits to the economy, society, environment, law, and governance with principles that are more integrated, focused, measurable in impact and can be accounted for and are part of the company's business approach."

By implementing the principles of integration, direction, measurable impact, and accountability, the Social and Environmental Responsibility Program aims to provide benefits for economic development, social development, environmental development, and legal and governance development for companies, contribute to the creation of added value for companies with integrated, direction, measurable impact and accountability principles, and foster micro and small businesses to be more resilient and independent, as well as the communities around the company.[333]

In managing social responsibility programs, State-Owned Enterprises carry out the planning, implementation, supervision, and reporting stages. The Board of Directors prepares planning by considering impacts and risks, needs and potential, advantages and local wisdom, orientation of sustainability and expected impacts, and focus and direction of sustainable development. The Board of Directors will implement the program after obtaining approval and ratification from the General Meeting of Shareholders/Minister.[334]

The implementation of social responsibility programs can be in the form of financing micro and small businesses and aiding or other activities, including coaching. In

[332] Article 4-11 of the Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities.
[333] Article 13 and 14 of the Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities.
[334] Article 16 and 17 of the Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities.

addition, State-Owned Enterprises can also carry out activities in the fields of education, environment, and development of micro and small businesses.[335]

Micro and small businesses that become partners of State-Owned Enterprises must meet specific criteria. First, they are owned by Indonesian citizens. Next, they still need to meet the criteria or have access to loans from funding institutions or banks. Then, micro and small businesses are prioritized in the working area of State-Owned Enterprises. Besides, micro and small businesses are not subsidiaries or branches of companies owned, controlled, or affiliated directly or indirectly with medium or large businesses. In addition, they are in the form of an individual business and a group of people, a business entity that is not a legal entity, or a business entity that is a legal entity. Finally, they have the potential and business prospects to be developed.[336]

Furthermore, micro and small businesses that are partners of State-Owned Enterprises receive working capital funding in the form of a loan or sharia financing with a maximum amount of 250 million rupiah and additional funding in the form of a loan or sharia financing to finance short-term needs for a maximum of one year is a maximum of 100 million rupiah. Each working capital funding is subject to an administration fee of three percent and interest of three percent per year. The loan agreement period is three years.[337]

The Social and Environmental Responsibility Program implemented by State-Owned Enterprises is a Corporate Social Responsibility (CSR) concept that generally applies to private companies. CSR is a company's voluntary contribution to the community and environment where the company is located.[338] In CSR activities, a company contributes positively to the community's economic, environmental, and social progress while minimizing losses due to adverse impacts of the company's activities in a particular area.[339]

---

[335] Article 20 of the Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities.
[336] Article 21 of the Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities.
[337] Article 22 of the Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities.
[338] Eberhard-Harribey, Laurence. "Corporate social responsibility as a new paradigm in the European policy: how CSR comes to legitimate the European regulation process." *Corporate Governance: The international journal of business in society* 6, no. 4 (2006): 358-368, https://doi.org/10.1108/14720700610689487.
[339] Glenn, Ted. "The management and administration of government communications in C anada." *Canadian Public Administration* 57, no. 1 (2014): 3-25, https://doi.org/10.1111/capa.12057.

Therefore, CSR is proof of a company's commitment to improving the welfare of residents by providing free coaching and company resources.[340]

In Indonesian regulations, several laws regulate CSR. Law Number 25 of 2007 on Investment mentions that every investor (individual or business entity) in Indonesia must carry out corporate social responsibility. Every investment company is responsible for maintaining harmonious, balanced, and appropriate relationships with the local community's environment, values, norms, and culture.[341] In addition, Law Number 40 of 2007 on Limited Liability Companies also notices CSR obligations even for companies that manage and utilize natural resources or whose business activities are related to or impact the function of natural resource capabilities.[342]

In the history of State-Owned Enterprises, CSR has experienced developments in models and changes in name and governance. In 1989, the Decree of the Minister of Finance Number 1232/KMK.013/1989 introduced the Development of Weak Economic Entrepreneurs and Cooperatives through State-Owned Enterprises. From this policy, small businesses and cooperatives receive coaching by increasing managerial capabilities, production technique skills, working capital capabilities with procurement of raw materials and business capital, marketing, and guarantees to obtain bank credit. Each State-Owned Enterprise sets aside one to five percent of the company's profits to support this coaching program, which has been running for one to five years.[343]

Then, in 1994, the Minister of Finance Number 316/KMK.016/1994 Decree launched the Small Business Development Program and Cooperatives. Like before, this program targets small businesses and cooperatives by assisting with loans or grants for working capital. The development funds come from the profits of State-Owned Enterprises

---

[340] Kotler, Philip, and Nancy Lee. *Corporate social responsibility: Doing the most good for your company and your cause*. John Wiley & Sons, 2008, p. 9-11.
[341] Article 15 of Law Number 25 of 2007 on Investment, https://peraturan.bpk.go.id/Details/39903/uu-no-25-tahun-2007, accessed 1 October 2024.
[342] Article 74 of Law Number 40 of 2007 on Limited Liability Companies, https://peraturan.bpk.go.id/Details/39965, accessed 1 October 2024.
[343] Decree of the Minister of Finance Number 1232/KMK.013/1989 on Guidelines for Guidance of Weak Economic Entrepreneurs and Cooperatives through State-Owned Enterprises, https://datacenter.ortax.org/ortax/aturan/show/8681, accessed 1 October 2024.

of one to three percent after tax deductions. The General Meeting of Shareholders/Ministers decides the funds disbursed by State-Owned Enterprises to make this program successful.[344]

In 1999, the State-Owned Enterprises changed the term of the CSR program to Partnership and Community Development Program based on the Decree of the Minister of State-Owned Enterprises Empowerment/Head of the State-Owned Enterprises Development Agency Number: Kep216/M-PBUMN/1999. Although the name changed, the concept and actualization of the program did not change much.

The name of the CSR program changed again in 2003 with the State-Owned Enterprise Partnership Program with Small Businesses and the Environmental Development Program. This name change was based on the Decree of the Minister of State-Owned Enterprises Number Kep-236/MBU/2003. In terms of basic concepts, the program runs as before, with the addition of a focus on distributing aid and coaching to victims of natural disasters, supporting the education and training sector, improving health, and developing public facilities and worship facilities.[345]

Then, in 2007, the Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/2007 reused the Partnership and Community Development Program term. This new regulation changed the policy related to the source of financing for the CSR program to two percent of the profits of State-Owned Enterprises. In addition, six focus activities are the advantages of this program: assistance to victims of natural disasters, support for the education/training sector, health improvement activities, development of public facilities, renovation of worship facilities, and nature conservation activities.[346]

The last change in the term CSR is Corporate Social and Environmental Responsibility in 2021 based on the Regulation of the Minister of State-Owned Enterprises

---

[344] Decree of the Minister of Finance Number 316/KMK.016/1994 on Guidelines for the Development of Small Businesses and Cooperatives Through the Utilization of Funds from the Profit Portion of State-Owned Enterprises, https://jdih.kemenkeu.go.id/en/dokumen/peraturan/89e00c2b-8b18-4e96-982a-16eb6d9d8b82, accessed 1 October 2024.

[345] The Decree of the Minister of State-Owned Enterprises Number Kep-236/MBU/2003 on State-Owned Enterprise Partnership Program with Small Businesses, https://bphn.go.id/data/documents/07pmbumn005.pdf, accessed 2 October 2024.

[346] Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/2007 on the Partnership Program of State-Owned Enterprises with Small Businesses and the Environmental Development Program, https://www.regulasip.id/themes/default/resources/js/pdfjs/web/viewer.html?file=/eBooks/2018/November/5bfb7d5eb2016/PER-05-MBU-2007.pdf, accessed 2 October 2024.

Number PER-5/MBU/04/2021. The conceptual change in this latest policy is harmonizing the program with the Sustainable Development Goals (SDGs), a global commitment to community welfare in 2030.[347] Until the Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 was issued, the Corporate Social and Environmental Responsibility program did not experience any significant conceptual changes.

4.2. Ministry Regulation on Governance Guidelines and Significant Corporate Activities

This new regulation, Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023, is an omnibus law for State-Owned Enterprises from several previous regulations on governance principles, risk management, health level assessment, strategic planning, corporate activity guidelines, information technology implementation, and corporate reporting. The main objective is to harmonize and synchronize various policies across many regulations. Therefore, this new regulation eliminates old provisions related to governance issues of State-Owned Enterprises.

The principles of good corporate governance for State-Owned Enterprises include the principles of transparency, accountability, responsibility, independence, and fairness. Transparency is openness in implementing the decision-making process and openness in disclosing material and relevant information about the company. Accountability is the clarity of the function, implementation, and responsibility of the organization so that the management of the company is carried out effectively. At the same time, accountability is the conformity in the company's management to the provisions of laws and regulations and the principles of a healthy corporation. Then independence is a condition in which the company is managed professionally without conflict of interest and influence/pressure from any party not by the provisions of laws and regulations and the principles of a healthy

[347] Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/04/2021 of 2021 on the Social and Environmental Responsibility Program of State-Owned Enterprises, https://peraturan.bpk.go.id/Details/171151/permen-bumn-no-per-05mbu042021-tahun-2021, accessed 2 October 2024.

corporation. Finally, fairness is justice and equality in fulfilling the rights of stakeholders that arise based on agreements and provisions of laws and regulations.[348]

The concept of good corporate governance principles is broader than the law because, often, legal rules cannot cover or capture all of its basic principles in writing. The principles of impartiality, transparency, accountability and responsibilities, truthfulness, and respect for others are the conceptual framework of good corporate governance that is globally recognized. [349] Therefore, the conceptualization of good corporate governance principles needs to consider the aspects of the values and attitudes of company managers. Not only are there proper and wrong legal rules, but there are ethical and moral considerations in the embodiment of good corporate governance principles. [350]

The realization of implementing good corporate governance principles is that each company organ (General Meeting of Shareholders, Board of Directors, and Commissioners) carries out its duties and responsibilities. Then, the internal control function, compliance function, internal audit, and external audit run well. In addition, good corporate governance also requires implementing risk management, conflict of interest guidelines, transparency of financial and non-financial conditions, and ethical behavior guidelines.[351]

Good corporate governance regulations for state-owned enterprises are essential because they aim to optimize the company's value to achieve strong competitiveness nationally and internationally. In addition, good corporate governance can encourage professional, efficient, and effective management. Company organs are also expected to base all their actions on high moral values, compliance with legal regulations, and social

---

[348] Article 3 paragraph 2 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023 on Guidelines for Governance and Significant Corporate Activities of State-Owned Enterprises, https://peraturan.bpk.go.id/Details/264291/permen-bumn-no-per-, accessed 2 October 2024.

[349] Sama, Linda M., and Victoria Shoaf. "Reconciling Rules and Principles: An Ethics-Based Approach to Corporate Governance." *Journal of Business Ethics* 58, no. 1/3 (2005): 177–85. http://www.jstor.org/stable/25123509.

[350] Dion, Michel. "The Ethical Principles Determining the Contents of Corporate Governance Rules and Systems." *Society and Economy* 27, no. 2 (2005): 195–211. http://www.jstor.org/stable/41472024.

[351] Article 3 paragraph 3 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.

responsibility. Ultimately, good corporate governance impacts increasing economic contributions and a conducive investment climate.[352]

The following principles of good corporate governance must be adhered to by organs of State-Owned Enterprises such as the General Meeting of Shareholders, Board of Commissioners/Supervisory Board, and Board of Directors.

4.2.1. General Meeting of Shareholders

State-Owned Enterprises are fair to all shareholders/capital owners, including minority shareholders. In addition, State-Owned Enterprises protect their rights such as attending and voting in a General Meeting of Shareholders, making the highest decisions, obtaining material information regarding the company, receiving a share of the company's profits allocated to shareholders/capital owners in the form of dividends and remaining assets from liquidation that are proportional to the number of shares/capital owned, and other rights by the company's articles of association. Shareholders who own shares with the same classification must be treated equally.[353]

The government, represented by the Minister of State-Owned Enterprises, is the General Meeting of Shareholders/shareholders/capital owners who can at any time request and obtain information on operational activities and act as a mediator to resolve disputes between State-Owned Enterprises/subsidiaries.[354]

Every shareholder has the right to receive a complete explanation and accurate information regarding the holding of the General Meeting of Shareholders. For instance, in the invitation to the General Meeting of Shareholders, every shareholder receives information regarding each agenda item, including proposals planned by the Board of Directors to be submitted. In addition, every shareholder receives information about calculating and determining the salary/honorarium, facilities, and other benefits for each

[352] Article 3 paragraph 4 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[353] Article 5 and 6 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[354] Article 7 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.

member of the Board of Commissioners and Board of Directors. More importantly, every shareholder receives financial information and other matters concerning the company that are contained in the annual report and financial statements. However, if shareholders make decisions outside the General Meeting of Shareholders, all shareholders with voting rights must agree in writing by signing the decision. If anyone rejects, then the decision is invalid.[355]

4.2.2. Board of Commissioners/Supervisory Board

The responsibilities and authorities of the Board of Commissioners/Supervisory Board are to supervise policies, manage aspects of the company and its business activities, and advise the Board of Directors. The advice is for the benefit of the company, not for personal or group interests. However, in its supervisory function, the Board of Commissioners/Supervisory Board may not participate in decision-making on the company's operational activities except following the articles of association and legal regulations.[356]

In carrying out its duties, the Board of Commissioners/Supervisory Board controls the division of tasks among its members. In addition, they are also required to prepare a work plan, an annual budget related to their duties, and binding work procedure guidelines to facilitate their duties. They report their supervisory duties to the General Meeting of Shareholders/Minister every year. In addition, they are also required to ensure that the Board of Directors has followed up on the findings of the Internal Audit, External Audit, Audit of the Financial and Development Supervisory Agency, and the results of other supervisory authority institutions following the provisions of laws and regulations.[357]

The Board of Commissioners/Supervisory Board works as an assembly or collectively. Each member cannot act alone but based on a joint decision. When the composition of the Board of Commissioners/Supervisory Board is more than one person, one of the people becomes the Main Commissioner/Chairman of the Supervisory Board.

[355] Article 8 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[356] Article 14 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[357] Article 14 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.

The composition of the Board of Commissioners/Supervisory Board must be at least 20% independent members of the Board of Commissioners/Supervisory Board as determined in the decision on their appointment.[358]

The Board of Commissioners/Board of Supervisors forms the Board of Commissioners/Board of Supervisors secretariat, audit committee, nomination and remuneration committee, and other committees to support the supervisory work. The formation of other committees is necessary due to the intensity of risk based on regulations or Ministerial orders.[359]

Furthermore, related to the ethics of professionalism, the Board of Commissioners/Board of Supervisors may not utilize State-Owned Enterprises for personal, family, or other party interests that may harm or reduce the company's profits. In addition, the Board of Commissioners/Board of Supervisors may not take personal advantage directly or indirectly from company activities other than legitimate income. Differences in economic interests between the company and the economic interests of the Board of Commissioners/Board of Supervisors that may harm the company are prohibited conflicts of interest.[360]

4.2.3. Board of Directors

The Board of Directors has full authority and responsibility for managing State-Owned Enterprises based on the articles of association and laws and regulations. These duties are accountable to the General Meeting of Shareholders/Minister. In carrying out its responsibilities, the Board of Directors may not grant general power to other parties, which results in the transfer of duties and functions of the Board of Directors. However, in carrying out its responsibilities effectively, the Board of Directors can form committees and supporting units. Several findings and recommendations from Risk Management, Compliance, Internal Audit, External Auditor, Board of Commissioners/Board of

[358] Article 15 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[359] Article 21 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[360] Article 19 and 20 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.

Supervisors, Audit Board of Finance, and Financial and Development Supervisory Agency must receive the attention of the Board of Directors for follow-up.[361]

The Board of Directors is also required to organize documents to fulfill accountability, transparency, and orderly administration in the company. The Board of Directors must create a list of shareholders, a particular list, minutes of the GMS/Minister's letter, and minutes of the Board of Directors' meeting. In addition, the Board of Directors creates annual reports and financial documents for the company. Moreover, the Board of Directors must maintain and store all company lists, minutes, financial records, and other documents.[362]

Regarding integrity, the Board of Directors is prohibited from taking personal advantage directly or indirectly from the company's activities other than legitimate income. The Board of Directors is also prohibited from using it for individual interests and to benefit their family or other parties, which can harm or reduce the company's profits. Every decision of the Board of Directors in the company must not give rise to a conflict of interest between their and the company's interests.[363]

In addition to conflicts of interest, which are essential concerns in individual integrity, the Board of Directors also establishes policies related to the prohibition of anti-money laundering and terrorism financing practices, anti-bribery, anti-corruption, anti-fraud, rules of involvement in politics by referring to national or international standards. Therefore, the Board of Directors must sign an integrity pact for transactional actions that require the approval of the Board of Commissioners/Supervisory Board or the General Meeting of Shareholders/Minister. In addition, the Board of Directors, including the Board of Commissioners/Supervisory Board, must submit a wealth report following the provisions of laws and regulations.[364]

---

[361] Article 22 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[362] Article 24 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[363] Article 25 and 26 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[364] Article 41 and 42 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.

Furthermore, the Board of Directors is required to establish an effective Internal Control System related to efforts to secure the company's investment and assets. The Internal Control System includes four things. Initially, an internal control environment that has integrity, ethical values, employee competence, management philosophy, and style, the method used by management in carrying out its authority and responsibility, the organization and development of human resources, and the attention and direction carried out by the Board of Directors. Next, control activities on company activities at every level and unit in the company's organizational structure. These control activities include authority, authorization, verification, reconciliation, assessment of work performance, division of tasks, and security of company assets. In addition, information, and communication systems. The company presents reports on operational activities, finances, and compliance with the provisions of laws and regulations. Finally, monitoring is assessing the quality of the internal control system, including the internal audit function at every level and unit in the company's organizational structure, so that it can be implemented optimally.[365]

Implementing the internal audit function is evaluated and examined by the Internal Audit Unit, which the Board of Directors creates. The Internal Audit Unit, led by a head appointed by the president director, evaluates the effectiveness of implementing internal control, risk management, and corporate governance processes under the provisions of laws, regulations, and company policies. Meanwhile, examinations and assessments are conducted on efficiency and effectiveness in finance, operations, human resources, information technology, and other activities.[366]

In addition to internal supervision, external auditors audit the financial statements of State-Owned Enterprises, subsidiaries, and affiliated companies of State-Owned Enterprises. The General Meeting of Shareholders/Minister appoints external auditors proposed by the Board of Commissioners/Supervisory Board. External auditors are public auditors who are members of a public accounting firm that has received permission from the Minister of Finance and is actively registered with the Financial Services Authority and

[365] Article 28 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[366] Article 29 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.

registered in the public accounting firm information system of the Audit Board of Indonesia. In addition, public accountants have received permission and are waiting to receive sanctions from the Minister of Finance and the Financial Services Authority. Moreover, according to the Risk Intensity of each State-Owned Enterprise, the number of auditors owned is a minimum of one hundred people.[367]

4.3. Ministry Regulation on Organs and Human Resources

This regulation covers several aspects related to organs and human resources in State-Owned Enterprises, such as requirements for members of the Board of Directors and Board of Commissioners/Supervisory Board, management of talent for the Board of Directors, procedures for appointing members of the Board of Directors and Board of Commissioners/Supervisory Board, procedures for dismissing members of the Board of Directors and Board of Commissioners/Supervisory Board, income for members of the Board of Directors and Board of Commissioners/Supervisory Board and supporting organs for the Board of Commissioners/Supervisory Board.

4.3.1. Board of Directors

A person can be appointed as a member of the Board of Directors of State-Owned Enterprises and subsidiaries if they meet the material and formal requirements. The material requirements are expertise, integrity, leadership, experience, honesty, good behavior, and high dedication to advancing and developing the company.[368]

There are some formal requirements. He or she is an individual who able to carry out legal acts. Next, he or she has never been declared bankrupt within five years before the appointment. He or she has also never been a member of the Board of Directors or a member of the Board of Commissioners/Supervisory Board who was found guilty of causing a State-Owned Enterprise, subsidiary, or other business entity to be declared bankrupt within five years before appointment. More importantly, he or she has never been convicted of

[367] Article 32 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[368] Article 3 of Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 of 2023.

committing a crime that is detrimental to state finances, State-Owned Enterprises, subsidiaries, other business entities, or related to the financial sector within five years before appointment.[369]

In addition to the material and formal requirements, a person must also meet the following other requirements. He or she is not a political party administrator, legislative candidate, or legislative member of the House of Representatives at the central provincial or district/city levels. Besides, he or she is not a candidate for regional head/deputy head and regional head/deputy head, including acting regional head/deputy head. Next, he or she is not serving as a member of the Board of Directors at a State-Owned Enterprise or its subsidiary for two terms. Then, he or she is not currently serving as an official at a ministry/institution, member of the Board of Commissioners/Supervisory Board at another State-Owned Enterprise, member of the Board of Directors at another State-Owned Enterprise, member of the Board of Directors at a subsidiary or other business entity. He or she is not also currently holding a position that is prohibited by law from being held concurrently with the position of member of the Board of Directors. In addition he or she is dedicated and provides full time to carry out his/her duties, as stated in a statement from the person concerned. Moreover, he or she is physically and mentally healthy, namely, not currently suffering from an illness that could hinder the implementation of duties as a member of the Board of Directors, as evidenced by a health certificate from a hospital. Finally, he or she has a Taxpayer Identification Number and have fulfilled their tax payment obligations for the last two years.[370]

Furthermore, the Minister of State-Owned Enterprises, assisted by the Deputy Minister, Secretary of the Ministry, or Deputy in charge of law, compiles and determines the list and track record of the Board of Directors periodically based on information from ministries, government agencies, state institutions conducting audits, and state institutions enforcing the law. The list and track record are information to measure the integrity, good

[369] Article 4 of Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 of 2023.
[370] Article 4 of Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 of 2023.

behavior, and honest behavior of prospective members of the Board of Directors of State-Owned Enterprises.[371]

4.3.2. Board of Commissioners/Supervisory Board

No different from the requirements for the Board of Directors, a person must meet the material and formal requirements to be appointed as a member of the Board of Commissioners/Supervisory Board in a State-Owned Enterprise or subsidiary. The material requirements are integrity, dedication, understanding of company management issues related to one of the management functions, adequate knowledge of the business field in which the person is nominated, and the availability of sufficient time to carry out his/her duties.[372] There are some formal requirements. He or she is an individual who is capable of carrying out legal acts. Besides, he or she has never having been declared bankrupt within five years prior to the appointment. Next, he or she has never having been a member of the Board of Directors or a member of the Board of Commissioners/Supervisory Board who was found guilty of causing a State-Owned Enterprise, subsidiary, or other business entity to be declared bankrupt within five years prior to appointment. In addition, he or she has never having been convicted of committing a crime that harmed the finances of the State, State-Owned Enterprises, subsidiaries, other business entities, or related to the financial sector within five years prior to appointment.[373]

In addition to meeting the material and formal requirements, a person who will be appointed as a member of the Board of Commissioners/Supervisory Board at a State-Owned Enterprise or subsidiary must meet the following other requirements. He or she is not a political party administrator, legislative candidate, or legislative member at the People's Representative Council, Regional Representative Council, Provincial People's Representative Council, and Regency/City Regional People's Representative Council. He or she is also not a candidate for regional head/deputy head or regional head/deputy head,

[371] Article 9, 10, and 11 of Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 of 2023.
[372] Article 15 of Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 of 2023.
[373] Article 16 of Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 of 2023.

including acting regional head/deputy head. Besides, he or she is not currently holding a position that has the potential to cause a conflict of interest with the State-Owned Enterprise/subsidiary concerned. Next, he or she is not serving as a member of the Board of Commissioners/Supervisory Board at a State-Owned Enterprise or Board of Commissioners at the subsidiary concerned for two terms. Then, he or she is not currently holding a position that is prohibited by law from being held concurrently with the position of a member of the Board of Commissioners. Moreover, he or she is physically and mentally healthy, who is not suffering from an illness that could hinder the implementation of duties as a member of the Board of Commissioners/Supervisory Board, as evidenced by a health certificate from a hospital. Finally, he or she has a Taxpayer Identification Number and have fulfilled the obligation to pay taxes for the past two years.[374]

5. Legal Issues in the Omnibus Law on State-Owned Enterprises

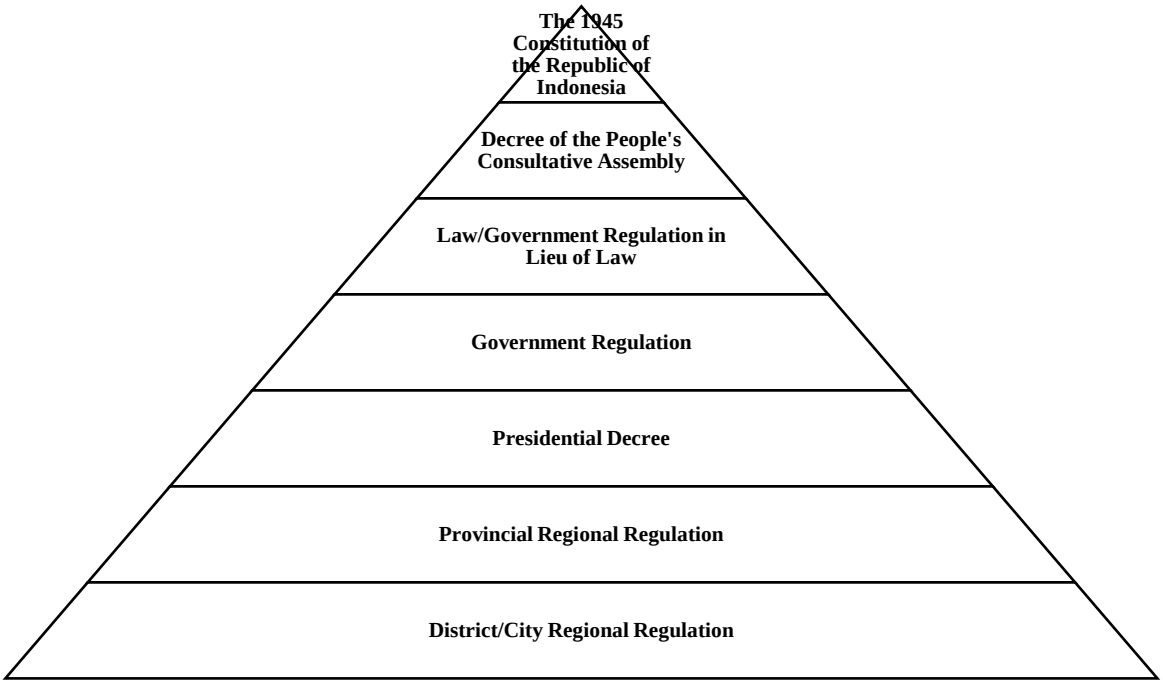
5.1. Omnibus Law Introduces Types of State-Owned Enterprises that Contradict Law Number 19 of 2003

Omnibus Law on State-Owned Enterprises consists of the Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities, Regulation of the Minister of State-Owned Enterprises Number PER-2 /MBU/03/2023 on Guidelines for Governance and Significant Corporate Activities, and Regulation of the Ministry of State-Owned Enterprises Number PER-3/MBU/03/2023 on Organs and Human Resources.

[374] Article 18 of Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 of 2023.

Figure 5.1.

Hierarchy of Indonesian Legislation



Source: Law Number 12 of 2011 on the Formation of Legislation

Figure 5.1. shows the hierarchy of Indonesian legislation. Based on the theory of the hierarchy of laws and regulations, the 1945 Constitution of the Republic of Indonesia is the highest law in Indonesia. Furthermore, the hierarchical order of position below it is the Decree of the People's Consultative Assembly, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/City Regulations. The legal force of each law and regulation applies and is binding with the provision that lower laws and regulations may not conflict with higher laws and regulations. [375]

In the Indonesian legal system, there are four principles in the hierarchy of applicable laws and regulations. First, *Lex superiori derogat legi inferiori*. This principle

[375] Article 7 paragraph (2) of Law Number 12 of 2011 on the Formation of Legislation, https://peraturan.bpk.go.id/Details/39188/uu-no-12-tahun-2011, accessed 14 October 2024.

stipulates that lower regulations must not conflict with higher regulations. In addition, this principle applies to two regulations whose hierarchy is not equal and contradicts each other. Second, *Lex specialis derogat legi generali*. This principle explains that a more specific regulation overrides a more general regulation. In its application, this principle applies to two regulations whose hierarchy is equal with the same material. Third, *Lex posteriori derogat legi priori*. In this principle, the new regulation overrides the old regulation. This principle aims to prevent legal uncertainty when there are two regulations whose hierarchy is equal. Fourth, a regulation can only be removed by a regulation whose position is equal or higher. [376]

Omnibus Law on State Owned Enterprises is a Ministerial Regulation made by the central government to implement higher regulations. Its nature is to regulate, and its position is higher than that of the Ministerial Decree. Although it is not mentioned in the hierarchy of laws and regulations, its existence is recognized by law. In addition, the creation of Ministerial Regulations is a delegation to implement higher regulations, such as Law Number 19 of 2003 on State Owned Enterprises and other related regulations. Therefore, its characteristics are similar to Presidential Regulations even though its position is lower in the government's bureaucratic structure. [377] A minister issues a ministerial regulation to exercise the president's authority in government affairs, which is his duty. Therefore, Ministerial Regulations are specific according to the field of his ministry to avoid causing overlap or conflict with higher regulations. The President is required to approve the draft of the Ministerial Regulation before its ratification so that laws and regulations are harmonized. [378]

Nevertheless, the Omnibus Law on State-Owned Enterprises is not only intended to regulate and delegate higher regulations. It creates new legal norms that are outside Law Number 19 of 2003. For example, it introduces several different terminologies of State-

[376] Sati, Nisrina Irbah. "Ketetapan MPR dalam tata urutan peraturan perundang-undangan di Indonesia." *Jurnal Hukum & Pembangunan* 49, no. 4 (2020): 834-846, https://scholarhub.ui.ac.id/jhp/vol49/iss4/4/.
[377] Aditya, Zaka Firma, and Muhammad Reza Winata. "Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 9, no. 1 (2018): 79-100, http://dx.doi.org/10.22212/jnh.v9i1.976.
[378] Ridwan, Ridwan. "Eksistensi Dan Urgensi Peraturan Menteri Dalam Penyelenggaraan Pemerintahan Sistem Presidensial." *Jurnal Konstitusi* 18, no. 4 (2021): 828-845, https://doi.org/10.31078/jk1845.

Owned Enterprises, such as State Holding Owned Enterprises, Subsidiaries of State-Owned Enterprises, and Affiliated Companies of State-Owned Enterprises. The following are the terms of State-Owned Enterprises listed in the Omnibus Law on State-Owned Enterprises:

Term	**Definition**
Badan Usaha Milik Negara/State-Owned Enterprises	A business entity whose capital is wholly or mainly owned by the state through direct investment originating from separated state assets.
Badan Usaha Milik Negara Induk/State-Owned Holding Company	A State-Owned Enterprise that has a subsidiary or subsidiaries.
Anak Perusahaan Badan Usaha Milik Negara/Subsidiary of State-Owned Enterprises	A limited liability company whose shares are more than 50% owned by a State-Owned Enterprise or a limited liability company that is directly controlled by a State-Owned Enterprise.
Perusahaan Perseroan/Limited Liability Company	A State-Owned Enterprise in the form of a Limited Liability Company whose capital is divided into shares, all or at least 51% of which are owned by the state, whose main objective is to pursue profit.
Perusahaan Perseroan Terbuka/Public Limited Company	A limited liability company whose capital and number of shareholders meet specific criteria or a limited liability company that makes a public offering in accordance with laws and regulations in the capital market sector.
Perusahaan Terafiliasi Badan Usaha Milik Negara/Affiliated Companies of State-Owned Enterprises	A Limited Liability Company whose shares are more than 50% owned by Subsidiaries of State-Owned Enterprises, a combination of Subsidiaries of State-Owned Enterprises, or a combination of Subsidiaries of State-Owned Enterprises with State-Owned Enterprises, or limited liability companies directly controlled by Subsidiaries of State-Owned Enterprises, a combination of Subsidiaries of State-

	Owned Enterprises, or a combination of Subsidiaries of State-Owned Enterprises with State-Owned Enterprises.
Perusahaan Umum/Public Corporation	A State-Owned Enterprise whose entire capital is owned by the state and is not divided into shares aims for public benefit by providing high-quality goods and/or services while simultaneously pursuing profits based on the principles of company management.
Perseroan Terbatas/Limited Liability Company	A company that is not a limited liability company, where one of the shareholders is the state.

Meanwhile, Law Number 19 of 2003 on State Owned Enterprises only recognizes and explains the following types of State-Owned Enterprises:

Term	**Definition**
Badan Usaha Milik Negara/State-Owned Enterprises	A business entity whose capital is wholly or mainly owned by the state through direct investment originating from separated state assets.
Perusahaan Perseroan/Limited Liability Company	A State-Owned Enterprise in the form of a limited liability company whose capital is divided into shares, all or at least 51% of which are owned by the Republic of Indonesia, whose main objective is to pursue profit.
Perusahaan Perseroan Terbuka/Public Limited Company	A limited liability company whose capital and number of shareholders meet certain criteria or a limited liability company that makes a public offering in accordance with laws and regulations in the capital market sector.
Perusahaan Umum/Public Corporation	A State-Owned Enterprise whose entire capital is owned by the state and is not divided into shares, which aims for public benefit in the form of providing high-quality goods and/or services while simultaneously pursuing profits based on the principles of company management.

Based on the comparison table, the Omnibus Law on State-Owned Enterprises has issued and regulated new legal norms in the governance of State-Owned Enterprises that are contrary to Law Number 19 of 2003 on State-Owned Enterprises. For instance, it introduced the new types of State-Owned Enterprises such as State-Owned Holding Company, Subsidiary of State-Owned Enterprises, and Affiliated Companies of State-Owned Enterprises. As a function and position as a Ministerial Regulation, the Omnibus Law should only regulate issues that have been mentioned and have been regulated in laws and regulations that are hierarchically higher in position.

5.2. Omnibus Law Regulates Governance of a Holding Company and a Subsidiary

Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 also governs State Capital Participation in State-Owned Enterprises. State Capital Participation is the separation of state assets from the State Revenue and Expenditure Budget, which is used as capital for State-Owned Enterprises or Limited Liability Companies and managed based on corporate rules. [379] The government allocates the State Revenue and Expenditure Budget to become capital or additional capital for State-Owned Enterprises, which then becomes state-owned shares. The aim is to improve the capital structure and increase the business capacity of State-Owned Enterprises. Moreover, the government also provides State Capital Participation to State-Owned Enterprises that carry out government assignments such as infrastructure development, subsidies for the price of goods or services, and specific public services. In saving the finances of State-Owned Enterprises, the government also provides State Capital Participation for restructuring programs and business development. [380]

The Minister of State-Owned Enterprises is the party proposing State Capital Participation to the government with the approval of the Minister of Finance. However, under certain conditions, the Board of Directors may propose State Capital Participation for

[379] Article 1 point 58 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[380] Article 110 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.

the purpose of restructuring and rescuing State-Owned Enterprises based on the results of an in-depth and comprehensive study. [381]

Recipients of State Capital Participation are not only State-Owned Enterprises, but a subsidiary can receive State Capital Participation. Every subsidiary that receives State Capital Participation is required to comply with the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023. The holding company is required to report the realization of the use of State Capital Participation funds to the Minister of State-Owned Enterprises. [382]

In addition to receiving State Capital Participation, a subsidiary of State-Owned Enterprises can also play a role in carrying out public service obligations from the government. For example, a subsidiary serves segments of society that are entitled to subsidies for goods or services from the government, receives compensation for the sale of goods or services below economic value, and carries out National Strategic Projects. [383]

In the Omnibus Law, especially the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023, there are many equal treatments in corporate governance issues between State-Owned Enterprises acting as a holding company and a subsidiary, likewise, regarding the supervision of the Audit Board and the supervision of the Financial and Development Supervisory Agency.[384] The Board of Commissioners/Supervisory Board is required to follow up on audit findings from the two state institutions. In addition, the Board of Directors is also required to follow up on findings and recommendations from the Audit Board report and the Financial and Development Supervisory Agency report. [385]

---

[381] Article 110 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[382] Article 119 of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[383] Article 53 paragraph (6) of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[384] Article 14 paragraph (12) of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.
[385] Article 22 paragraph (4) of Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 of 2023.

CHAPTER VI

GOVERNANCE OF INDONESIAN STATE-OWNED ENTERPRISES IN THE PERSPECTIVE OF THE OECD GUIDELINES ON CORPORATE GOVERNANCE

1. Indonesia and OECD

Indonesia has registered as a member of the Organization for Economic Cooperation and Development (OECD) and entered the accession process on March 29, 2024. Some of the main reasons why the OECD accepted Indonesia's registration as a member are the shared vision between Indonesia and the OECD in implementing an open and fair market economy. In addition, Indonesia is an important player in the global economy as a member of the G-20 world countries, and there is mutual benefit between Indonesia and the interests of the OECD.[386]

In relation to Indonesia's membership registration to the OECD, there is one guideline that is of important concern to Indonesia concerning the governance of State-Owned Enterprises. The guideline is the OECD Guidelines on Corporate Governance of State-Owned Enterprises. As one of the important references for OECD countries, Indonesia indeed uses the guideline as one of the strategic policy studies in reforming the governance of State-Owned Enterprises in recent years.

This chapter analyzes the aspects of governance compliance of State-Owned Enterprises in Indonesia with the OECD Guidelines on Corporate Governance. The main aspects of the guidelines serve as the basic framework for the analysis of this paper.

In addition, this chapter presents examples of the implementation of the OECD Guidelines on Corporate Governance from Croatia and Hungary. The selection of the two countries was based on the representation of countries that are in the process of registering as OECD members and countries that have become OECD members. Croatia has the same

[386] OECD, "Roadmap for the OECD Accession Process of Indonesia," https://one.oecd.org/document/C/MIN(2024)7/en/pdf, accessed 10 November 2024.

position as Indonesia as a prospective member who is in the process of registering as a member. Hungary is the 27th OECD member that has joined since 1996.

2. Implementation of the OECD Guidelines on Corporate Governance of State-Owned Enterprises in Indonesia

The OECD Guidelines on Corporate Governance of State-Owned Enterprises are an essential reference for policymakers in realizing the framework of State-Owned Enterprise ownership, governance, and its role in a country's economy. In addition, the Guidelines present the best practices and offer various ways to achieve profitable, professional, accountable, and transparent governance of State-Owned Enterprises.[387]

However, the Guidelines are not legal rules and do not replace the role of domestic legislation for member and non-member countries. Its existence began in 2005 and was revised in 2015. Then, in 2022, the OECD Corporate Governance Committee assigned the Working Party on State Ownership and Privatization Practices to test and revise the Guidelines. Finally, the latest version of the guidelines was published in 2024.[388]

This section of the paper analyzes the regulations and management practices of State-Owned Enterprises in Indonesia based on the formulations in the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

2.1. Rationales for State Ownership

In the Indonesian legal framework, State-Owned Enterprises are an essential instrument in advancing the economy and improving the welfare of society.[389] The intent and purpose of their establishment are, among others, to help develop the national economy in general and increase state revenues in particular. Next, they have the goal of pursuing

---

[387] OECD, OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024, Paris: OECD Publishing, 2024, https://doi.org/10.1787/18a24f43-en, p. 6.
[388] OECD, OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024, p. 7-8.
[389] Apriliyanti, Indri Dwi, and Stein Oluf Kristiansen. "The logics of political business in state-owned enterprises: the case of Indonesia." *International Journal of Emerging Markets* 14, no. 5 (2019): 709-730, https://doi.org/10.1108/IJOEM-08-2018-0433.

profits from their business activities. They also have a mandate to organize public benefits in the form of providing high-quality and adequate goods and services to meet the needs of society. In addition, they are pioneers of business activities that private businesses and cooperatives have yet to carry out. Additionally, they have a social role in fostering and assisting weak entrepreneurs, cooperatives, and the community.[390]

As a country with abundant natural resources, Indonesia makes State-Owned Enterprises the leading managers of natural resources to gain profits while driving economic sectors. Almost all business sectors have State-Owned Enterprises involved in them.[391] The Ministry of State-Owned Enterprises introduced 12 business clusters, each of which has many enterprises. See Appendix 9: State-Owned Enterprises in 12 business clusters.

The division of State-Owned Enterprises into twelve business clusters is the result of streamlining hundreds of enterprises by forming holding companies and subsidiaries. The government changed the company structure by making one or several companies into holding companies, while several other companies that have the same business sector become subsidiaries.[392] Therefore, if we count the number of state-owned enterprises, both holding companies and subsidiaries, then quantitatively, it is still huge. The process of streamlining the number of enterprises and the efficiency of governance still requires quite a long time.

In the matter of state ownership, Law Number 19 of 2003 divides the types of State-Owned Enterprises into a Public Company, a Limited Liability Company, and a Public Limited Company. A Public Company is a state-owned enterprise that is fully controlled and owned by the state and aims to provide public benefits by providing goods and services to the public. Meanwhile, a Limited Liability Company and a Public Limited Company are State-Owned Enterprises that have undergone a corporatization process with state control of 51% share ownership. As for Public Limited Companies, they are State-Owned

[390] Article 2 of Law Number 19 of 2003 on State-Owned Enterprises.
[391] Dutu, Richard. "Making the Most of Natural Resources in Indonesia", OECD Economics Department Working Papers, No. 1236, OECD Publishing, Paris, (2015), https://doi.org/10.1787/5js0cqqk42ls-en.
[392] Tambunan, Tulus. 2005. "Promoting Small and Medium Enterprises with a Clustering Approach: A Policy Experience from Indonesia." Journal of Small Business Management 43 (2): 138–54, https://doi.org/10.1111/j.1540-627X.2005.00130.x.

Enterprises that offer their shares to the public through the capital market mechanism.[393] Some State-Owned Enterprises assets are entirely owned by the state and have the legal entity of a Public Company. See Appendix 10: State-Owned Enterprises with hundred-percent state ownership.

Since the period of corporatization of State-Owned Enterprises in 1966, the change from a public company into a limited liability company and public limited companies has increasingly occurred. There are no written rules in the laws and regulations related to state-owned enterprises that still need to be fully controlled by the state or corporatized and privatized for the diversification of ownership by the public. For instance, the State Electricity Company (PLN) produces, manages, and distributes electricity monopolistically by order of the state. The company formed by the government in 1945 experienced a change in legal entity starting from a bureaucratic, under the Ministry of Public Works and Energy, the State Electricity Company in 1972 until finally becoming a Limited Liability Company in 1994.[394]

Another example is Pertamina, a national oil and gas company founded in 1957 with a legal entity as a State Company or Public Corporation. Not only selling oil and gas for the company's profit, since 2001, the government has assigned Pertamina as the organizer of public service obligations related to the provision of subsidized fuel for the poor/lower middle class. Pertamina carried out a fundamental transformation on July 20, 2006, by changing its legal entity to a Limited Liability Company. The state is no longer the sole owner but only has a shared ownership of more than 51% with privatization and transfer of shares to the public.[395]

Privatization is not a prohibited issue for State-Owned Enterprises based on the rules of law in Indonesia. Privatization can be carried out with the aim of expanding public ownership of State-Owned Enterprises, increasing company efficiency and productivity, creating a more robust financial structure and management, and creating a healthy, competitive, globally oriented industrial structure. State-owned enterprises with the legal

[393] Article 1 Paragraphs 2, 3, and 4 of Law Number 19 of 2003 on State Owned Enterprises.
[394] PLN, "Company Profile," https://web.pln.co.id/en/about-us/company-profile, accessed 7 November 2024.
[395] Pertamina, "Milestone PT Pertamina (Persero)," https://www.pertamina.com/id/tonggak-sejarah, accessed 7 November 2024.

entity of a limited liability company can be privatized because they meet the criteria as a competitive industry and whose technological elements change rapidly.[396]

However, Indonesia also limits privatization. State-owned enterprises that are incorporated as limited liability companies cannot be privatized if their business fields are only carried out by state-owned enterprises based on laws and regulations. Next, limited liability companies engaged in the field of national defense and security may also not be privatized. In addition, the prohibition on privatization also applies to limited liability companies that receive particular tasks from the government for goods and services for the benefit of the community. Finally, limited liability companies that manage national natural resources are expressly prohibited from being privatized by laws and regulations.[397]

At last, the transformation of several Public Corporations into Limited Liability Companies is a government strategy to reform corporate governance from absolute state ownership to diversified ownership to the public.[398] The state, based on Article 33 of the 1945 Indonesian Constitution, controls important and strategic production branches for the state and the main livelihoods of the community. All natural resources on earth, water and air, become part of the state's wealth, which is under the control of the state for the prosperity of the people.[399]

2.2. The State's Role as an Owner

In the Indonesian legal framework, the state appoints and authorizes the Minister of State-Owned Enterprises as the representative of the government, as a shareholder in State-Owned Enterprises with the legal entity of a Limited Liability Company, and as the owner of capital in State-Owned Enterprises with the legal entity of a Public Corporation.[400] In addition, the Technical Minister receives a mandate from the state to regulate the sector

[396] Article 75 and 76 of Law Number 19 of 2003 on State Owned Enterprises.
[397] Article 77 of Law Number 19 of 2003 on State Owned Enterprises.
[398] Harianto, Farid, and Mari E. Pangestu. "Changes in corporate governance structure in Indonesia." In *Asia-Pacific Financial Deregulation*, pp. 173-182. Routledge, 2002, https://doi.org/10.4324/9780203013922.
[399] Article 33 of the 1945 Constitution of the Republic of Indonesia.
[400] Article 1 point 5 of Law Number 19 of 2003 on State-Owned Enterprises.

policy where the State-Owned Enterprises conduct business activities.[401] The Minister of Finance is authorized to implement policies related to the separation of the State Budget from the state financial regime into state shares in State-Owned Enterprises, such as when establishing a company or transferring state ownership shares.[402]

Indonesia adopts two ownership models in state ownership. This model is the ownership of State-Owned Enterprises divided between two ministries or high-level public institutions. In general, this model gives authority to one ministry in financial matters and another ministry in strategic policy matters.[403] In the Indonesian context, the Minister of State-Owned Enterprises and the Technical Minister share authority and responsibility for the management of State-Owned Enterprises. At the same time, the Minister of Finance is responsible for the transfer of the government budget into state shares in the company.

In a State-Owned Enterprise that is a Public Corporation, the Minister of State-Owned Enterprises is one of the company's organs in addition to the board of directors and the board of supervisors. The government determines the articles of association and its amendments through Government Regulations. The Minister has the authority to accept or reject the Board of Directors proposals for business development policies based on the provisions of laws and regulations. In addition, the Minister also has the authority to appoint and dismiss the Board of Directors and the Board of Supervisors.[404]

Meanwhile, in State-Owned Enterprises with the legal entity of a Limited Liability Company, the Minister is not a direct organ of the company. However, it is based on share ownership in the limited liability company. The Minister acts as the General Meeting of Shareholders in limited liability companies whose share ownership is controlled by the state. If state share ownership is not entirely, majority, or only partially, then the Minister acts as a shareholder in the General Meeting of Shareholders.[405] The authority of the Minister over State-Owned Enterprises with the legal entity of a limited liability company is to follow the provisions of corporate law as generally applicable, including private

[401] Article 1 point 6 of Law Number 19 of 2003 on State-Owned Enterprises.
[402] Article 10 and 35 of Law Number 19 of 2003 on State-Owned Enterprises.
[403] OECD, Ownership and Governance of State-Owned Enterprises 2024, OECD Publishing, Paris, (2024), https://doi.org/10.1787/395c9956-en, p. 27-29.
[404] Article 38, 41, 44 and 56 of Law Number 19 of 2003 on State-Owned Enterprises.
[405] Article 15 and 27 of Law Number 19 of 2003 on State-Owned Enterprises.

companies. Therefore, the appointment and dismissal of Directors and Commissioners are the authority of the General Meeting of Shareholders, including the company's business policies. The Minister has the authority according to the portion of state share ownership in the company.[406]

As a capital owner or majority shareholder, the government has the authority to assign State-Owned Enterprises to carry out public benefit functions in accordance with the objectives of the company's business activities.[407] For instance, the State Electricity Company is obliged to provide goods and services related to the electricity needs of the community and industry. Not only aiming for profit orientation, but the company also considers the affordability of electricity for all citizens, including in remote areas. [408]

Furthermore, in the latest developments, the Minister of State-Owned Enterprises introduced the restructuring of State-Owned Enterprises by establishing holding companies, subsidiaries, and affiliated companies. A State-Owned Enterprise that has one or more subsidiaries is called a State-Owned Holding Enterprise. Next, a subsidiary is a limited liability company whose shares are more than 50% owned by a State-Owned Enterprise or a limited liability company that is under the control of a State-Owned Enterprise. At the same time, an affiliated company is a limited liability company whose shares are more than 50% owned by a subsidiary of a State-Owned Enterprise, a combination of subsidiaries of a State-Owned Enterprise, or a combination of subsidiaries of a State-Owned Enterprise with a State-Owned Enterprise. In addition, an affiliated company also means a limited liability company that is directly controlled by a subsidiary of a State-Owned Enterprise, a combination of subsidiaries of a State-Owned Enterprise, or a combination of subsidiaries of a State-Owned Enterprise with a State-Owned Enterprise.[409]

---

[406] Sitinjak, Punia Nathania. "Discource on Increasing the Role of The Ministry of SOEs as The Management and Supervision State-Owned Enterprises Entity." *" Dharmasisya" Jurnal Program Magister Hukum FHUI* 1, no. 4 (2022): 28, https://scholarhub.ui.ac.id/dharmasisya/vol1/iss4/28/.

[407] Article 66 of Law Number 19 of 2003 on State-Owned Enterprises.

[408] Kurniawati, Lestari. "Understanding the Financial Performance of PT PLN (Persero): A Narrative on State-Owned Enterprise (SOE) with a Mandate of Electricity in Indonesia." *Binus Business Review* 13, no. 3 (2022): 241-258, https://doi.org/10.21512/bbr.v13i3.7883.

[409] Article 1 point 2, 5, and 36 of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 concerning Guidelines for Governance and Significant Corporate Activities of State-Owned Enterprises.

The legal basis for the establishment of a holding company is Government Regulation Number 72 of 2016 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies. Actually, this regulation does not mention the term. It explicitly regulates holding companies, but this regulation is the basis for the establishment of a holding company with the provision of the transfer of state shares to State-Owned Enterprises.[410] The establishment of a holding company occurs by appointing a State-Owned Enterprise as a holding company and other State-Owned Enterprises as subsidiaries with the aim of facilitating governance due to the similarity of their business fields. Articles 63, 64, and 65 of Law Number 19 of 2003 regulate legal norms regarding State-Owned Enterprises that take over shares of other limited liability companies. Therefore, although the legal regulations have yet to introduce holding companies and subsidiaries explicitly, the government takes the meaning from the existing legal norms.[411]

However, legal certainty over holding companies, subsidiaries, and affiliated companies of State-Owned Enterprises is essential for the future of Indonesian State-Owned Enterprises, especially regarding state ownership. The transfer of state shares in the formation of holding companies and subsidiaries and the placement of capital in affiliated companies must take into account the interests of state assets.[412] The government has the responsibility to revise/amend Law Number 19 of 2003 concerning State-Owned Enterprises and laws and regulations related to state finances, such as Law Number 17 of 2003, so that there is harmonization of legal policies on the governance of State-Owned Enterprises that guarantee justice, legal certainty and protection for state assets and the interests of the nation.[413]

---

[410] Government Regulation Number 72 of 2016 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies.

[411] Ishak, Ahmad, Aminuddin Ilmar, and Winner Sitorus. "Analysis of Government Policies in Structuring State Owned Corporation Through the Formation of Holding Companies." *Jurnal Hukum Volkgeist* 6, no. 1 (2021): 38-45, https://doi.org/10.35326/volkgeist.v6i1.1322.

[412] Afwa, Ulil, and Fathya Neysa Oktavia. "Legal Standing of Parent and Subsidiary Companies of Indonesian Subsidiary State-Owned Enterprises." In *3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023)*, pp. 17-27. Atlantis Press, 2023, https://doi.org/10.2991/978-2-38476-164-7_3.

[413] Wicaksono, Adi Hardiyanto. "On harming the state finances or the state economy by a state-owned enterprise (bumn) and/or its subsidiaries in Indonesia." *Scientia Business Law Review (SBLR)* 1, no. 2 (2022): 63-73, https://doi.org/10.56282/sblr.v1i2.222.

2.3. State-Owned Enterprises in the Marketplace

Indonesia passed Law Number 5 of 1999 on the Prohibition of Monopolies and Unfair Business Competition as an effort to improve business competition in order to create justice for all business actors. In this rule of law, the Business Competition Supervisory Commission is a law enforcement institution that has the authority to examine and prosecute business actors suspected of violating fair business competition.[414]

Are State-Owned Enterprises the object of competition law? Law Number 5 of 1999 exempts the application of competition rules to acts or agreements aimed at implementing laws and regulations. In addition, agreements related to intellectual property rights such as licenses, patents, trademarks, copyrights, industrial product designs, integrated electronic circuits, trade secrets, and franchise agreements are exempted from anti-monopoly law provisions. Furthermore, several agreements, such as agency agreements, research cooperation agreements, international agreements, and export agreements, are exempted from anti-monopoly law provisions. In addition, competition law provisions also exempt small business actors and cooperative activities for their members.[415]

Based on the provisions of Law Number 5 of 1999, State-Owned Enterprises are exempted from carrying out business activities based on the order of the law if there are elements of monopoly and unfair business competition. However, in recent years, the Indonesian government has passed several laws and regulations that release the monopoly rights of State-Owned Enterprises in various business activities that are of a public service nature as follows:

1. Law Number 22 of 2001 on Oil and Natural Gas removes the monopoly authority of PT Pertamina (Persero), the national oil and gas company, in exploration, exploitation, processing, transportation, storage, and trading activities. Pertamina may only monopolize the provision of subsidized fuel for people experiencing poverty. This legal

[414] Simbolon, Alum Simbolon. "The Amounts of anti trust law in Indonesia." In *International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2018)*, pp. 138-140. Atlantis Press, 2018, https://doi.org/10.2991/icblt-18.2018.33.

[415] Article 50 of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, https://peraturan.bpk.go.id/Details/45280/uu-no-5-tahun-1999, accessed 12 November 2024.

policy opens up private companies to be involved in business activities in the oil and gas sector.[416]

2. Law Number 23 of 2007 on Railways eliminates the monopoly rights of PT Kereta Api Indonesia (Persero), the national railway company, in organizing railway transportation services. This legal policy has been in effect since April 25, 2020.[417] Although monopoly rights have been revoked and private companies can participate in the railway business, private parties have yet to invest in the railway sector due to the difficulty of providing land for the construction of railway lines.[418] In addition, the investment costs for the railway business are prohibitive and do not benefit the private sector.[419]

3. Law Number 1 of 2009 on Aviation and Government Regulation Number 40 of 2012 on Airport Development and Environmental Conservation revoked the monopoly rights of the State-Owned Enterprise, PT Angkasa Pura (Persero), in managing airports in Indonesia.[420] Several private companies, such as PT Angkasa Transportindo Selaras (a private company), manage Halim Perdanakusuma Airport in Jakarta together with PT Angkasa Pura II (Persero).[421] In addition, PT Angkasa Pura Aviasi, in collaboration with GMR Airports Netherlands BV, became the manager of Kualanamu Airport in Medan, North Sumatra, for 25 years.[422]

4. Law Number 17 of 2008 on Shipping revokes the monopoly regulation in the implementation of ports that are fully managed by PT Pelindo I-IV (Persero), a State-

---

[416] Law Number 22 of 2001 on Oil and Natural Gas, https://peraturan.bpk.go.id/Details/44903/uu-no-22-tahun-2001, accessed 12 November 2024.
[417] Law Number 23 of 2007 on Railways, https://peraturan.bpk.go.id/Details/39896/uu-no-23-tahun-2007, accessed 12 November 2024.
[418] Asikin, Mohamad Nur. "Terungkap! Sulitnya Swasta Investasi di Sektor Perkeretaapian," Jawa Pos, 18 August 2017, https://www.jawapos.com/bisnis/01126422/terungkap-sulitnya-swasta-investasi-di-sektor-perkeretaapian, accessed 12 November 2024.
[419] Saputra, Dany. "Ini Alasan Investor Swasta Ogah Garap Proyek Kereta Api," Bisnis.com, 7 July 2022, https://ekonomi.bisnis.com/read/20220707/98/1552075/ini-alasan-investor-swasta-ogah-garap-proyek-kereta-api, accessed 12 November 2024.
[420] Law Number 1 of 2009 on Aviation, https://peraturan.bpk.go.id/Details/54656/uu-no-1-tahun-2009, accessed 12 November 2024. See also Government Regulation Number 40 of 2012 on Development and Conservation of the Airport Environment, https://peraturan.bpk.go.id/Details/5252/pp-no-40-tahun-2012, accessed 12 November 2024.
[421] PT Angkasa Transportindo Selaras, "KSO HLP Pengelola Bandar Udara Halim Perdanakusuma," https://ats-airport.co.id/2023/06/21/kso-hlp-pengelola-bandar-udara-halim-perdanakusuma/, accessed 12 November 2024.
[422] PT Angkasa Pura Aviasi, "Sejarah Perusahaan," https://avi.id/id/about, accessed 12 November 2024.

Owned Enterprise that manages all ports in Indonesia.[423] For example, PT Pelabuhan Patimban Internasional is a government cooperation scheme with private business entities, including PT CT Corp Infrastruktur Indonesia, PT Indika Logistic & Support Services, PT U Connectivity Services, PT Terminal Petikemas Surabaya.[424]

5. Presidential Regulation Number 79 of 2005 revoked Presidential Decree Number 36 of 1979 on Iron Procurement, which granted monopoly rights to PT Krakatau Steel, a national steel and iron company. The elimination of monopoly rights opens up opportunities for private companies to participate in procurement projects carried out by the government, ministries, and other state institutions.[425]

Of the several legal policies that regulate the demonopolization of State-Owned Enterprises, Indonesia has provided fair and equal opportunities to individuals and private companies to compete more healthily with State-Owned Enterprises. In addition to following the free trade concept within the framework of economic globalization, the elimination of monopoly rights is a strategy to create independent state-owned enterprises that are stronger internally and externally and able to compete at the global level.[426]

2.4. Equitable Treatment of Shareholders and Other Investors

In the discussion on fair treatment for shareholders and investors of State-Owned Enterprises, the focus of the study is State-Owned Enterprises that are incorporated as Limited Liability Companies where state ownership of the company's shares is the majority, with a portion of more than 51% of the shares. As for State-Owned Enterprises that are

[423] Article 26 paragraph 1 of Law Number 17 of 2008 on Shipping, https://peraturan.bpk.go.id/Details/39060, accessed 12 November 2024.
[424] Direktorat Jenderal Perhubungan Laut, "Pelabuhan Patimban Resmi Dikelola PT Pelabuhan Patimban Internasional Dengan Skema KPBU," https://dephub.go.id/post/read/pelabuhan-patimban-resmi-dikelola-pt-pelabuhan-patimban-internasional-dengan-skema-kpbu, accessed 12 November 2024.
[425] Presidential Regulation Number 79 of 2005 on Revocation of Presidential Decree Number 36 of 1979 on Procurement of Iron and Steel, https://peraturan.bpk.go.id/Details/42605/perpres-no-79-tahun-2005, accessed 12 November 2024.
[426] Samawati, Putu. "Demonopolization SOEs Policy as an Efforts to Restructured Roles and Institutions in Facing Global Competition." Bappenas Working Papers, vol. 2, no. 1, 25 Mar. 2019, pp. 116-132, https://doi.org/10.47266/bwp.v2i1.34.

incorporated as Public Corporations, the company's ownership is not divided into shares because the state controls 100% of the company's assets.

State-owned enterprises that have the legal status of a Limited Liability Company are not only subject to Law Number 19 of 2003 on State-Owned Enterprises but also comply with the provisions of Law Number 40 of 2007 on Limited Liability Companies.

Law Number 40 of 2007 stipulates that any shareholder who feels aggrieved by unfair and unreasonable actions of the company can file a lawsuit against the company in court. For instance, the decision of the General Meeting of Shareholders, Board of Directors, or Commissioners has harmed the interests of one or a group of minority shareholders. In addition to filing a lawsuit against the company in court, any shareholder who disagrees with a corporate action has the right to ask the company to buy his shares at a fair price. Some actions of the company that can harm shareholders include changes to the articles of association, transfer or guarantee of company assets that have a value of more than 50% of the company's net assets, and mergers, amalgamations, takeovers, or separations.[427]

In the event that the Board of Directors' actions result in losses to the company due to their errors or negligence, shareholders representing at least one-tenth of the total number of shares with voting rights may file a lawsuit with the district court.[428]

State-owned enterprises, predominantly minority shareholders, are required to protect and facilitate the fair implementation of shareholder rights. Shareholder rights include attending and voting at the General Meeting of Shareholders and obtaining material information about the company. Next, shareholders are also entitled to receive a share of the profits allocated to shareholders in the form of dividends and remaining assets from liquidation in proportion to the number of shares/capitals owned. In addition, shareholders have the right to protection against company policies that carry out mergers, acquisitions, amalgamations, separations, dissolutions, liquidations, and extraordinary transactions.[429]

---

[427] Article 61 and 62 of Law Number 40 of 2007 on Limited Liability Companies, https://peraturan.bpk.go.id/Details/39965, accessed 13 November 2024.
[428] Article 97 paragraph 6 of Law Number 40 of 2007 on Limited Liability Companies.
[429] Article 5 and 6 of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.

In addition to the protection mechanism for the rights of minority shareholders, State-Owned Enterprises also implement information disclosure in a timely, accurate, clear, and objective manner. Information disclosure to the public must still pay attention to the provisions of laws and regulations and the principle of corporate confidentiality. [430] One form of public information disclosure is the publication of an annual report containing financial reports, activity reports, reports on the implementation of social and environmental responsibilities, details of problems during one fiscal year, supervisory task reports, names of members of the Board of Directors and Board of Commissioners/Supervisory Board, and salaries and other benefits. [431]

2.5. Disclosure, Transparency, and Accountability

Law Number 19 of 2003 on State-Owned Enterprises introduces five principles of good corporate governance, namely transparency, independence, accountability, responsibility, and fairness. The meaning of transparency is openness in implementing the decision-making process and openness in disclosing material and relevant information about the company. Next, independence means a state in which the company is managed professionally without conflict of interest and influence/pressure from any party that is not in accordance with laws and regulations and healthy corporate principles. The meaning of accountability is the clarity of the function, implementation, and responsibility of the Organ so that the management of the company is carried out effectively. In addition, accountability is the conformity in the management of the company to laws and regulations and healthy corporate principles. Finally, fairness means conformity in the management of the company to laws and regulations and healthy corporate principles.[432]

Furthermore, the five principles of good corporate governance in Law Number 19 of 2003 are re-stated in Article 3 paragraph (2) of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and

[430] Article 38 of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.
[431] Article 221 of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.
[432] Explanation of Article 5 paragraph (3) of Law Number 19 of 2003 on State-Owned Enterprises.

Significant Corporations of State-Owned Enterprises with the same terms and explanations. Then Article 3 paragraph (3) mentions that the realization of good corporate governance is the fulfillment of several aspects in State-Owned Enterprises. First, the implementation of the duties and responsibilities of the General Meeting of Shareholders/Ministers, Board of Commissioners/Supervisory Board, and Board of Directors. Next, the completeness and implementation of the duties of the committee that carries out the internal control function. Then, the implementation of compliance functions, Internal Audit and External Audit. Besides, the implementation of Risk Management. In addition, the Conflict of Interest Guidelines. Finally, the transparency of financial and non-financial conditions and ethical behavior guidelines.[433]

In order to realize the principles of good corporate governance, State-Owned Enterprises have a tiered and layered supervisory mechanism inside and outside the company. Within the company, the Board of Directors has a supervisory obligation to form an Internal Supervisory Unit led by a chairman who is responsible for the board of directors. The implementation of the internal supervisory function is an evaluation of the effectiveness of the implementation of internal control, risk management, and corporate governance processes. In addition, internal supervision also includes examination and assessment of efficiency and effectiveness in the fields of finance, operations, human resources, information technology, and other activities.[434]

The Board of Commissioners/Board of Supervisors also has an Audit Committee that has an internal audit function and is a risk management organ under the Board of Commissioners/Board of Supervisors. They may access all relevant information about the company related to the duties and functions of the audit committee. Besides, they may monitor and review the effectiveness of the implementation of internal and external audits. Next, they should ensure the objectivity and independence of internal and external auditors. They also ensure the credibility and objectivity of the financial statements of State-Owned Enterprises to be published for external parties and supervisory bodies, including follow-up

[433] Article 3 of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.
[434] Article 29 of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.

on complaints and notes of irregularities regarding the statements during the audit committee review period. Moreover, they should monitor and review the financial reporting process audited by external auditors. And they should ensure that the Internal Audit Unit communicates with the Board of Directors, Board of Commissioners/Board of Supervisors, and external auditors. In addition, they provide recommendations to the Board of Commissioners/Board of Supervisors regarding the preparation of the audit plan, scope, and budget of the Internal Audit Unit.[435]

Furthermore, they may evaluate periodic internal auditor reports and recommend corrective actions to address control weaknesses, fraud, compliance issues with policies and laws and regulations, or other issues identified and reported by the Internal Audit Unit. Besides, they may evaluate the performance of the Internal Audit Unit. Next, they should ensure that the Internal Audit Unit upholds integrity in carrying out its duties. In addition, they provide recommendations to the Board of Commissioners/Supervisory Board regarding the provision of annual remuneration for the Internal Audit Unit as a whole and performance awards.[436]

In addition to their jobs, they also monitor and evaluate the suitability of the implementation of financial and internal audit policies of the Parent State-Owned Enterprise and Subsidiary State-Owned Enterprise. Then, they provide recommendations to the Board of Commissioners/Supervisory Board on matters that support the effectiveness and accuracy of the financial reporting process and the suitability between the internal audit policies of the Parent State-Owned Enterprise and the internal audit policies of the Subsidiary State-Owned Enterprise. Moreover, they carry out monitoring and evaluation of the implementation of other internal audit functions in accordance with the provisions of laws and regulations, articles of association, and decisions of the General Meeting of Shareholders/Minister. More importantly, they carry out other authorities, duties, and responsibilities related to its functions.[437]

---

[435] Article 59 of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.
[436] Article 59 of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.
[437] Article 59 of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.

Furthermore, in the matter of external audits, especially the examination of the company's financial statements, Public Accountants are parties appointed by State-Owned Enterprises to provide assurance that the representation of figures prepared by the company's management and presented in the financial statements has materially represented the actual conditions and has been presented and calculated in accordance with applicable accounting standards.[438] The role of public accountants is very strategic in supporting the embodiment of the principles of accountability of state-owned enterprises. As an external party, Public Accountants are expected to be independent so as to produce honest, fair, and reliable audits.[439]

In addition to Public Accountants, three state institutions supervise and audit State-Owned Enterprises: The Audit Board of Indonesia, the Financial and Development Supervisory Agency, and the Financial Services Authority (specifically for State-Owned Enterprises engaged in the financial services sector). The Audit Board of Indonesia is a state institution tasked with auditing the management and accountability of state finances. The Central Government, Regional Governments, state institutions, State-Owned Enterprises, Regional-Owned Enterprises, and other bodies that manage state finances are the objects of financial audits and performance audits for the Audit Board of Indonesia.[440] The role of the Audit Board of Indonesia is vital for State-Owned Enterprises in efforts to strengthen good corporate governance. Moreover, the Audit Board of Indonesia is a protector of state assets, especially in preventing fraud in the management of state finances that are channeled into company capital.[441]

Next, there is also the Financial and Development Supervisory Agency, which is an internal government supervisory institution that is under and responsible to the President.

---

[438] Article 1 paragraph 25 of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.

[439] Indiasti, Anitasiya Risky, and Lalu Takdir Junaidi. "Interpreting the Relationship of the Accounting Profession through Core Values to Internal Control in Preventing Management Irregularities in BUMN Companies." In *International Conference of Business and Social Sciences*, pp. 753-765. 2023, https://doi.org/10.24034/icobuss.v3i1.447.

[440] Article 1 paragraph 1 and Article 6 of Law Number 15 of 2006 on the Audit Board of Indonesia, https://peraturan.bpk.go.id/Details/40184/uu-no-15-tahun-2006, accessed 17 November 2024.

[441] Hidayatulloh, Hidayatulloh and Erdos, Eva. "Restrengthening the Role of Supreme Audit Agency in Supervising State-Owned Enterprises." *International Comparative Jurisprudence* 8 (2022): 152, https://doi.org/10.13165/j.icj.2022.12.003.

Its main task is to supervise state finances and national development. This agency audits State-Owned Enterprises because of the state finances contained therein; for example, the State Budget becomes the capital for the establishment or additional capital participation and distribution of subsidy funds. In addition, this agency strengthens the governance of State-Owned Enterprises by providing consultation, supervision, risk management, and financial audits.[442]

Specifically for State-Owned Enterprises in the financial services sector, such as banking, capital markets, and non-bank financial industries, the Financial Services Authority is a state institution that has the function of supervising, regulating, examining, and investigating financial services institutions in Indonesia.[443] In addition, the Financial Services Authority works by integrating regulatory and supervisory models and supervising aspects of prudence and business ethics in order to protect the interests of financial service consumers.[444]

In addition, in realizing the principles of disclosure, transparency, and accountability, the Ministry of State-Owned Enterprises publishes annual reports and combined financial reports on its official website. The annual report contains a profile of the portfolio, activities, governance, risk control, and policies, as well as an analysis of the financial performance of State-Owned Enterprises. Meanwhile, the combined annual report, also published annually, is a report that combines each financial report of State-Owned Enterprises covering the performance, risks, and prospects of the company individually, in groups, and as a whole.[445]

In more detail, the annual report of a State-Owned Enterprise contains at least financial statements consisting of at least the financial position report for the end of the

---

[442] Article 1, 2 and 3 of Presidential Regulation Number 192 of 2014 on the Financial and Development Supervisory Agency, https://peraturan.bpk.go.id/Details/41712/perpres-no-192-tahun-2014, accessed 16 November 2024.

[443] Article 1 paragraph (1) and Article 4 of Law Number 21 of 2011 on the Financial Services Authority, https://peraturan.bpk.go.id/Details/39257/uu-no-21-tahun-2011, accessed 17 November 2024.

[444] Agus, Riyanto, Budi Santoso, and Paramitha Paraningtyas. "Reforming Indonesia's OJK to Comply with International Standards: Lessons from Australia." *Brawijaya Law Journal* 10, no. 2 (2023), https://doi.org/10.21776/ub.blj.2023.010.02.07.

[445] Ministry of State-Owned Enterprises, "SOE's Consolidations Performance," https://bumn.go.id/publikasi/laporan/laporan-tahunan, accessed 15 November 2024.

previous financial year in comparison. In addition, the company must include with the previous financial year, the profit and loss report for the relevant financial year, the cash flow statement, the statement of changes in equity, and notes to the financial statements. Next, reports on the company's activities and reports on the implementation of social and environmental responsibilities are important too. The company also includes details of problems that arose during the financial year that affected the company's business activities. Moreover, reports on the supervisory duties that the Board of Commissioners has carried out during the previous financial year. The company puts names of members of the Board of Directors and Board of Commissioners/Supervisory Board and salaries and other allowances for members of the Board of Directors and salaries or honorariums and other allowances for members of the Board of Commissioners/Supervisory Board for the previous year.[446]

Furthermore, each State-Owned Enterprise submits a financial report signed by the President Director to the Minister of State-Owned Enterprises consisting of the first-semester financial report, the third-quarter financial report, the annual financial report, and the audited financial report. The components of the financial report consist of the financial position report, the profit and loss report and other comprehensive income, the equity change report, the cash flow report, and notes to the financial report.[447]

2.6. The Composition and Responsibilities of the Boards of State-Owned Enterprises

This section of the article analyzes how the composition and responsibilities of the boards of state-owned enterprises consisting of the Board of Directors and the Board of Commissioners or the Board of Supervisors (for State-Owned Enterprises with a Public Corporation legal entity) are in several laws and regulations in Indonesia, including Law Number 19 of 2003 on State-Owned Enterprises, Law Number 40 of 2007 on Limited

[446] Article 221 paragraph (2) of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.
[447] Article 222 paragraph (1) and (2) of the Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporations of State-Owned Enterprises.

Liability Companies, and Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 on Organs and Human Resources of State-Owned Enterprises.

Article 5 of Law Number 19 of 2003 states that the Board of Directors is an organ that is fully responsible for the management of State-Owned Enterprises for the interests and objectives of the company and represents the company both inside and outside the court. In carrying out their duties, members of the Board of Directors must comply with the articles of association and laws and regulations. They must implement the principles of professionalism, efficiency, transparency, independence, accountability, responsibility, and fairness. Meanwhile, Article 92 of Law Number 40 of 2007 further explains that the Board of Directors is authorized to carry out company management in accordance with policies deemed appropriate within the limits specified in Law Number 40 of 2007 and the company's articles of association.

The authority of the Board of Directors in managing the company is protected by law based on the business judgment rule theory. This concept originates from the jurisprudence of the Delaware Supreme Court in the United States, which formulated that "a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the act was in the best interests of the company."[448] This concept is not only a protection for the policies of the Board of Directors but also an effort to balance between the Board of Directors to exercise authority in managing the company on the one hand. At the same time, the Board of Directors must also be accountable, on the other hand, to prevent the transfer of company policies or assets to serve the personal interests of the Board of Directors.[449]

In the context of Indonesia, the business judgment rule has been adopted in Articles 92 and 97 of Law Number 40 of 2007. The Board of Directors has a fiduciary duty to carry out its duties in good faith and with full responsibility. In addition, the Board of Directors is immune from all lawsuits for its decisions. First, the loss is not due to its fault or negligence. Next, the Board of Directors has carried out the management of the Company

[448] Johnson, Lyman. "The Modest Business Judgment Rule." *The Business Lawyer* 55, no. 2 (2000): 625–52, http://www.jstor.org/stable/40687937.
[449] McMillan, Lori A. "The Business Judgment Rule as an Immunity Doctrine." *William & Mary Business Law Review* 4, no. 2 (2013), https://ssrn.com/abstract=2266489.

in good faith and with caution for the benefit of the Company in achieving its intent and purpose. In addition, the Board of Directors has no conflict of interest, either directly or indirectly, in the management that results in losses. Finally, the Board of Directors has taken preventive measures so that no losses arise from its business policies in the company.[450]

With the Board of Directors enormous power in the company, Article 3 of the Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 regulates strict requirements from the material and formal aspects for prospective Directors. The material aspect requirements are expertise, integrity, leadership, experience, honesty, good behavior, and high dedication to advancing and developing the company. The formal requirements are individuals who are legally competent and have never been declared bankrupt within five years prior to appointment. In addition, prospective Directors have never been members of the Board of Directors or members of the Board of Commissioners/Supervisory Board who have been found guilty of causing a State-Owned Enterprise, Subsidiary, or other business entity to be declared bankrupt within five years prior to appointment. More importantly, prospective Directors have never been convicted of committing a crime that is detrimental to the finances of the State, State-Owned Enterprises, Subsidiaries, or other business entities, or related to the financial sector within five years prior to appointment.

Furthermore, to prevent conflicts of interest between the Board of Directors and State-Owned Enterprises, especially regarding aspects of party politics and political positions, Article 6 of the Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 also regulates other requirements. For example, the Board of Directors is not a member of a political party or a legislative candidate at the center or region. Next, prospective Directors are not candidates for regional heads or candidates for deputy regional heads or regional officials. In addition, prospective Directors are also not government officials in ministries/state institutions or members of the Board of Commissioners in other State-Owned Enterprises.

---

[450] Hidayatulloh, Hidayatulloh. "Business Judgment Rule and Its Implementation in Indonesian Corporate Law" in A Studia Iurisprudentiae Doctorandorum Miskolciensium, University of Miskolc (2021), p. 23-27, https://jogikar.uni-miskolc.hu/kiadvany_studia_iurisprudentiae.

After the Board of Directors, the Board of Commissioners in Article 1 Paragraph 7 and Article 28 of Law Number 19 of 2003 concerning State-Owned Enterprises is also an essential organ in State-Owned Enterprises which has the task of supervising and providing advice to the Board of Directors. The General Meeting of Shareholders appoints and dismisses the Board of Commissioners. The appointment of members of the Board of Commissioners for a five-year term and can be reappointed for one term is based on considerations of integrity, dedication, and understanding of company management issues.

Law Number 40 of 2007 on Limited Liability Companies, especially in Article 108, also regulates the role of the Board of Commissioners as a supervisor of company policies and a provider of advice to the Board of Directors. The Board of Commissioners, if more than one person, must act together based on a joint decision of the Board of Commissioners.

Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 regulates the Board of Commissioners in more detail. Prospective members of the Board of Commissioners must meet material and formal requirements. Material requirements are integrity, dedication, understanding of company management issues related to one of the management functions, adequate knowledge of the business field in which the person concerned is nominated, and the availability of sufficient time to carry out his duties.

The formal requirements for candidates for the Board of Commissioners are that they are individuals, capable of carrying out legal acts, have never been declared bankrupt within five years prior to appointment, have never been a member of the Board of Directors or a member of the Board of Commissioners/Supervisory Board who has been found guilty of causing a State-Owned Enterprise, Subsidiary or other business entity to be declared bankrupt within five years prior to appointment, and have never been convicted of committing a crime that is detrimental to the finances of the State, State-Owned Enterprises, Subsidiaries, other business entities or related to the financial sector within five years prior to appointment.

Furthermore, in the context of a State-Owned Enterprise that is a Public Corporation, the Supervisory Board is an organ that supervises and provides advice to the Board of Directors. The Minister of State-Owned Enterprises appoints and dismisses the Supervisory

Board based on the provisions of Article 56 of Law Number 19 of 2003 concerning State-Owned Enterprises. As for the procedures for appointment, the regulatory requirements are the same as for candidates for the Board of Commissioners.

Furthermore, to prevent conflicts of interest between the Board of Commissioners/Board of Supervisors and State-Owned Enterprises, especially regarding aspects of party politics and political positions, Article 18 of the Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 also regulates other requirements. For example, the Board of Directors is not a member of a political party or a legislative candidate at the center or region. Next, candidates for the Board of Directors are not candidates for regional heads or candidates for deputy regional heads or regional officials. In addition, candidates for the Board of Directors are also not government officials in ministries/state institutions or members of the Board of Commissioners in other State-Owned Enterprises.

2.7. State-Owned Enterprises and Sustainability

In the records of the Ministry of State-Owned Enterprises, Indonesian State-Owned Enterprises faces four severe challenges. The first is the challenge of strategy. The company's development strategy from production to distribution and cross-sector aspects still needs to be synergistic. Several state-owned enterprises have the same business, which means they compete with and duplicate each other. It is also caused by several State-Owned Enterprises that are unable to differentiate their business and innovate to compete.[451]

Next, in terms of governance, State-Owned Enterprises have a complexity of stakeholders both internally and externally. From the internal side, decision-making takes quite a long time because many parties have an interest and have authority over the company's policy choices. From the external side, cross-sector regulations related to State-Owned Enterprises overlap and are diverse and end up contradicting each other.

[451] Ministry of State-Owned Enterprises, "MSOE's Strategic Planning 2020-2024," https://www.bumn.go.id/profil/erabarukami/rencana-strategis, p. 11-15, accessed 21 November 2024.

In addition, the financial aspect of State-Owned Enterprises also faces challenges of limited investment capacity and less competitive cost of funds. So far, project funding instruments and company business activities are still minimal, and the model is traditional.

Finally, human resource issues are still a challenge for State-Owned Enterprises. Employee development still needs to be focused on results orientation and bureaucratic work culture, such as in government institutions. The best graduates from Indonesian universities have yet to place State-Owned Enterprises as their main choice for a career, resulting in a talent shortage, especially at high levels such as the Board of Directors, which is also caused by gaps in the human resource management system.

In facing these challenges, the Ministry of State-Owned Enterprises has formulated a policy direction and strategy for 2020-2024. It is, first, making the Ministry of State-Owned Enterprises a professional supervisor and mentor. As a government institution directly under the President, the Ministry of State-Owned Enterprises functions as a shareholder/capital owner that supports the company's business activities in accordance with legal compliance by providing opinions and consultations. In addition, the ministry also provides training to employees on the use of new technology, improving good corporate governance, and creating an inclusive work environment. More importantly, the ministry also improves the financial supervision of companies that are accountable, transparent, and responsible.[452]

Next is the transformation of State-Owned Enterprises by strengthening independence and corporatization. The Ministry of State-Owned Enterprises supports corporate development and business restructuring, including investor funding through Initial Public Offering. More importantly, the ministry also encourages harmonization and optimization of corporate assets with the implementation of sound risk management. For State-Owned Enterprises that are assigned to produce goods or services for people with low incomes at subsidized prices, the government provides financial support so that the company's covenant and profit are adequately maintained.

---

[452] Ministry of State-Owned Enterprises, "MSOE's Strategic Planning 2020-2024," https://www.bumn.go.id/profil/erabarukami/rencana-strategis, p. 27-31, accessed 21 November 2024.

In addition, State-Owned Enterprises are required to improve their excellence and competitiveness. For example, companies innovate their businesses by utilizing strategic technology. The Ministry of State-Owned Enterprises encourages the maximization of the use of domestic production materials and the creation of raw materials into finished goods. In addition, State-Owned Enterprises create value from big data and artificial intelligence, such as consumer data integration. For State-Owned Enterprises that are experiencing financial difficulties, the government restructures the business model so that companies can rise from adversity and achieve profits again in the future.

Finally, State-Owned Enterprises maximize their contribution to sustainable economic development. They pay corporate taxes according to regulations and support national strategic projects. In terms of national resilience, they contribute to food, energy, health, and environmental security, including growing jobs that absorb many young Indonesians. More importantly, they communicate with the government and investors for the benefit of community welfare, especially in the company's business environment.

3. Corporate Governance of State-Owned Enterprises: Examples from Croatia and Hungary

3.1. Croatia

Croatia is a country located in the northwestern part of the Balkan Peninsula. Its capital is Zagreb. It borders Serbia to the east and Hungary and Slovenia to the north. It has a crescent-shaped coastline along the Adriatic Sea that reaches Montenegro at its southern tip and shares a border with Bosnia and Herzegovina to the south. Its territory consists of 20 counties, which are divided into 128 cities and 428 municipalities.[453]

Croats speak Croatian as their official language, a North Slavic language of the Indo-European family that is similar to Serbian and Bosnian. Their ethnic groups include Croats, Serbs, Bosnians, and others. The majority of Croats are Roman Catholic, while Serbs are Eastern Orthodox, and Bosnians are Muslims. A minority of the population is atheist.[454]

[453] Britannica, "Croatia," https://www.britannica.com/place/Croatia, accessed 21 October 2024.
[454] Britannica, "Croatia," https://www.britannica.com/place/Croatia, accessed 21 October 2024.

Since July 1, 2003, Croatia has joined the European Union (EU) and has adopted the Euro as its currency since January 1, 2023. In addition, Croatia has also been a member of the Schengen area since January 1, 2023. With a population of 3,861,967 in 2024 and an area of 56,594 km2, Croatia's GDP per capita is 28,700 euros below the European Union average of 37,600 euros.[455] Besides, Croatia, which has a geostrategic position among European regions, also became a member of the North Atlantic Treaty Organization (NATO) on April 1, 2009.[456] Moreover, Croatia is an OECD accession candidate in 2022. Its influence is significant in the Southeast Europe Region in advancing social, economic, and environmental reforms.[457]

Croatia's political system is a parliamentary republic. The head of government is a prime minister, and the head of state is a president. The government structure recognizes the division of power between the legislative, executive, and judiciary. The parliament, whose members are elected every four years, holds legislative power and supervises the executive.[458]

3.1.1. The Overview of State-Owned Enterprises in Croatia

Croatia has 260 state-owned enterprises that play a significant role in the sectors of transport, energy, construction, postal, telecommunications, forestry, and utilities. Croatian state-owned enterprises employ 73,000 employees, which is equivalent to 5% of the country's workforce. Although the government has reformed its policies by reducing the number of state-owned enterprises and restructuring them, Croatia still has one of the highest numbers of state-owned enterprises in central and southeastern Europe.[459]

---

[455] European Union, "Croatia," https://european-union.europa.eu/principles-countries-history/eu-countries/croatia_en, accessed 21 October 2024.
[456] Ministry of Foreign and European Affairs of Croatia, "15th anniversary of Croatia's NATO membership," https://mvep.gov.hr/press-22794/15th-anniversary-of-croatia-s-nato-membership/272151#:~:text=National%20ratification%20instruments%20were%20deposited,document%20on%20April%201%2C%202009., accessed 21 October 2024.
[457] OECD, "Croatia," https://www.oecd.org/en/countries/croatia.html, accessed 21 October 2024.
[458] European Union, "Croatia," https://european-union.europa.eu/principles-countries-history/eu-countries/croatia_en, accessed 21 October 2024.
[459] Zoller, Catherine Bridge and Alenka Cerne. "Turning Around State-Owned Enterprises in Croatia," in Law in Transition 2020: Fostering the Sustainable Development Goals. European Bank for Reconstruction and Development, 2020, p. 62-67, https://www.ebrd.com/news/publications/newsletters/law-in-transition-2020.html.

The transformation of state-owned enterprises from a socialist to a liberal market system began with the declaration of independence from Yugoslavia with the ratification of the Law on the Transformation of Socially Owned Enterprises in 1991. The Croatian Privatization Fund (CPF) is a state agency that manages the transformation process in two stages. In the first stage, in 1991-1993, the government invited employees to own shares in state-owned enterprises with special discounts. As a result, diversification of state-owned enterprises occurred to thousands of investors. Next, the second stage in 1993-1997 was privatization. At the end of 1995, privatization was completed for 1145 enterprises and turned into joint-stock companies. The most considerable privatization momentum was the sale of 51% of Croatian Telecom shares to Deutsche Telekom in 1991 and 2001. Finally, the CPF, after being tasked with privatization in 2010, changed its function to become the Agency for Management of the Public Property, which is tasked with managing assets and legal entities owned by the state. [460]

Then, in 2015, Croatia established the 2015 National Reform Program aimed at improving the performance of state-owned enterprises. The reform program included strengthening the selection model for state-owned enterprise managers, improving the setting of company-specific objectives, conducting comparative studies of governance with the experiences of other countries, and expanding better oversight. More importantly, the 2015 reforms resulted in a new framework for the selection of supervisory boards and management boards. New regulations strengthened the qualification requirements for candidates from the private sector who compete fairly with incumbents. In addition, more transparent, accountable, and responsible corporate governance is also an essential goal of the 2015 reforms.[461]

In terms of legal forms, Croatian State-Owned Enterprises are joint-stock companies, limited liability companies, or statutory corporations. There are 59 entirely or majority State-Owned Enterprises consisting of thirty-four limited liability companies,

[460] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," Corporate Governance, OECD Publishing, Paris, (2021), https://doi.org/10.1787/b4a46863-en, p. 21-31.
[461] Directorate-General for Economic and Financial Affairs of the European Commission. "State-Owned Enterprises in the EU: Lessons Learned and Ways Forward in a Post-Crisis Context." Brussels: 2016, the European Commission, http://dx.doi.org/10.2765/99224, p. 70-72.

eighteen joint stock companies (six of which are listed on the Zagreb Stock Exchange), and seven legal entities such as statutory enterprises and quasi-corporations. In addition, there are 938 public enterprises at the sub-national level of government. Of these, 888 are majority-owned unlisted enterprises, which are generally in the form of limited liability companies and 50 statutory corporations or quasi-corporations.[462]

In state ownership, Croatian policy is two ownership models. First, line ministries and the Ministry of Physical Planning, Construction, and State Assets become representatives of the state as owners of strategic State-Owned Enterprises. In the division of tasks, line ministries have more power, while the Ministry of Physical Planning, Construction, and State Assets has the authority over management and governance supervision. This first ownership model is called a decentralized model with a majority or entire state ownership portion of the company. Second, the Center for Restructuring and Sale holds ownership of non-strategic State-Owned Enterprises that have been privatized and restructured. State ownership is predominantly minority-owned, with a model called a centralized model.[463]

The fundamental difference between the Ministry of Physical Planning, Construction, and State Assets and the Center for Restructuring and Sale is their authority and responsibility. The Ministry of Physical Planning, Construction, and State Assets exercises ownership rights on behalf of the Croatian government, coordinates, supervises, and develops State-Owned Enterprises, including training managers and supervisors on good corporate governance. Meanwhile, the Center for Restructuring and Sale is a self-funded State-Owned Enterprise that manages state-owned shares in companies that are not included in enterprises of particular interest or non-strategic enterprises. The line ministries are several Ministers who have responsibility for State-Owned Enterprises that are directly related to the duties and functions of the ministry. The line ministries include the Ministry of Sea, Transport, and Infrastructure, Ministry of Economy and Sustainable Development, Ministry of Finance, Ministry of Agriculture, Ministry of Defense, Ministry of Physical

[462] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 37.
[463] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 47.

Planning, Construction, and State Assets, Ministry of the Interior, Ministry of Labor, and Ministry of Tourism.[464]

3.1.2. Laws and Legislations on State-Owned Enterprises in Croatia

In the transformation efforts of state-owned enterprises, legal instruments are one of the essential aspects that support better governance reform. The following is a list of main regulations on corporate governance in Croatia:[465]

a) Companies Act

The primary legal regulation governing corporate governance issues is the Companies Act (Official Gazette no. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15, 40/19). Although it does not explicitly explain state ownership and the definition of state-owned enterprises, this law introduces corporate governance, which includes the rights and obligations of shareholders, corporate governance rules, and the company's organizational structure (board of directors and board of commissioners). Moreover, this law comprehensively regulates the establishment, dissolution, and changes in the structure of companies, including state-owned enterprises. In addition, the law applies broadly to a public company, a partnership, a joint stock company, a limited liability, and an economic interest group in Croatia.

Over time, the Companies Act has been amended several times, the last being in 2019. Often, the reason for the amendment is the harmonization of the rules, especially with the EU's rule of law. For instance, to align the norms with the EU Directive 2017/828 on the amendment of the EU Shareholder Rights Directive, the government amended the Companies Act in 2019 to make it easier to trade within the EU Member States.

[464] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 49-53.
[465] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 35-39.

b) Rule of Law on Capital Market

Croatia has the Capital Market Act (Official Gazette no. 65/18 and no. 17/20) and the Act on the Takeover of Joint-Stock Companies (Official Gazette no. 109/07). The first regulation applies to the listed State-Owned Enterprises and all aspects covering investment and capital market services on the Zagreb Stock Exchange, including the duties and functions of the Croatian Financial Services Supervisory Agency. The second regulation regulates the procedures and supervision of the takeover process as well as the rights and obligations attached to the parties involved.

c) The Croatian Corporate Governance Code

The Croatian Financial Services Supervisory Agency and the Zagreb Stock Exchange adopted the Croatian Corporate Governance Code in October 2019, which was revised in 2010 and came into force on 1 January 2020. The Code contains principles that govern transparent business operations, the working of management and supervisory boards, prevention of conflicts of interest, accountability, and the establishment of internal and external oversight mechanisms.

In some issues, the Code and the rules of the Zagreb Stock Exchange overlap. For instance, the Code regulates some issues in more detail and at a higher standard than the rules of the Zagreb Stock Exchange. However, compliance with the rules of the Zagreb Stock Exchange is mandatory and cannot be reduced on the grounds that the provisions of the Code have been met.

d) Laws on banking institutions

The Act on the Croatian National Bank (Official Gazette no. 75/2008, 54/2013, and 47/2020) is the legal basis for the Croatian National Bank, the central bank of Croatia, to supervise banks and credit institutions. Next, the Credit Institutions Act (Official Gazette no. 159/2013, 19/2015, 102/2015, 15/2018, 70/2019, 47/2020, and 146/2020) is the legal basis for credit activities in banks and other financial institutions. In addition, the Act on the Croatian Bank for Reconstruction and Development (Official Gazette no. 138/06 and

29/13) is the legal basis for the establishment of the Croatian state-owned development bank, which regulates good corporate governance, in particular the rights and obligations of the supervisory board and management board.

In Croatia's legal structure, legislation governing state ownership is not single but is spread across several laws and regulations. Therefore, in addition to several primary laws and regulations on corporate governance, some are relevant and applicable to State-Owned Enterprises. In general, these laws and regulations are divided into general legal framework and primary individual laws. Included in the general legal framework are relevant laws of the public sector involving: the Civil Servants and Officials Act, the Conflict-of-Interest Prevention Act (Official Gazette no. 26/11, 12/12, 126/12, 48/13, 57/15 and 98/19), the Act on the Right of Access to Information (OG 25,13, 85/15), the Act on the Transparent Flow of Public Funds (Official Gazette no. 72/13 and 47/14), the Act on the State Audit Office (Official Gazette no. 25/19), the Act on the Internal Control System in the Public Sector, the Accounting Act (Official Gazette no. 78/15, 134/15,120/16,116/18, 42/20 and 47/20), the Public Procurement Act (Official Gazette no. 120/16), the Concessions Act (Official Gazette no. 143/12), the Act on Public-Private Partnership (Official Gazette no. 78/12 and 152/14), the Act on the State Commission for Supervision of Public Procurement Procedures (Official Gazette no. 18/13, 127/13 and 74/14), Regulation on the conditions for the selection and appointment of members of the supervisory boards and management boards of legal entities of special interest for the Republic of Croatia and on the manner of their selection (Official Gazette no. 12/2019), Decision on the obligation to introduce the compliance monitoring function in majority state-owned legal entities (Official Gazette no. 99/2019), Decision on the monitoring of business plans and reports of companies and legal entities constituting state property (Official Gazette no. 71/2018), and Decision on the amount, manner and deadlines for the payment of funds of SOEs into the state budget of the Republic of Croatia (Official Gazette no. 88/20).[466]

One of the uniqueness of Croatian authorities' policy in positioning State-Owned Enterprises and private companies is the equality of position in law and court. State-owned enterprises do not get any legal privileges because they are required to comply with the

[466] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 39-40.

same laws and regulations as privately owned legal entities. In addition, not all management boards and supervisory boards have legal immunity from lawsuits in court. Moreover, employment policies such as salaries, pensions, and worker protection refer to the Labor Act (Official Gazette no. 93/14, 127/17, 98/19).[467]

Likewise, in relation to bankruptcy and insolvency cases, State-Owned Enterprises comply with several laws and regulations such as the 2021 Deposit Insurance System Act, the Bankruptcy Law (Official Gazette, no. 71/15, 104/17), the Law on Compulsory Liquidation of Credit Institutions (Official Gazette, no. 146/20), the Financial Agency Act (Official Gazette no. 117/01, 60/04, 42/05), and the Act on the Execution of the State Budget for 2020 (Official Gazette no. 117/19, 32/20, 42/20 and 58/20).[468]

Furthermore, the primary individual laws include the Act on State Property Management, the Act on the Internal Organization and Scope of State Administrative Bodies, and the Accounting Act.

The Act on State Property Management is an adoption of the provisions of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of objects and proceeds of crime in the European Union (OJ L 127, 29.4.2014). This regulation is the legal basis for the Ministry of Physical Planning, Construction, and State Assets (MPPCSA) to manage state property together with the Center for Restructuring and Sale (CERP). In Article 3, the Act defines state property into several elements. First, Stocks and shares in companies whose holder is Croatia, the Croatian Pension Insurance Fund and/or the Croatian Deposit Insurance Agency, if these were acquired in the process of bank resolution and privatization. Next, founding rights in legal entities of which Croatia is the founder. Then, real estate, namely: construction land and buildings, special parts of real estate, on which the ownership of Croatia has been established. In addition, land, including real estate, on which a camp is located, and on which the ownership of Croatia has been established, regardless of whether it is located in a construction zone, on agricultural land, or in a forest or on forest land owned by Croatia. Moreover, mountain lodge or house with land used as part of the regular use of the real

[467] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 39-40.
[468] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 39-40.

estate, built on land registered as property of Croatia, regardless of whether they are located in a construction zone, on agricultural land or in a forest or on forest land, if ownership was not acquired by other persons in the process of transformation of social ownership or based on special regulations. Then, movables entrusted to the management of the MPPCSA or CERP. Finally, all subjective civil (private) rights of Croatia that have a monetary value, and which relate to any of the property listed above.[469]

More importantly, regarding the legal status of subsidiaries of State-Owned Enterprises, the Croatian legal system does not include them in the definition of state property. The holding company (state-owned holding company) is the owner of the subsidiary assets, so it is not included in state property. This policy has an impact on the laws and regulations applicable to subsidiaries. They have the same position as other joint stock companies and limited liability companies in compliance with company law regulations. In addition, they do not receive supervision from state financial supervisory institutions like their holding companies.[470]

Next, another primary individual law is the Act on the Internal Organization and Scope of State Administrative Bodies (Official Gazette no. 85/20). The Act regulates the authority of state administrative bodies over state property and the governance of several State-Owned Enterprises that are the responsibility of line ministries.[471]

In addition, the Corporate Governance Code for State-Owned Enterprises is one of the essential legal regulations that contains a set of business principles and ethics to ensure efficient and responsible corporate governance. Effective in 2017, the Code is mandatory for all state-owned enterprises and recommended for other private companies. Some of the main aspects of the Code include the basic principles of corporate governance, guidelines for portfolio management, performance procedures for supervisory and management boards, guidelines for collaboration and relationships between supervisory and management boards, internal and external audit mechanisms, and reporting.[472]

---

[469] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 41.
[470] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 41.
[471] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 42.
[472] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 42.

Finally, the Accounting Act (Official Gazette no. 78/15, 134/15, 120/16, 116/18, 42/2020, and 47/20). The Act regulates every aspect related to financial reporting for natural persons and companies, including State-Owned Enterprises.[473]

3.1.3. Control and Supervision of State-Owned Enterprises

In the Croatian legal system, state-owned enterprises are controlled and supervised by various institutions, and internal mechanisms regulate the issue of company management supervision. Some institutions involved in the control mechanism are The State Audit Office, internal audit mechanisms, the Ministry of Finance and the Financial Agency, and the Supervisory Board of State-Owned Enterprises.[474]

The first is the State Audit Office, which is the Supreme Audit Institution of Croatia. Based on the provisions of the Act on the State Audit Office (Official Gazette no. 25/19), the authority of the State Audit Office is to examine documents and reports related to the internal control system, audit accounting governance, financial and other procedures, and assess compliance and financial performance based on laws and regulations. Every legal entity established by the Republic of Croatia or a legal entity whose shares are owned by the Republic of Croatia is an audit object for the State Audit Office.[475]

Next, all State-Owned Enterprises are required to perform the additional internal and external audit functions with the aim of evaluating the sufficiency, agility, and validity of internal control. Each audit process by an independent auditor uses objective documents and data to produce the correct conclusions.[476]

In addition, the Ministry of Finance is also authorized to supervise the disclosure of non-financial reports. It has the right to impose fines on State-Owned Enterprises that do not publish non-financial reports on their websites. The Financial Agency has the right to request annual financial reports from all State-Owned Enterprises.[477]

---

[473] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 42.
[474] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 60.
[475] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 61.
[476] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 62.
[477] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 63-64.

Finally, the supervisory board of State-Owned Enterprises supervises it. The duties and competencies of the supervisory board are to supervise the management of the company's operations, ask the auditor to review the company's annual financial statements, submit a written supervisory report to the General Assembly, represent the company in relation to the role of management board members, examine the company's business records, can dismiss management board members on the grounds of incompetence/incompetence and elect their replacements, and hold General Assembly meetings if needed for the benefit of the company.[478]

3.1.4. The Croatian State-Owned Enterprises on OECD Guidelines on Corporate Governance

This section of the paper describes and breaks down the governance reform of State-Owned Enterprises in the Republic of Croatia in order to meet the standards of the OECD Guidelines on Corporate Governance. Based on the OECD Guidelines, seven policies are the requirements for good corporate governance, including rationales for state ownership, the state's role as an owner, state-owned enterprises in the marketplace, equitable treatment of shareholders and other investors, stakeholder relations and responsible business conduct, disclosure and transparency, and the responsibilities of the boards of state-owned enterprises.

Croatian legal system in the aspect of state ownership still divides State-Owned Enterprises into categories of “special interest” and not. State-owned enterprises are categorized as “special interest” because their business activities are related to the management of common goods such as water, forests, agricultural land, roads, railways, and infrastructure. Next, their business activities have a natural monopoly right, such as communication and energy. In addition, public services such as postal and electricity services are available. In addition, business activities related to the defense industry, oil and gas, finance and banking, information technology, games of chance, and tourism. State-

[478] OECD. “OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia,” p. 64-70.

owned enterprises that do not meet the criteria for these business activities are not categorized as "special interest."[479]

Croatia adopts an ownership model that falls into the dispersed model category. Ownership of each State-Owned Enterprise is carried out by one line ministry or other government institution. No state institution acts as the sole owner. On the contrary, many line ministries or government institutions are involved in the ownership of State-Owned Enterprises. Therefore, this model is an embodiment of the expansion or spread of ownership as a form of responsibility of many ministries or government institutions.[480]

However, in the OECD review, Croatia does not have a state ownership policy. There needs to be an official government document that explains the government's policy regarding the standards and prospects of State-Owned Enterprises extensively and clearly for the public. Although the main objectives and priorities have been summarized in the Strategy for the Management of State Assets 2019-2015, for the OECD, the document needs to be refined and improved.[481]

Furthermore, related to the role of the state as the owner of State-Owned Enterprises, Croatia places line ministries, MPPCSA, and CERP (specifically for State-Owned Enterprises that are not included in the "special interest" category) as representatives of the government that manage the ownership of State-Owned Enterprises. They have the authority to represent the government in the General Assembly, nominate the management board and supervisory board, and participate in several determinations of the State-Owned Enterprise work plan. MPPCSA has the authority to regularly monitor compliance and financial performance to ensure that it is in accordance with good corporate governance standards. Meanwhile, CERP and line ministries jointly manage the ownership of State-Owned Enterprises that are not included in the "special interest" category. Besides, CERP manages state-owned shares.[482]

---

[479] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 85-86.
[480] OECD, "OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024," OECD Publishing, Paris, (2024), https://doi.org/10.1787/18a24f43-en, p. 27-29.
[481] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 86.
[482] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 93.

Of the 59 state-owned enterprises that are wholly or majority-owned by the state, seven are statutory corporations that have specific legal privileges. They provide public services and certain state administrative activities under the provisions of the State Administration Act. They are exempt from certain aspects of corporate law that apply to private companies. For instance, they may be partially or fully protected from insolvency or bankruptcy procedures without permission from a ministry or government institution. The following is a list of the seven statutory corporations in Croatia:[483]

Table 6.1.

Statutory corporations at the central level of government

Enterprise	**Type of activities**
Center for Restructuring and Sale (CERP)	Management of State-Owned Enterprises shares (except those of "enterprise of special interest" and companies whose management and disposal are regulated by a special law.
Jadrolinja	Shipping company for the maritime transport of passengers and vehicles
Financijska Agencija (Financial Agency)	Financial and electronic services
Croatian Deposit Insurance Agency	State Agency for Deposit Insurance and Bank Resolution
Croatian Bank for Reconstruction and Development	Development and export bank established with the objective of financing the reconstruction and development of the Croatian economy
Hrvatske Vode	Water management
Hrvatska Radiotelevizija	Television programming and broadcasting

Source: OECD Review of the Corporate Governance of SOEs: Croatia, 2021, p. 89-90.

[483] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 89-90.

Table 6.1. shows the list of state-owned enterprises with majority ownership of the state. More specifically, they are seven are statutory corporations that have specific legal privileges. Their activities are mostly related to the daily needs of people and the services for public such as public transportation, financial services, water, and television broadcasting.

According to an OECD review, Croatian state-owned enterprises need a mechanism for monitoring compliance with good corporate governance guidelines. However, in terms of transparency and disclosure, State-Owned Enterprises have fulfilled it well. State-owned enterprises submit various routine reports (financial, business activities, and other governance policies) to several government institutions such as the Financial Agency, Ministry of Finance, MPPSCA/CERP, and line ministries related to their business activities.[484]

Regarding the position of State-Owned Enterprises in commerce or trade, Croatian policy regulates State-Owned Enterprises that fall into the category of "public undertakings" and aim to serve the public by managing separate financial accounts because they receive compensation or subsidies for public services from the state budget. For example, the Croatian Post is self-financed except for business activities that are of a public service nature by order of laws and regulations—the public benefits from these services.[485]

However, in the context of fair business competition, State-Owned Enterprises are subject to and comply with the Competition Act (Official Gazette no. 79/09 and 80/13) as private companies in general. Therefore, there is no particular policy for State-Owned Enterprises, such as legal immunity against lawsuits. The Croatian Competition Agency (CCA), a competition watchdog, regulates and supervises the legal framework in realizing fair business competition and anti-monopoly.[486]

Then specifically, some State-Owned Enterprises are exempted from tax obligations due to specific business activities, such as the provision of goods and public services. For

[484] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 97-98.
[485] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 103-104.
[486] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 105.

example, the Croatian National Bank is exempted from tax regulations. It is not subject to profit tax. As for state-owned enterprises that are fully corporate and carry out business activities for profit, all of their income is subject to tax law.[487]

Moreover, one of Croatia's advantages is that it also has many independent regulatory bodies tasked with regulating and supervising private companies and state-owned enterprises equivalently based on business fields. For example, they are the Croatian Competition Agency, the Croatian Regulatory Authority for Network Industries, the Croatian Energy Regulation Agency, the Croatian Financial Services Supervisory Agency, and others.[488]

Furthermore, in terms of equitable treatment of shareholders and other investors, Croatia has the Companies Act, which states that shareholders have rights such as voting and so on in the company's general meetings. In addition, the ZSE Corporate Code guarantees that majority and minority shareholders receive fair and equal treatment of the company and that they can express their rights in the general meeting.[489]

Croatia also provides legal instruments that protect minority shareholders from insolvency, over-indebtedness, takeovers, and related-party transactions. For instance, the Companies Act stipulates that directors must carry out their duties diligently and with great care. In addition, the Act on the Takeover of Joint-Stock Companies prohibits directors from taking corporate actions that cause an imbalance in the rights of creditors in insolvency matters. Minority shareholders are protected by law in the event of a fair transfer of company ownership.[490]

In principle, the state as the owner of a State-Owned Enterprise follows and is subject to laws and regulations related to the rights of shareholders of a company. However, Croatia also regulates exceptions with the existence of special ownership rights in the form of "golden shares" for two post-privatization companies: Industrija Nafte d.d. (INA) and Hrvatska Elektroprivreda d.d. (HEP) based on the Act of Privatization (Official Gazette no.

[487] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 106.
[488] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 101-102.
[489] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 113.
[490] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 114.

32/02).[491] INA is a medium-sized oil company in Croatia that explores, produces, and distributes oil and gas. With a network of 439 retail stations, INA has become a very influential oil and gas company in Croatia. Established on January 1, 1964, INA is a merger of the Naftaplin Zagreb, Rijeka Oil Refinery, and Sisak Oil Refinery companies.[492] Meanwhile, HEP is a holding company with subsidiaries engaged in electricity supply, heat energy, gas, power plant operation and trading, natural gas distribution, energy services and development, and telecommunications. HEP's business activities serve domestic and regional needs.[493]

Additionally, regarding stakeholder relations and responsible business conduct, the Labor Act is one of the legal instruments that regulates the relations, rights, and responsibilities of company employees, including State-Owned Enterprises. For example, employees have the right to vote for their representatives in the Employees Council, an institution that protects the rights and interests of workers. More specifically, company employees, including State-Owned Enterprises, receive legal protection when reporting fraud and injustice committed by the company to government authorities based on the Whistleblower Protection Act. In addition, employees have the right to access information related to the company's transparency to the public. The Act of the Right of Access to Information guarantees these rights.[494]

In terms of business ethics responsibility, State-Owned Enterprises have internal monitoring mechanisms, compliance, fraud and corruption prevention, and social responsibility. For example, the Croatian government has approved the national 2015-2020 Anti-Corruption Strategy for State-Owned Enterprises. Moreover, the Conflict of Interest Prevention Act regulates the mechanism for preventing conflicts of interest in companies, especially for company leaders and supervisors. In addition, Croatia also issued a Code of Ethics for State-Owned Enterprises containing the principles of morality and professional ethics in the company hierarchy, business processes, and work culture. Finally, all State-

[491] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 114-115.
[492] INA, "About INA: History," https://www.ina.hr/en/about-ina/profil-kompanije/povijest/, accessed 30 October 2024.
[493] HEP, "About HEP Group," https://www.hep.hr/about-hep-group/2502, accessed 30 October 2024.
[494] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 121-122.

Owned Enterprises publish non-financial statements annually that present data on management reports, including social and environmental responsibility programs.[495]

Furthermore, regarding disclosure and transparency, Croatian State-Owned Enterprises have several laws and regulations related to reporting and disclosure, including the Accounting Act, the State Property Management Act, the Credit Institutions Act, the Capital Market Act, the Code of Corporate Governance for SOEs, the Ordinance on Financial Reporting in Budgetary Accounting, and the Right of Access to Information Act.[496]

Initially, the Accounting Act applies to all individual entrepreneurs and companies, including State-Owned Enterprises. They are required to report and publish financial statements in accordance with the Croatian Financial Reporting Standards to the Financial Agency (FINA).

Then, the State Property Management Act is a special regulation for State-Owned Enterprises with a majority state-owned. They frequently submit financial statements, annual statements, annual plans, mid-term plans, plan amendments, and other ad hoc reports to MPPCSA and CERP. However, all documents are limited to the interests of MPPCSA and CERP without being published on their official websites.

Next, the Credit Institutions Act applies to two State-Owned Banks. Information related to the list of directors and board of commissioners is public information that must be open on information portals such as the company's official website.

In addition, the Capital Market Act applies to State-Owned Enterprises that enter and are listed on the stock exchange. Public information disclosure, including compliance with public company governance guidelines as listed private companies, is the same obligation for listed State-Owned Enterprises.

Moreover, the Code of Corporate Governance for SOEs serves as a guideline for State-Owned Enterprises related to business activities and transparency of public companies. In addition to being subject to and complying with the rules of private corporate

[495] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 123-125.
[496] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 129-130.

law, State-Owned Enterprises are also required to follow the provisions of the Public Internal Financial Control System Act and the Fiscal Responsibility Act.

Additionally, the Ordinance on Financial Reporting in Budgetary Accounting is a unique legal regulation for State-Owned Enterprises with statutory enterprise status. Due to the use of State Budget funds for the production of some goods and public service activities, they are required to submit and publish annual financial reports on their websites, or the websites of government institutions related to the use of the state budget.

Finally, the Right of Access to Information Act requires all public authorities, including State-Owned Enterprises, to present data on their official websites, such as annual plans, programs, strategies, financial reports, independent auditor reports on the audit of financial operations, annual reports on the company status, information on their internal organization and the names of the management board and supervisory board, management board decisions and measures adopted with the agreement of Croatian government, and other information related to public interest.

Next, in the responsibilities of the boards of state-owned enterprises, Croatia adopts a two-tiered board structure.[497] This model divides corporate governance into two distinct boards: the management board and the supervisory board. Each has definitive responsibilities to prevent overlapping work between the two. For example, the management board manages business and financial activities, while the supervisory board oversees long-term strategy, reputation, and direction.[498]

In the context of Croatian company law, Article 263 of the Companies Act stipulates that the supervisory board, consisting of at least three persons, is responsible for supervising the management of the company and examining and reviewing various types of company reports, such as financial audits and corporate compliance. In addition, the supervisory board submits a written report on the company's performance to the shareholders' meeting. If necessary, the supervisory board can invite shareholders to a General Meeting on strategic

[497] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 141.
[498] Byne, Dan. "What is a two-tiered board structure?" Corporate Governance Institute, https://www.thecorporategovernanceinstitute.com/insights/lexicon/what-is-a-two-tiered-board-structure/?srsltid=AfmBOopsyk87fHoLof6BB8u8hwbr87LUAR72IDCL7ChpkMHrw57U8lwh, accessed 31 October 2024.

issues and company challenges. In addition, some strategic policies of the management board, based on the law, require the approval of the supervisory board.[499]

The management board, consisting of one or more persons, should report the company's business plan, profitability, and transactions, amongst other aspects, to the supervisory board. Next, the management board has the authority to represent the company in and out of court. In addition, the management board executes the results of the meeting and the general policies of the shareholder's meeting as a guideline for the company's performance.[500]

3.2. Hungary

Hungary is a landlocked country in Central Europe that became the 27th member of the OECD after joining in 1996.[501] In 2024, it will celebrate 20 years of membership of the European Union since 1 May 2004. In addition, it has also been a member of the Schengen Area since 21 December 2007.[502] It is a republic with a president as head of state and a prime minister as head of government. With a population of less than ten million, the majority of Hungarians live in the capital, Budapest, and speak the Hungarian language. The majority religion of the population is Roman Catholic (over 40%), with the remainder being Calvinist, Greek or Byzantine Catholics, Eastern Orthodox, and Unitarians.[503]

Hungary is located on the banks of the Danube River, the longest river in the country. It is also located in the Carpathian Basin. The country shares borders with Slovakia to the north, Ukraine to the northeast, Romania to the east, Serbia and Croatia to the north, Slovenia to the southeast, and Austria to the west.[504]

From an economic perspective, Hungary has advantages in the service sector, such as trade, tourism, finance, and other financial services, which are highly developed and

[499] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 141-142.
[500] OECD. "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," p. 142-143.
[501] OECD, "Hungary," https://www.oecd.org/en/countries/hungary.html, accessed 28 November 2024.
[502] European Union, "Hungary," https://european-union.europa.eu/principles-countries-history/eu-countries/hungary_en, accessed 28 November 2024.
[503] Britannica, "Hungary," https://www.britannica.com/place/Hungary, accessed 28 November 2024.
[504] Britannica, "Hungary," https://www.britannica.com/place/Hungary, accessed 28 November 2024.

contribute less than two-thirds of the gross domestic product. In addition, the agricultural sector is still one of the mainstays of the population's economy, with significant farming products being wheat, corn, sunflower, seed-grain, potato, sugar beet, pork, cattle, poultry, and dairy products. In addition, industry is also an essential export-oriented business sector. Major industries are building materials, processed foodstuff, textiles, chemicals, motor vehicles, IT, electronics, and software.[505]

3.2.1. The Overview of State-Owned Enterprises in Hungary

Hungary adopts a dispersed ownership model in the relationship between state ownership and State-Owned Enterprises. This model eliminates a single institution or state actor that is solely responsible for the ownership of State-Owned Enterprises. One line ministry or other government institution manages ownership in each State-Owned Enterprise so that ownership is spread across many institutions, not solely in a separate institution. Therefore, the public often sees this ownership model as an extension of the ministerial powers of the ownership ministries.[506] Obviously, the ownership of State Holding Company is under the Ministry of Development and other government bodies. In addition, the Hungarian Government has formed an Inter-Ministerial Council tasked with overseeing the management of holding companies and State-Owned Enterprises.[507]

There are major firms in the portfolio of a Magyar Nemzeti Vagyonkezelő Zártkörűen Működő Részvénytársaság (MNV Zrt) or the Hungarian National Asset Management Private Limited Company: (1) the Magyar Posta providing postal services in Hungary; (2) the MÁV, the Hungarian State Railways; (3) the Szerencsejáték Zrt, the state gambling company holding monopoly in this field; (4) the NIF Nemzeti Infrastruktúra Fejlesztő Zrt., which is responsible for major infrastructure development projects in Hungary; (5) the RÁBA Járműipari Holding Nyrt., in other words the car manufacturer

[505] EUGO, “Hungary: Economy,” http://eugo.gov.hu/key-facts-about-hungary/economy, accessed 28 November 2024.
[506] OECD, Ownership and Governance of State-Owned Enterprises 2024, OECD Publishing, Paris, (2024), https://doi.org/10.1787/395c9956-en, p. 27-29.
[507] Böwer, Uwe. "State-owned enterprises in emerging Europe: The good, the bad, and the ugly." IMF Working Paper, (2017), https://www.imf.org/en/Publications/WP/Issues/2017/10/30/State-Owned-Enterprises-in-Emerging-Europe-The-Good-the-Bad-and-the-Ugly-45181, p. 23.

named RABA, whose state ownership is circa 75 percent; (6) the Eximbank, and the Hungarian Development Bank, which function as a group of economic development banks and agencies of the state; (7) the Diákhitel Központ Zrt, which manages the student loan portfolio; and (8) the Magyar OLaj- és Gázipari Részvénytársaság (MOL), which is the largest oil company in Hungary.[508]

3.2.2. Laws and Legislations on State-Owned Enterprises in Hungary

Hungary has yet to introduce a law explicitly regulating State-Owned Enterprises. The central government and municipalities that manage state assets in the form of companies that later become publicly owned enterprises follow the legal provisions regarding the forms of companies contained in the Act V of 2013 on Civil Code.[509]

However, the basic concept related to State-Owned Enterprises appears in the concept of state property introduced by Article 38 of the Fundamental Law of Hungary. For instance, Article 38, paragraph 1 emphasizes that every property of the Central Government and Regional Government is part of the national asset whose management is aimed at the public interest and maintaining its sustainability for future generations. Then, Article 38, paragraph 2 introduces the concept of exclusive rights for the state in the management of national assets and certain economic activities related to national economic interests. In addition, Article 38, paragraph 3 states that by law, national assets can be transferred for specific purposes. Then, more firmly, Article 38, paragraph 4 explains that the transfer of national assets and their utilization is carried out by an organization regulated by law to carry out the management of national assets in an accountable and responsible manner.[510]

---

[508] Moldicz, Csaba. "Hungary economy briefing: State-owned enterprises in Hungary." *Chine-CEE Institute* 37, no. 2 (2021), https://china-cee.eu/2021/02/17/hungary-economy-briefing-state-owned-enterprises-in-hungary/#:~:text=State%2Downed%20enterprises%20in%20the%20Hungarian%20economy,18%2C000%20billion%20Ft%20in%202020.

[509] Papp, Tekla, and Ádám Auer. "Corporate Governance in State-Owned Companies in Hungary." *Juridical Tribune (Tribuna Juridica)* 6, no. 2 (2016): 22-39, https://www.proquest.com/scholarly-journals/corporate-governance-state-owned-companies/docview/1867914422/se-2?accountid=28062. See also the Act V of 2013 on Civil Code, accessed 1 December 2024, https://faolex.fao.org/docs/pdf/hun209514.pdf and http://https//magyarkozlony.hu.

[510] Article 38 of the Fundamental Law of Hungary, https://2015-2019.kormany.hu/en/doc/the-hungarian-state/the-fundamental-law, accessed 3 December 2024.

Although the Fundamental Law of Hungary does not explicitly mention State-Owned Enterprises, Article 38 Paragraph 5 introduces the term business organization managed by the Central Government or Regional Government as an agency that manages state assets based on law. Then, Article 38, paragraph 6, explains that there is a Cardinal Act that will regulate the establishment, operation, termination of, and performance of public duty by a public interest asset management foundation.[511]

Next is the Act CVI of 2007 on State Property. This Act aims to create a new, modern, effective, efficient, and sustainable state property management system. Therefore, the Act regulates the procedures for organizing state property rights and property and their management. Magyar Nemzeti Vagyonkezelő Zártkörűen Működő Részvénytársaság (MNV Zrt) or the Hungarian National Asset Management Private Limited Company is a state agency regulated in the Act. MNV Zrt is a public legal entity that is tasked by the state to manage national property rights and assets, except those regulated explicitly in laws or ministerial decrees.[512]

Then there is the Act CXCVI of 2011 on National Assets, which describes the policy of utilizing state wealth and managing state assets for the public interest and the needs of the community. Moreover, this Act regulates the types of state assets, the mechanism for managing state assets responsibly, the categorization of assets regulated in other laws, and the exclusive rights of the state in natural resource wealth, mainline railway lines, shares of state-owned companies, and buildings and building complexes that are national assets.[513]

In relation to State-Owned Enterprises, which are companies subject to general rules on corporations, the Civil Code of Hungary is also an important law. Part III Chapter XV to Chapter XXII of the Civil Code regulates standard rules on a company, such as the establishment of a company, protection of minority shareholders, rights and obligations of

[511] Article 38 of the Fundamental Law of Hungary.
[512] Act CVI of 2007 on State Property, https://net.jogtar.hu/jogszabaly?docid=a0700106.tv, accessed 2 December 2024.
[513] Act CXCVI of 2011 on National Assets, https://net.jogtar.hu/jogszabaly?docid=a1100196.tv, accessed 2 December 2024.

members of a company, company organization, audits, and corporate actions in the transfer of company ownership.[514]

3.2.3. Control and Supervision of State-Owned Enterprises

Based on the Hungarian experience, the State Audit Office (Állami Számvevőszék) is a state institution tasked with auditing and supervising State-Owned Enterprises. The audit and supervision include financial aspects, national asset governance, internal control system configuration, compliance with laws and regulations, and corporate leadership performance. Moreover, the State Audit Office has a vital role in supporting good corporate governance for State-Owned Enterprises.[515]

The State Audit Office established on 1 January 1990 after a general amendment to the Constitution by Act XXXVIII of 1989 on the State Audit Office. It is the organ of the Parliament which is responsible for financial and economic auditing. Besides, it must conduct its audits from the perspective of legality, expediency, and efficiency.[516] Moreover, the State Audit Office contributes to good governance model with the fundamental pillars such as high-quality lawmaking, lawfulness, accountability, transparency, integrity, economic and financial sustainability, a model organization, and effective and efficient management.[517] It also supports the effectiveness and efficiency of governance both public entities and state-owned enterprises by enforcing transparency and measurability of performance. Therefore, the State Audit Office, as a supreme audit institution, plays a prominent role in the renewal of public management.[518]

---

[514] Act V of 2013 on the Civil Code, https://net.jogtar.hu/jogszabaly?docid=A1300005.tv&dbnum=62&getdoc=1, accessed 4 December 2024.
[515] László Domokos, et.al. Supporting the Effectiveness of Governance: Expediency Control and Performance Measurement in SAI's Audit (Budapest: The State Audit Office of Hungary, 2016), 13-19, https://www.asz.hu/storage/files/files/Angol_portal/pillars_of_good_governance/10_eng.pdf.
[516] Zsolt Halász, "Finances and Financial Law in the Constitution in General.," in The Basic Law of Hungary: A First Commentary, ed. Csink Lóránt, et.al. (Dublin: Clarus Press, 2012), 286.
[517] László Domokos, et.al. Supreme Audit Institutions' Contribution to Good Governance (Budapest: The State Audit Office of Hungary, 2016), 17-20, https://www.asz.hu/storage/files/files/Angol_portal/pillars_of_good_governance/1_eng.pdf
[518] László Domokos, et.al. Supporting the Effectiveness of Governance: Expediency Control and Performance Measurement in SAI's Audit (Budapest: The State Audit Office of Hungary, 2016), 13-19, https://www.asz.hu/storage/files/files/Angol_portal/pillars_of_good_governance/10_eng.pdf

The main legal basis for the State Audit Office of Hungary is the Fundamental Law of Hungary. Article 43 of the law explains that the State Audit Office is the organ of the National Assembly responsible for financial and economic audit. Acting within its functions laid down in an Act, it shall audit the implementation of the central budget, the administration of public finances, the use of funds from public finances and the management of national assets. It also shall carry out its audits according to the criteria of lawfulness, expediency, and efficiency. Its president is elected with the votes of two thirds of the Member of the National Assembly for twelve years. In addition, the elected president shall give an account annually to the National Assembly of the activities of the State Audit Office.[519]

Furthermore, Act LXVI of 2011 emphasizes the legal status and powers the State Audit Office of Hungary. It mentions in Article 1 that the State Audit Office is the supreme financial and economic audit institution of the National Assembly, reporting to the National Assembly. Moreover, it conducts its audit independently of any other organization since it has general powers in auditing the responsible financial management of public funds as well as of state and local government assets. With its findings, recommendations and advice based on its audit experience, the State Audit Office assists the National Assembly, its committees, and the work of the audited entities, thus facilitating well-governed operations. Based in its findings, the State Audit Office may initiate proceedings with the competent authority against the audited entities and the persons responsible. However, its reports, findings, and conclusions therein shall not be contested before courts or other authorities.[520]

3.2.4. The Hungarian State-Owned Enterprises on OECD Guidelines on Corporate Governance

This section of the paper describes and breaks down the governance reform of State-Owned Enterprises in Hungary to meet the standards of the OECD Guidelines on Corporate Governance. Based on the OECD Guidelines, seven policies are the requirements for good

[519] Constitutional Court of Hungary, *The Fundamental Law of Hungary*.
[520] Act LXVI of 2011 on the State Audit Office of Hungary https://www.asz.hu/storage/files/files/Angol_portal/Introductions/act_on_sao_july_2013.pdf

corporate governance, including rationales for state ownership, the state's role as an owner, state-owned enterprises in the marketplace, equitable treatment of shareholders and other investors, stakeholder relations and responsible business conduct, disclosure and transparency, and the responsibilities of the boards of state-owned enterprises.

Regarding the rationales for state ownership in Hungary, the ownership rationale is established through legislation. The Act CVI of 2007 on State Property and the Act CXCVI of 2011 on National Assets are the primary legal sources regarding state ownership of State-Owned Enterprises. The state has an interest in the ownership rights of State-Owned Enterprises to ensure that national assets are managed and utilized appropriately, somewhat, and efficiently. In addition, the use of national assets is aimed at fulfilling government tasks and the interests of society and facilitating the government's overall economic policy. In addition, the state also focuses heavily on the protection and preservation of national assets as well as improving the quality and quantity of these national assets.[521]

Each Hungarian State-Owned Enterprise has economic objectives based on an agreement between the State-Owned Enterprise and the ministry or state institution that is its shareholder. However, in general, the Act CXCVI of 2011 on National Assets distinguishes between for-profit and non-profit State-Owned Enterprises, including their ability to establish subsidiaries.[522]

Furthermore, related to the state's role as an owner, Hungary handed over the ownership of State-Owned Enterprises on behalf of the state to Magyar Nemzeti Vagyonkezelő Zártkörűen Működő Részvénytársaság (MNV Zrt) or the Hungarian National Asset Management Private Limited Company. As a public entity, MNV Zrt also has the task of establishing new state-owned enterprises according to the needs or agreements with government stakeholders.[523]

---

[521] OECD. *State-Owned Enterprise Governance: A Stocktaking of Government Rationales for Enterprise Ownership*, OECD Publishing, Paris, (2015), https://doi.org/10.1787/9789264239944-en, p. 20.
[522] OECD. *State-Owned Enterprise Governance: A Stocktaking of Government Rationales for Enterprise Ownership*, p. 21.
[523] OECD. *State-Owned Enterprise Governance: A Stocktaking of Government Rationales for Enterprise Ownership*, p. 33.

As MNV Zrt is a Public Sector Holding whose shares are wholly owned by the state (central government), it is supervised by the Minister of National Development in terms of portfolio management, including companies, fundamental properties, and intangible properties. With respect to financial assets in the government's equity portfolio, the five most important sectors in terms of Value Added (VA) generated by Public Sector Holdings are transportation and storage, mining and quarrying, manufacturing, electricity, gas, steam and air conditioning supply, and water supply, sewerage, waste management, and remediation activities.[524]

In the ownership of State-Owned Enterprises, the Hungarian legal system authorizes the central government and local governments to participate in the ownership of the company. Although, in general, the most significant ownership is controlled by MNV Zrt. For instance, in the transportation sector, the majority of Public Sector Holdings are owned by the central government, and MNV Zrt directly owns some others. In other sectors, such as mining, the central government and authorities control the majority of Public Sector Holdings shares. Unlike the manufacturing sector, the central government and local governments are the owners of Public Sector Holdings, and MNV Zrt directly owns many Public Sector Holdings. However, specifically in the electricity, gas, and water supply sectors, local governments are the majority owners of Public Sector Holdings.[525]

Although the local government controls and owns several Public Sector Holdings, strategic and investment decisions are the full authority of the central government and the Ministry of National Development. As for the responsibility in operational decisions, MNV Zrt is a public institution responsible for the task.[526]

In the role of state-owned enterprises in the marketplace, the International Monetary Fund report states that State-Owned Enterprises dominate the overall infrastructure sector,

[524] KMPG and Bocconi University. "Study on State asset management in the EU: Hungary," Brussels, European Commission, 2018, https://commission.europa.eu/document/download/94ace5c8-c996-481e-929d-cf84fe506e17_en?filename=dg_ecfin_am_final_report_pillar_1_eu28_hungary.pdf, p. 3-4.
[525] KMPG and Bocconi University. "Study on State asset management in the EU: Hungary," p. 4.
[526] KMPG and Bocconi University. "Study on State asset management in the EU: Hungary," p. 5.

such as electricity supply, water supply, railroad, and port in emerging Europe and landlocked countries such as Hungary, Czech Republic, Slovakia, and Slovenia.[527]

The dominance of state-owned enterprises in Hungary and also in several former communist countries such as Poland and Ukraine is due to incomplete privatization programs. Moreover, many state-owned enterprises have long managed national strategic sectors such as energy supply, oil and gas, and transportation. The performance of state-owned enterprises is, on average, comparable to the performance of private companies.[528]

Furthermore, related to the equitable treatment of shareholders and other investors in State-Owned Enterprises, Act IV of 2006 on Business Associations is the legal basis that regulates how to treat shareholders fairly and equally, including minority shareholders. For instance, for the sake of justice for minority rights, shareholders who control at least five percent of the company's shares can request the General Meeting to hold an association by stating the reasons. In addition, the company's articles of association can regulate this right for shareholders who have a lower percentage of votes. If the company's management cannot fulfill the shareholders' request within thirty days, the court can hold the association they proposed.[529]

In addition, shareholders have the right to participate in the General Meeting, including requesting information in accordance with their rights, submitting proposals, and providing notes to management. Conversely, the company's management is required to present information required by shareholders related to items placed on the agenda of the General Meeting.[530]

Additionally, regarding stakeholder relations and responsible business conduct, the Hungarian government has undertaken several strategic policies. First, Hungary established the National Council for Sustainable Development as an advisory body to the Parliament in

---

[527] Böwer, Uwe. "State-Owned Enterprises in Emerging Europe: The Good, the Bad, and the Ugly." IMF Working Paper, https://www.elibrary.imf.org/downloadpdf/journals/001/2017/221/001.2017.issue-221-en.pdf, p. 14.
[528] Szarzec, Katarzyna, and Wanda Nowara. 2017. "The Economic Performance of State-Owned Enterprises in Central and Eastern Europe." *Post-Communist Economies* 29 (3): 375–91, https://doi.org/10.1080/14631377.2017.1316546.
[529] Section 49 of Act IV of 2006 on Business Associations, https://gss.unicreditgroup.eu/sites/default/files/markets/documents/Act%20on%20Business%20Associations.pdf, accessed 9 December 2024.
[530] Section 214 and 2015 of Act IV of 2006 on Business Associations.

2008. It functions as a stakeholder body regarding the implementation of responsible business conduct. Members of parliament regularly elect and appoint their representatives to this body.[531]

In addition, Hungary passed the Procurement Act in 2015. This law also covers the objectives of responsible business conduct regarding the environment, labor rights, people with disabilities, long-term unemployment, and integrity. Under this Act, at the tender stage, the contracting authority can prohibit a business entity from participating in a tender if it has committed serious violations of environmental, social, and labor laws. At the post-tender stage, the contracting authority can set specific provisions related to social or environmental considerations that must be complied with during the contract period.[532]

Finally, the Public Procurement Authority launched the preparation of a national green public procurement strategy. It established the Sustainability Working Group, a multi-stakeholder body with representatives of the Public Procurement Authority, contractors, and other organizations in 2021. Based on the strategy adopted in December 2022, the Public Procurement Authority will develop green public procurement solutions and create green tools for the green transition.[533]

Furthermore, in 2004, the Budapest Stock Exchange issued the Hungarian Corporate Governance Recommendation. The recommendation covers shareholder rights and their respective procedures, competence of directors/board of directors and members of the supervisory board, the committees, and transparency and public disclosure and their respective recommendations and guidelines.[534]

Moreover, the Recommendation emphasizes the main principles that companies must pay attention to, including cooperation of company stakeholders, transparent and allocated management director responsibilities, increasing ownership value, protection of minority shareholders' interests, the principle of information accessibility and publicity,

---

[531] OECD, "National Contact Point for Responsible Business Conduct Peer Reviews: Hungary," 2024, https://oecdmnkp.hu/CMS/Content/Report_final.pdf, p. 39-40, accessed 9 December 2024.
[532] OECD, "National Contact Point for Responsible Business Conduct Peer Reviews: Hungary."
[533] OECD, "National Contact Point for Responsible Business Conduct Peer Reviews: Hungary."
[534] Papp, Tekla, and Ádám Auer. "Corporate Governance in State-Owned Companies in Hungary." *Juridical Tribune (Tribuna Juridica)* 6, no. 2 (2016): 22-39, https://www.proquest.com/scholarly-journals/corporate-governance-state-owned-companies/docview/1867914422/se-2?accountid=28062.

accessibility of information provided to owners, the principle of protection of company property, the principle of sustainable value creation, the principle of sustainability.[535]

[535] Papp, Tekla, and Ádám Auer. "Corporate Governance in State-Owned Companies in Hungary."

CHAPTER VII

CONCLUSION

This final section of the paper is the result of a dissertation research finding that is structured to answer several research questions in the initial section. The first research question is about the concept of Indonesian public finance and its influence on the governance of State-Owned Enterprises. Next, this study discusses how the transformation of legal governance on state-owned enterprises in Indonesia occurred. In addition, this study examines how the restructuring of State-Owned Enterprises will be carried out during 2014-2024 and legal problems arise. In addition, the Omnibus Law on State-Owned Enterprises is one of the government's legal products, whether it supports corporate governance reform or not. Finally, this study explains how the governance of Indonesian State-Owned Enterprises from the perspective of the Organization for Economic Cooperation and Development.

1. Research Findings

1.1. Indonesian Public Finance influences State-Owned Enterprises

The public financial system in Indonesia places an equal position between the President and other state institutions based on the 1945 Constitution of the Republic of Indonesia. As the holder of executive power, the President, assisted by ministers, heads of government institutions and regional heads, manages state finances through the State Revenue and Expenditure Budget. Every year, the President submits a draft State Revenue and Expenditure Budget to the House of Representatives, the legislative body, as a check and balance mechanism in managing public finances.

In managing state finances, the Audit Board, one of the highest state institutions, has an essential role in supervising, examining, and auditing the performance of state financial managers, including state-owned enterprises that manage state finances. State finance in the Indonesian public finance concept are not only assets managed by state institutions but also include the assets of State-Owned Enterprises, which originate from the

State Revenue and Expenditure Budget, which is allocated as State Capital Participation. The Audit Board plays an external supervisory function for State-Owned Enterprises in addition to the company's internal supervision.

The Audit Board's intervention as an external audit for State-Owned Enterprises embodies the concept of state financial resources entering state companies in the form of Public Companies and Limited Liability Companies. As an adherent of the welfare state concept, the Indonesian Government controls vital economic sectors through State-Owned Enterprises for people's lives so that state wealth creates a prosperous Indonesian society.

State-owned enterprises being part of public finance creates a decisive role for the state as the company's owner. Management of State-Owned Enterprises is obliged to run the company professionally, with integrity and effectively by safeguarding the state's interests as shareholders. As the government representative, the Ministry of State-Owned Enterprises has strong authority to intervene in company policies based on statutory regulations.

1.2. Nationalization to Corporatization: The Historical Journey of State-Owned Enterprises

Historically, the transformation of State-Owned Enterprises has been divided into four periods. First, the early period of independence was from 1945 to 1958. Before Indonesia was established as an independent country, the Dutch Colonial Government had established state-owned companies to exploit national natural resources and fill government coffers. The beginning of this period was the process of taking over these companies to the Indonesian Government slowly and diplomatically. However, many Dutch-owned companies still controlled most of the national economy.

Furthermore, the nationalization period in 1958-1966 was the radical takeover of ownership of Dutch-owned companies based on Law Number 86 of 1958. The main trigger was the military and political conflict between the Indonesian Government and the Dutch Government over the territorial area in West Irian. As a result, this nationalization program became the leading cause of the total loss of Dutch economic influence in its former colony.

The transfer of ownership of Dutch companies to Indonesia left behind a considerable workload for decades. After the Old Order under President Soekarno's leadership ended, State-Owned Enterprises entered the Corporatization period from 1966-2003. President Soeharto, with his New Order, changed the organizational structure of state-owned enterprises, which were previously directly managed by the state, into a modern corporate model based on corporate legal values. However, the corporatization of State-Owned Enterprises has not run optimally due to government intervention that is not democratic enough. Then, the corporatization period experienced changes after 1998, which began with the fall of the New Order regime. The corporatization strengthened after the ratification of Law Number 19 of 2003 concerning State-Owned Enterprises. Economic democratization and legal reform are the characteristics of the second corporatization period from 2003-2024.

The form of State-Owned Enterprises has changed throughout Indonesian history. At the beginning of independence, the management of State-Owned Enterprises used an operational model that had been running since the Dutch colonial era. The main activities at that time were more about the administrative process of transferring ownership and restructuring its human resources from the hands of the Dutch to native Indonesians. Furthermore, during the nationalization period, the Committee for the Nationalization of Dutch-Owned Enterprises took over the company's assets and wealth and compensated for the takeover. At that time, the Prime Minister of Indonesia appointed the Minister of Finance and the Minister of Justice to lead the nationalization process. At that time, Dutch-owned companies had several different models:

1. State-owned companies to make a profit, with their founding capital being the state treasury in the form of debt.
2. State-owned companies that were oriented towards social and public services.
3. National companies affiliated with the Netherlands.
4. Private companies under Bank Negara Indonesia and Bank Industri Negara include plantation, agricultural, and industrial companies.

The Indonesian government unified the organization of State-Owned Enterprises against the Dutch legacy structure by issuing Government Regulation Number 19 of 1960. By law, the General Management Body is a government representative supervising and regulating State-Owned Enterprises. In addition, with Government Regulation Number 10 of 1958, the Indonesian government established the Central Agency for the Management of Industrial and Mining Companies to control and administer former Dutch-owned companies.

Furthermore, during the first corporatization period, the Indonesian Government introduced the form of State-Owned Enterprises into *Perusahaan Jawatan* (PERJAN; service company), *Perusahaan Umum* (PERUM; public company), and *Perusahaan Persero* (PERSERO; limited liability company). The differences in form affect the state ownership model, separation of state assets, objectives, employee status, and appointment of directors. PERJAN and PERUM state ownership is one hundred percent, while PERSERO is at least fifty-one percent. State finances for PERJAN are inseparable because the company's operations are included in the State Revenue and Expenditure Budget structure. In contrast, state finances for PERUM and PERSERO are separated from the State Revenue and Expenditure Budget structure. Then, based on its objectives, PERJAN does not seek profit because it focuses on public services. At the same time, PERUM is profit and non-profit-oriented, and PERSERO tends to pursue more profit for the company's benefit. As for employment relations, PERJAN employees are civil servants the government pays through the State Revenue and Expenditure Budget, while PERUM and PERSERO employees are company employees subject to employment law. Then, related to management, the Minister, as the government representative, appoints and dismisses the directors of PERJAN and PERUM, while for PERSERO, the appointment and dismissal of directors is by the General Meeting of Shareholders.

The existence of PERJAN ended with the issuance of Law Number 19 of 2003. State-Owned Enterprises are divided into PERUM and PERSERO. The state ownership structure of PERUM is one hundred percent, while that of PERSERO is at least more than fifty-one percent. Both company assets have been separated from state finances. The difference in objectives between PERUM and PERSERO is a matter of business, where PERUM supplies more primary needs and public services while PERSERO is fully profit

oriented. The employee status of both is equally subject to employment regulations. However, in terms of appointing directors, the minister has full authority over PERUM, while in PERSERO, it is the authority of the General Meeting of Shareholders. Uniquely, in the current era, since the issuance of Government Regulation Number 72 of 2016, the Government has established subsidiaries of State-Owned Enterprises and Affiliated Companies of State-Owned Enterprises. Both are not State-Owned Enterprises because their capital does not come from state finances but the assets of State-Owned Enterprises. The model of these two companies is a breakthrough in organizational structure but will cause legal problems in the future.

Following the global trend to improve governance of state-owned enterprises, privatization was only known in the early days of Indonesian independence once it emerged during the corporatization period. In 1988, Indonesia began privatizing State-Owned Enterprises, later strengthened by the legal basis of Law Number 19 of 2003. In principle, Indonesia supports privatization and is oriented toward financial improvement, efficiency, healthy competition, and ownership diversification. The government privatized through initial public offerings, private placements, and employee share purchases. However, privatization was only widely open to some sectors. Many legal regulations now limit privatization in the defense, security, primary livelihood, and natural resource wealth sectors.

Finally, the transformation of State-Owned Enterprises is also related to the ownership model. The Minister of Finance is the government's representative as the owner of shares in State-Owned Enterprises who acts as a supervisor and strategic policy maker. Then, the Ministry of State-Owned Enterprises became the government's representative from 1998 to the present. This ministry was originally the Directorate of Public Companies and Financial Management of State-Owned Enterprises under the Ministry of Finance. Based on Law Number 19 of 2003, the authority of the Ministry of Finance over State-Owned Enterprises was transferred to the Ministry of State-Owned Enterprises. The centralization of power lies entirely with the Minister of State-Owned Enterprises, who has the authority to supervise, appoint, and dismiss directors and boards of commissioners/supervisory boards in State-Owned Enterprises. As a direct subordinate of

the President, the Minister of State-Owned Enterprises holds significant power over the operations and governance of State-Owned Enterprises.

1.3. The Steep Road of Restructuring for Governance Reform

The Indonesian government uses the restructuring method as one of its efforts to reform the governance of State-Owned Enterprises. Throughout the two terms of President Joko Widodo's administration from 2014 to 2024, these efforts have been apparent and have become the main focus of several fundamental change agendas such as State Equity Participation for State-Owned Enterprises experiencing poor financial conditions, the establishment of a State-Owned Enterprise holding, the arrangement of business clusters based on business sectors, and the establishment of the National Asset Management Company as a company tasked with restructuring and revitalizing unhealthy State-Owned Enterprises. Moreover, the government has also dissolved several State-Owned Enterprises that are at a loss, bankrupt, and uncompetitive because they cannot be saved despite receiving assistance from the National Asset Management Company in the restructuring and revitalization program.

The governance reform policy with the restructuring program is stated in various legal policies through laws and regulations. Although the government and the House of Representatives did not amend Law Number 19 of 2003 concerning State-Owned Enterprises, the government issued government regulations, presidential decrees, and ministerial regulations as legal instruments for several new policies related to governance reform of State-Owned Enterprises. The government prefers to interpret and formulate micro-governance policies of State-Owned Enterprises in technical regulations rather than changing legal rules that are more than twenty years old.

However, the ten-year journey of governance reform with the State-Owned Enterprise restructuring policy has raised several legal problems. *First*, the government still uses State Equity Participation as a way out of the failure of governance of a State-Owned Enterprise. Several state-owned enterprises that received state equity participation could not improve their financial condition, but they suffered losses until some were dissolved. The policy of continuous capital injection in the last ten years has caused a heavy increase in the

financial burden for the State Budget. As the company's owner, the state should receive benefits through dividends. However, the state's financial burden continues to inject funds into several State-Owned Enterprises. The State Budget, which should be able to be maximally effective for public welfare such as education, health, and public facilities, has had its budget allocation reduced because State Equity Participation burdens the state's finances.

Second, the government creates a holding company for State-Owned Enterprises. Law Number 19 of 2003 on State-Owned Enterprises does not mention or regulate a holding company. There is a legal vacuum related to the legal framework for a holding company. Therefore, the government issued a legal instrument in Government Regulation Number 72 of 2016 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies. Uniquely, the title of this regulation and its contents do not explicitly mention the formation of a holding company but regulate the transfer of share ownership of a State-Owned Enterprise to another State-Owned Enterprise. The government determines which State-Owned Enterprise will become the holding company and which other State-Owned Enterprises will become subsidiaries. The formation model is a holding-operating company. The State-Owned Enterprise that becomes the holding has a control function over its subsidiaries but continues to carry out its business activities and does not act as a purely parent company for its subsidiaries.

The legal problem in forming a holding company is the loss of the State Budget mechanism in transferring share ownership between State-Owned Enterprises, which also automatically ignores the House of Representatives supervisory function in transferring State-Owned Enterprises' assets. The government argues that forming a holding company differs from privatization, which sells state shares to the private sector. Although the Supreme Court has strengthened the government's legal policy by rejecting a lawsuit by a group of people for a material review of Government Regulation Number 72 of 2016, the issue of transferring state shares between State-Owned Enterprises without external government supervision such as the House of Representatives raises concerns about abuse of power. The process of transferring state shares in the formation of a holding company that ignores the State Budget mechanism can cause a reduction in state assets in the form of shares in State-Owned Enterprises if the principle of balance and the principle of checks

and balances between the executive power (government) and the legislative function (House of Representatives) are not fulfilled.

Another legal problem that emerged after the establishment of the holding company was the relationship between the holding company and its subsidiaries in the context of state finance. The Supreme Court and the Constitutional Court have different views on whether a subsidiary is still a State-Owned Enterprise. The Supreme Court stated that a subsidiary is included in a State-Owned Enterprise. Therefore, the provisions related to establishing a subsidiary with the State Budget mechanism apply: the subsidiary's assets are state assets, the Audit Board supervises the subsidiary, and bankruptcy follows the state finance mechanism. The Constitutional Court has the opposite opinion on separating the holding company's assets and its subsidiaries, transferring state assets into company shares, and appointing the board of directors and board of commissioners through the limited liability company mechanism. Only now has the legal debate between the two judicial institutions, the Supreme Court and the Constitutional Court, not ended, nor has it shown any common ground.

Third, the government established the National Asset Management Company with a legal instrument in Government Regulation Number 10 of 2004 on establishing a Limited Liability Company (Persero) in the Asset Management Sector. The company is PT Perusahaan Pengelola Aset (PPA), which is tasked with restructuring and revitalizing state-owned enterprises experiencing financial, governance, and management problems. PPA has three functions: deposit management, management of non-performing loans in banking, and special situations funds. The Minister of State-Owned Enterprises and the Minister of Finance have a very strategic role as policymakers for the restructuring and revitalization of State-Owned Enterprises, while PPA is the executor. After several years, PPA changed its status to become a subsidiary of PT Danareksa, a holding company in the investment and financial management sector, based on Government Regulation Number 7 of 2022 on the Addition of State Capital Participation of the Republic of Indonesia into the Share Capital of the Limited Liability Company (Persero) PT Danareksa.

The restructuring and revitalization program of State-Owned Enterprises is only sometimes successful. After undergoing restructuring and revitalization, several State-

Owned Enterprises could not escape the trap of large debts, business losses, bankruptcy, operational failure, or mismanagement. Finally, the government dissolved several State-Owned Enterprises, including PT Pembangunan Armada Niaga Nasional, PT Industri Gelas, PT Kertas Kraft Aceh, PT Industri Sandang Nusantara, PT Istaka Karya, PT Kertas Leces, PT Merpati Nusantara Airlines. The dissolution of the company shows that the efforts to improve several State-Owned Enterprises have yet to be able to save state wealth in the form of state assets or shares in the State-Owned Enterprises. After the dissolution decision, the bankruptcy process takes a long time and causes the loss or reduction of state wealth valued in the company's assets and shares.

While efforts to reform the governance of State-Owned Enterprises still face many obstacles and challenges, the government has given a heavy burden to several State-Owned Enterprises to work on National Strategic Projects. Seventeen State-Owned Enterprises and three subsidiaries have worked on 81 projects since 2016, worth more than 711 trillion rupiah.

The government's assignment to several State-Owned Enterprises to work on National Strategic Projects has caused a heavy financial burden for State-Owned Enterprises. The massive increase in foreign debt in the last ten years proves that this assignment burdens the finances of State-Owned Enterprises because they are working on projects that exceed their capabilities.

For instance, PT Adhi Karya, PT Hutama Karya, PT Pembangunan Perumahan, PT Waskita Karya, and PT Wijaya Karya are five State-Owned Enterprises in the infrastructure sector that are experiencing poor financial conditions because the amount of their liabilities, both current liabilities and non-current liabilities, exceeds the amount of their equity. Finally, the government is required to restructure and revitalize by burdening state finances in the form of State Equity Participation.

Finally, State-Owned Enterprises do not carry out their vision of generating profits for state revenues; instead, State-Owned Enterprises carry out tasks given by the government even though they are detrimental to the company's finances. The government as a shareholder becomes the principal, and State-Owned Enterprises as companies become agents.

Therefore, government policies that burden State-Owned Enterprises contradict the objectives of establishing State-Owned Enterprises in Article 2 of Law Number 19 of 2003. The objectives of their establishment include, among other things, contributing to the development of the national economy in general and state revenues in particular, pursuing profits, and providing public benefits in the form of providing high-quality and adequate goods or services to fulfill the needs of many people.

1.4. Omnibus Law and the Need for Amendments to the Law

The Indonesian government introduced a new legislative model using the Omnibus Law, which is a tradition of the common law system. The goal is to rearrange the legal rules that are spread across various abundant and often overlapping laws and regulations. In fact, the abundance of legal rules slows down bureaucracy and complicates the economy, predominantly domestic and foreign investment. Moreover, the performance of the House of Representatives in recent years has been getting worse in producing legislation, which is one of its duties. The National Legislation Program always fails to achieve its target every year. Therefore, the government believes that the Omnibus Law is the best solution to various problems of chaotic legal bureaucracy and stagnant legislative products.

The legal basis for the formation of the Omnibus Law is Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Formation of Legislation. The House of Representatives carries out the process of creating the Omnibus Law through five stages, namely planning, drafting, discussion, ratification, and promulgation. All stages can be completed quickly because members of the House of Representatives review the draft Omnibus Law containing thousands of articles in packages and collectively with a focus on general rules and policies, not details and specific norms. The Minister of State-Owned Enterprises also made a legislative breakthrough by issuing three Omnibus Law packages on State-Owned Enterprises. The three are Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities, Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporate

Activities, and Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 on Organs and Human Resources.

In the context of effectiveness and efficiency, the Omnibus Law makes it easier for stakeholders to read, review, and understand legal policies for State-Owned Enterprises. The Omnibus Law collects and codifies dozens to hundreds of abundant Ministerial Regulations into just three regulations. However, not all ministries follow this legislative trend because, in fact, the Omnibus model is only used for higher and regulatory laws, not at the level of Ministerial regulations, which are technical procedural following higher legal rules.

However, the Omnibus Law on State-Owned Enterprises has several legal issues that cause it to conflict with Law Number 19 of 2003 concerning State-Owned Enterprises. *First*, the Omnibus Law introduces new legal norms that need to be regulated in Law Number 19 of 2003. The new legal norms are the division of types of State-Owned Enterprises consisting of: (1) State-Owned Enterprises; (2) State-Owned Holding Company; (3) Subsidiary of State-Owned Enterprises; (4) Limited Liability Company; (5) Public Limited Company; (6) Affiliated Companies of State-Owned Enterprises; (7) Public Corporation; and (8) Limited Liability Company. Meanwhile, Law Number 19 of 2003 only mentions four terms, namely: (1) State-Owned Enterprises; (2) Limited Liability Company; (3) Public Limited Company; and (4) Public Corporation.

Second, the Omnibus Law, which is a Ministerial Regulation, is a technical legal regulation implementing higher laws and regulations. The Ministerial Regulation becomes a legal policy of a ministry to regulate its field of work based on the orders of the President as head of government. The legal norms in the Regulation of the Minister of State-Owned Enterprises should be in line with Law Number 19 of 2003 on State-Owned Enterprises.

Third, the Omnibus Law regulates the governance of State-Owned Enterprises, especially regarding the duties, functions, and institutional relationships between State-Owned Holding Companies, Subsidiaries of State-Owned Enterprises, and Affiliated Companies of State-Owned Enterprises. The three types of State-Owned Enterprises are still the objects of supervision by the Audit Board and the Financial and Development Supervisory Agency. The role of these two state institutions is evidence of the existence of

the state financial regime in all types of State-Owned Enterprises that have capital ties from the State Revenue and Expenditure Budget. Moreover, all types of State-Owned Enterprises also have the same position in obtaining State Equity Participation and Public Service Obligations.

1.5. Indonesian State-Owned Enterprises on OECD Guidelines on Corporate Governance

The OECD Guidelines on Corporate Governance cover seven main aspects in the embodiment of corporate governance values for State-Owned Enterprises. First, a country conceptualizes state ownership of a legal entity that does business in goods and services in the name of national interests. Next, as the owner of State-Owned Enterprises, the state needs to regulate itself so as not to abuse its power because of the potential for conflicts of interest. Then, the state also regulates so that its role as the owner of a State-Owned Enterprise does not "kill" private companies that are often its competitors in gaining profit. In addition, the treatment exists for shareholders and other investors because State-Owned Enterprises carry out privatization, which causes diversification of ownership, is not entirely by the state. Moreover, as a public entity that takes state resources, State-Owned Enterprises are required to strengthen the values of disclosure, transparency, and accountability. In addition, State-Owned Enterprises regulate the duties and responsibilities of their directors fairly and professionally as the values of good corporate governance. Finally, State-Owned Enterprises also prepare for the sustainability of business activities in the future by participating in maintaining a green environment and improving the welfare of the community around the business area.

In principle, Indonesia, with its various existing regulations, has complied with the OECD Guidelines on Corporate Governance. Law Number 19 of 2003 is an umbrella regulation as a general guideline for the legal and business aspects of State-Owned Enterprises in Indonesia. Furthermore, several other regulations, such as those governing state finances, limited liability companies, prohibitions on monopolies and unfair business competition, and state financial audit mechanisms, also support the implementation of good corporate governance for State-Owned Enterprises. Regulations that are structured

hierarchically from laws to ministerial regulations are the key to realizing transparent, responsible, and accountable State-Owned Enterprises.

State institutions play an important role in realizing good corporate governance. The Ministry of State-Owned Enterprises, as a representative of the state as owner and shareholder, issues various regulations that maintain business stability and continuity with a spirit of professionalism. Next, the Audit Board of the Republic of Indonesia and the Financial and Development Supervisory Agency also supervise the finances of State-Owned Enterprises, in addition to internal and external audits of the company, to maintain the values of openness, transparency, and accountability.

However, efforts to reform the governance of State-Owned Enterprises to comply with the OECD Guidelines on Corporate Governance need improvement in various aspects. For instance, Indonesia does not have precise regulations in which the state must fully control business sectors of State-Owned Enterprises. Then, what business sectors may be privatized by inviting domestic and foreign investors? Learn from the experience of Croatia which regulates the division of unique business sectors controlled by the state one hundred percent and business sectors open to the role of the private sector. Indonesia needs to emphasize how many State-Owned Enterprises are in the form of Public Companies that are wholly owned and controlled by the state and State-Owned Enterprises in the form of Limited Liability Companies by opening up opportunities for the private sector to own shares in the state-owned company.

Next, learn from Hungary's experience in managing MNV Zrt, the Hungarian National Asset Management Private Limited Company. The centralization of strategic business sectors under the coordination of MNV Zrt reduces the complicated and long bureaucratic chain. Indonesia needs to form a centralized holding company in strategic areas, especially those related to the main livelihoods of the community, under the coordination of the Ministry of State-Owned Enterprises. Currently, holding companies are only limited to clustering similar business areas into one holding company.

2. Recommendations for Policy and Suggestions for Future Research

Indonesia urgently needs to reform the legislation for State-Owned Enterprises, especially Law Number 19 of 2003, to achieve better corporate governance. Some policy suggestions that are the focus of this study include:

1) Law Number 19 of 2003 has not regulated State-Owned Holding Companies as the parent of State-Owned Enterprises. The law needs to formulate the conceptual framework of the holding company that Indonesia wants to form, whether an investment holding company or a management holding company. Then, what is the role of the Ministry of State-Owned Enterprises as a representative of the state who is the owner and shareholder of the company? More importantly, the role of supervision and audit has become an important object that has been carried out by the Audit Board of Indonesia and the Financial and Development Supervisory Agency.

2) Law Number 19 of 2003 also does not regulate which State-Owned Enterprises which business sectors must maintain full state ownership, and which business sectors are permitted to be privatized. Throughout the corporatization period of State-Owned Enterprises, many Public Companies have changed into Limited Liability Companies without any firm regulations. Will all State-Owned Enterprises become Limited Liability Companies in the future? It is an important concern because strategic sectors related to the need for goods and services that are very important for the community need to remain controlled by the state based on the values of the Constitution of the Republic of Indonesia.

3) Law Number 19 of 2003 must regulate the establishment of subsidiaries of State-Owned Enterprises and affiliated companies of State-Owned Enterprises. Both forms of companies are established by State-Owned Enterprises for business diversification and strengthening specific markets. However, this policy needs to be regulated in the Law so that it does not become a loophole for legal smuggling to avoid supervision and audits by the Audit Board of Indonesia and the Financial and Development Supervisory Agency. In addition, the House of Representatives is also unable to supervise these two types of companies. Their establishment and management are beyond their authority

because they follow the provisions of the General Meeting of Shareholders in corporate law.

4) Law Number 19 of 2003 needs to limit the government's authority to assign State-Owned Enterprises in infrastructure development and business activities that do not generate profits for the company. With the spirit of corporatization, State-Owned Enterprises should not only become a shadow of government in government projects that the State Budget cannot fund. The law needs to limit government actions and decisions that are not in accordance with the values of good corporate governance.

Furthermore, for future research, scholars and academics can continue this research in broad aspects related to the governance of State-Owned Enterprises. Until this research ends, Indonesia has changed leadership from President Joko Widodo to President Prabowo Subianto. Therefore, the scope of the research is limited until 2024 so that, of course, new legal policies will emerge by the next government period.

BIBLIOGRAPHY

A. Book

1. Afwa, Ulil, and Fathya Neysa Oktavia. "Legal Standing of Parent and Subsidiary Companies of Indonesian Subsidiary State-Owned Enterprises." In *Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023)*, edited by Abdul Aziz Nassihudin, Tedi Sudrajat, Sri Wahyu Handayani, Aryuni Yuliantiningsih, and Riris Ardhanariswari, 805:17–27. Paris: Atlantis Press SARL, 2023. https://doi.org/10.2991/978-2-38476-164-7_3.
2. Ali, Chidir. *Badan hukum*. Bandung: Penerbit Alumni, 1987.
3. Asian Development Bank. *Reforms, Opportunities, and Challenges for State-Owned Enterprises*. Asian Development Bank, 2020. https://www.adb.org/publications/reforms-opportunities-challenges-state-owned-enterprises.
4. Böwer, Uwe. *State-Owned Enterprises in Emerging Europe*. Washington, D.C: International Monetary Fund, 2017.
5. Clifton, Judith, and Daniel Díaz-Fuentes. "The State and Public Corporations." In *Handbook of the International Political Economy of the Corporation*, edited by Andreas Nölke and Christian May. Edward Elgar Publishing, 2018. https://doi.org/10.4337/9781785362538.00013.
6. Cooter, Robert, and Thomas Ulen. *Law & Economics*. 5th ed. The Addison-Wesley Series in Economics. Boston: Pearson/Addison Wesley, 2008.
7. Daems, Herman. *The Holding Company and Corporate Control*. Boston, MA: Springer US, 1978. https://doi.org/10.1007/978-1-4613-4056-0.
8. De Brouwer, Gordon, and Wisarn Pupphavesa, eds. *Asia-Pacific Financial Deregulation*. 0 ed. Routledge, 2002. https://doi.org/10.4324/9780203013922.
9. Dick, Howard. "Formation of the Nation-State, 1930s–1966." In *The Emergence of a National Economy*, edited by V.J.H. Houben and J.Th. Lindblad, 153–93. BRILL, 2002. https://doi.org/10.1163/9789004486454_015.

10. Directorate-General for Economic and Financial Affairs (European Commission). *State-Owned Enterprises in the EU: Lessons Learnt and Ways Forward in a Post Crisis Context*. Publications Office of the European Union, 2016. https://data.europa.eu/doi/10.2765/99224.

11. Domokos, László, Erzsébet Németh, and Katalin Jakovác. *Supporting the Effectiveness of Governance: Expediency Control and Performance Measurement in SAI's Audit*. Budapest: The State Audit Office of Hungary, 2016. https://www.asz.hu/storage/files/files/Angol_portal/pillars_of_good_governance/10_eng.pdf.

12. Halász, Zsolt. "Finances and Financial Law in the Constitution in General." In *The Basic Law of Hungary: A First Commentary*. Dublin: Clarus Press [u.a.], 2012.

13. Haliassos, Michael, and James Tobin. "Chapter 17 The Macroeconomics of Government Finance." In *Handbook of Monetary Economics*, 2:889–959. Elsevier, 1990. https://doi.org/10.1016/S1573-4498(05)80024-4.

14. Hill, Hal, and Siwage Dharma Negara, eds. "Infrastructure Development under the Jokowi Administration: Progress, Challenges and Policies." In *The Indonesian Economy in Transition*, 239–65. ISEAS Publishing, 2019. https://doi.org/10.1355/9789814843102-012.

15. Horváth Tamás M, Bartha Ildikó, Bordás Péter, and Lovas Dóra. *A látható kéz: Kormányzati tulajdon és szabályozó szerep vállalati körben*. ORAC Kiado, 2024.

16. Juwono, Vishnu, and Sebastian Eckardt. "Budget Accountability and Legislative Oversight in Transition: The Case of Post-Suharto Indonesia." In *Legislative Oversight and Budgeting: A World Perspective*. WBI Development Studies. Washington, DC: World Bank, 2012.

17. Kotler, Philip, and Nancy R. Lee. *Corporate Social Responsibility: Doing the Most Good for Your Company and Your Cause*. Online-Ausg. EBL-Schweitzer. Hoboken: Wiley, 2005.

18. Kumar, Anjali. *The State Holding Company: Issues and Options*. World Bank Discussion Papers 187. Washington, D.C: World Bank, 1992.

https://documents.worldbank.org/curated/en/853961468740448292/pdf/multi-page.pdf.

19. Lane, Max, ed. “Ideologies of Joko Widodo and Indonesian Political Parties.” In *Continuity and Change after Indonesia’s Reforms*, 44–77. ISEAS Publishing, 2019. https://doi.org/10.1355/9789814843232-005.

20. Mallin, Chris A. *Corporate Governance*. Sixth edition. Oxford ; New York, NY: Oxford University Press, 2019.

21. Marciano, Alain. *Law and Economics: A Reader*. Hoboken: Taylor and Francis, 2013.

22. McDonald, David A. “Public Ambiguity and the Multiple Meanings of Corporatization.” In *Rethinking Corporatization and Public Services in the Global South*, 2014. https://www.torrossa.com/it/resources/an/5211277.

23. Monks, Robert A. G., and Nell Minow, eds. “What Is A Corporation?” In *Corporate Governance*, 1st ed., 3–100. Wiley, 2012. https://doi.org/10.1002/9781119207238.ch1.

24. Nugraha, Safri. *Hukum Administrasi Negara dan Good Governance*. Pidato Pengukuhan Guru Besar. Jakarta: Universitas Indonesia Press, 2016.

25. ———. *Privatisasi di Berbagai Negara: Pengantar Untuk Memahami Privatisasi*. Jakarta: Lentera Hati, 2002.

26. OECD. *Boards of Directors of State-Owned Enterprises: An Overview of National Practices*. Corporate Governance. OECD, 2013. https://doi.org/10.1787/9789264200425-en.

27. ———. *Corporate Governance, State-Owned Enterprises and Privatisation*. OECD, 1998. https://doi.org/10.1787/9789264162730-en.

28. ———. *OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition*. 2015th ed. Paris: OECD, 2015. https://doi.org/10.1787/9789264244160-en.

29. ———. *OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024*. OECD, 2024. https://doi.org/10.1787/18a24f43-en.

30. ———. *OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia*. Corporate Governance. OECD, 2021. https://doi.org/10.1787/b4a46863-en.

31. ———. *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices*. Paris: OECD, 2021. https://www.oecd.org/corporate/ownership-and-governance-of-state-owned-enterprises-a-compendium-of-national-practices.htm.

32. ———. *Privatisation and the Broadening of Ownership of State-Owned Enterprises: Stocktaking of National Practices*. OECD, 2018. https://doi.org/10.1787/2b94c510-en.

33. ———. *State-Owned Enterprise Governance: A Stocktaking of Government Rationales for Enterprise Ownership*. OECD, 2015. https://doi.org/10.1787/9789264239944-en.

34. ———. *The Size and Sectoral Distribution of State-Owned Enterprises*. OECD, 2017. https://doi.org/10.1787/9789264280663-en.

35. Posner, Richard A. *Economic Analysis of Law*. 7th ed. New York, NY: Wolters Kluwer Law & Business : Aspen Publishers, 2007.

36. PT Perusahaan Pengelola Aset. *Dua Windu PPA: Sang Dokter Korporasi*. Jakarta: PT Perusahaan Pengelola Aset, 2020. https://www.ptppa.com/id/buku-sang-dokter-korporasi/.

37. Ray, Kamal Ghosh. *Mergers and Acquisitions: Strategy, Valuation and Integration*. Second edition. Delhi: PHI Learning, 2023.

38. Salter, Michael, and Julie Mason. *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*. Harlow, England; New York: Pearson/Longman, 2007.

39. Savas, Emanuel S. *Privatization and Public-Private Partnerships*. New York: Chatham House, 2000.

40. Siahaan, Bisuk. *Industrialisasi Di Indonesia: Sejak Hutang Kehormatan Sampai Banting Stir*. Cet. 1. Jakarta: Pustaka Data, 1996.

41. Singh, Daljit, and Malcolm Cook, eds. “Infrastructure Development under the Jokowi Administration: Progress, Challenges and Policies.” In *Southeast Asian Affairs 2016*, 145–66. ISEAS Publishing, 2016. https://doi.org/10.1355/9789814695671-013.

42. Soeprapto, Maria Farida Indrati, and A Hamid S. Attamimi. *Ilmu perundang-undangan: dasar-dasar dan pembentukannya*. [Yogyakarta]: Kanisius, 1998.

43. Sutedi, Adrian. *Hukum Keuangan Negara*. Cet. 1. Jakarta: Sinar Grafika, 2010.

44. “The Law of Nations in Hans Kelsen’s ‘Pure Theory of Law’ System.” In *Truyol y Serra’s Doctrines of International Law*, 87–107. Edward Elgar Publishing, 2018. https://doi.org/10.4337/9781788116374.00011.

45. Tjandra, W Riawan. *Hukum Keuangan Negara*. Jakarta: Gramedia Widiasarana Indonesia, 2006.

46. Verhezen, Peter, and Tanri Abeng. “Indonesian State-Owned Enterprises: Boards That Govern and Lead.” In *Doing Business in ASEAN Markets: Leadership Challenges and Governance Solutions across Asian Borders*, edited by Peter Verhezen, Ian Williamson, Mark Crosby, and Natalia Soebagjo, 137–58. Cham: Springer International Publishing, 2016. https://doi.org/10.1007/978-3-319-41790-5_9.

47. Weber, Max. *Economy and Society. Volume 2: Economy and Society: An Outline of Interpretive Sociology / Max Weber; Edited by Guenther Roth and Claus Wittich ; with a New Foreword by Guenther Roth*. Edited by Guenther Roth and Claus Wittich. Berkeley Los Angeles London: University of California Press, 2013.

48. Wie, Thee Kian. “Indonesianization: Economic Aspects of Decolonization in Indonesia in the 1950s.” In *Indonesian Economic Decolonization in Regional and International Perspective*, edited by J.Th. Lindblad and Peter Post, 17–38. BRILL, 2009. https://doi.org/10.1163/9789004253780_003.

49. World Bank. *Corporate Governance of State-Owned Enterprises: A Toolkit*. The World Bank, 2014. https://doi.org/10.1596/978-1-4648-0222-5.

50. Zoller, Catherine Bridge, and Alenka Cerne. “Turning Around State-Owned Enterprises in Croatia.” In *EBRD Law in Transition 2020 Fostering the Sustainable*

Development Goals, 62–67, 2020. https://www.ebrd.com/news/publications/newsletters/law-in-transition-2020.html.

B. Journal Article

1. Aditya, Zaka Firma, and Muhammad Reza Winata. "Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia (Reconstruction Of The Hierarchy Of Legislation In Indonesia)." *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (June 1, 2018). https://doi.org/10.22212/jnh.v9i1.976.
2. Agus, Riyanto, Budi Santoso, and Paramitha Paraningtyas. "Reforming Indonesia's OJK to Comply with International Standards: Lessons from Australia." *Brawijaya Law Journal* 10, no. 2 (October 31, 2023): 260–81. https://doi.org/10.21776/ub.blj.2023.010.02.07.
3. Aktas, Nihat, Ettore Croci, and Serif Aziz Simsir. "Corporate Governance and Takeover Outcomes." *Corporate Governance: An International Review* 24, no. 3 (2016): 242–52. https://doi.org/10.1111/corg.12116.
4. Alfitri, Alfitri. "Ideologi Welfare State Dalam Dasar Negara Indonesia: Analisis Putusan Mahkamah Konstitusi Terkait Sistem Jaminan Sosial Nasional." *Jurnal Konstitusi* 9, no. 3 (May 20, 2016): 449. https://doi.org/10.31078/jk932.
5. Anastassopoulos, Jean-Pierre. "State-Owned Enterprises between Autonomy and Dependency." *Journal of Public Policy* 5, no. 4 (1985): 521–39. https://www.jstor.org/stable/3998400.
6. Anderson, Benedict R. O'G. "Old State, New Society: Indonesia's New Order in Comparative Historical Perspective." *The Journal of Asian Studies* 42, no. 3 (1983): 477–96. https://doi.org/10.2307/2055514.
7. Anggraeny, Isdian. "Analisis Hukum Privatisasi Badan Usaha Milik Negara Dalam Prespektif Pasal 33 ayat (4) UUD 1945." *Legality : Jurnal Ilmiah Hukum* 24, no. 1 (2016): 138–56. https://ejournal.umm.ac.id/index.php/legality/article/view/4262.

8. Apriliyanti, Indri Dwi. "Continuity and Complexity: A Study of Patronage Politics in State-Owned Enterprises in Post-Authoritarian Indonesia." *Critical Asian Studies* 55, no. 4 (October 2, 2023): 516–37. https://doi.org/10.1080/14672715.2023.2257223.

9. Apriliyanti, Indri Dwi, and Stein Oluf Kristiansen. "The Logics of Political Business in State-Owned Enterprises: The Case of Indonesia." *International Journal of Emerging Markets* 14, no. 5 (December 2, 2019): 709–30. https://doi.org/10.1108/IJOEM-08-2018-0433.

10. Arifin, Saru. "Illiberal Tendencies in Indonesian Legislation: *The Case of the Omnibus Law on Job Creation*." *The Theory and Practice of Legislation* 9, no. 3 (September 2, 2021): 386–403. https://doi.org/10.1080/20508840.2021.1942374.

11. Bai, Jun, and Lishuai Lian. "Why Do State-Owned Enterprises over-Invest? Government Intervention or Managerial Entrenchment." *China Journal of Accounting Studies* 1, no. 3–4 (2013): 236–59. https://doi.org/10.1080/21697221.2013.867401.

12. Bar-Siman-Tov, Ittai. "An Introduction to the Comparative and Multidisciplinary Study of Omnibus Legislation." *Springer Nature*, January 20, 2021. https://doi.org/10.2139/ssrn.3770028.

13. Becht, Marco, Patrick Bolton, and Ailsa Roell. "Corporate Governance and Control." *Handbook of the Economics of Finance* 1, Part 1 (2003): 1–109. https://ideas.repec.org//h/eee/finchp/1-01.html.

14. Bohdanowicz, Leszek. "The Impact of Ownership Structure on Supervisory Board Size and Diversity: Evidence from the Polish Two-Tier Board Model." *Procedia Economics and Finance* 23 (2015): 1420–25. https://doi.org/10.1016/S2212-5671(15)00429-3.

15. Bowman, Edward H., and Harbir Singh. "Corporate Restructuring: Reconfiguring the Firm." *Strategic Management Journal* 14 (1993): 5–14. https://www.jstor.org/stable/2486417.

16. Busroh, Firman Freaddy. "Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan." *Arena Hukum* 10, no. 2 (August 1, 2017): 227–50. https://doi.org/10.21776/ub.arenahukum.2017.01002.4.

17. Candra, Lisa Ade, Achmad Ruslan, and Marten Arie. “The Authority of the State Audit Board in Managing State Finances as an Effort to Prevent Corruption.” *Jurnal Hukum Volkgeist* 7, no. 1 (December 31, 2022): 89–96. https://doi.org/10.35326/volkgeist.v7i1.2810.

18. Cuervo-Cazurra, Alvaro, Andrew Inkpen, Aldo Musacchio, and Kannan Ramaswamy. “Governments as Owners: State-Owned Multinational Companies.” *Journal of International Business Studies* 45, no. 8 (2014): 919–42. https://doi.org/10.1057/jibs.2014.43.

19. Conard, Alfred F. “The Supervision of Corporate Management: A Comparison of Developments in European Community and United States Law.” *Michigan Law Review* 82, no. 5/6 (1984): 1459. https://doi.org/10.2307/1288490.

20. Cronqvist, Henrik, and Mattias Nilsson. “The Choice between Rights Offerings and Private Equity Placements.” *Journal of Financial Economics* 78, no. 2 (2005): 375–407. https://doi.org/10.1016/j.jfineco.2004.12.002.

21. Dion, Michel. “The Ethical Principles Determining the Contents of Corporate Governance Rules and Systems.” *Society and Economy* 27, no. 2 (2005): 195–211. https://www.jstor.org/stable/41472024.

22. Dragomir, Voicu D., Mădălina Dumitru, and Liliana Feleagă. “Political Interventions in State-Owned Enterprises: The Corporate Governance Failures of a European Airline.” *Journal of Accounting and Public Policy* 40, no. 5 (2021): 106855. https://doi.org/10.1016/j.jaccpubpol.2021.106855.

23. Dunleavy, Patrick. “Explaining The Privatisation Boom: Public Choice Versus Radical Approaches.” *Public Administration* 64, no. 1 (1986): 13–34. https://doi.org/10.1111/j.1467-9299.1986.tb00601.x.

24. Eberhard-Harribey, Laurence. “Corporate Social Responsibility as a New Paradigm in the European Policy: How CSR Comes to Legitimate the European Regulation Process.” Edited by Gilbert Lenssen. *Corporate Governance: The International Journal of Business in Society* 6, no. 4 (August 1, 2006): 358–68. https://doi.org/10.1108/14720700610689487.

25. Ekayanta, Fredick. “Ideology and Pragmatism: Discourse Factors in Infrastructure Development in Indonesia’s Jokowi-JK Era.” *Jurnal Politik* 4, no. 2 (February 1, 2019). https://doi.org/10.7454/jp.v4i2.1047.

26. Emirullah, Chandra. “The Budgetary Role of the Indonesian Parliament: The Impact of the Law on State Finances.” *Journal of Governance and Development (JGD)* 10, no. 1 (June 30, 2014): 75–92. https://e-journal.uum.edu.my/index.php/jgd/article/view/13883.

27. Ford, Robert S. “State and Local Finance.” *The Annals of the American Academy of Political and Social Science* 266 (1949): 15–23. https://www.jstor.org/stable/1027563.

28. Ghosh, Saibal. “Corporate Distress, Troubled Debt Restructurings and Equity Stripping: Analyzing Corporate Debt Restructurings in India.” *South Asian Journal of Business Studies* 8, no. 1 (March 4, 2019): 105–26. https://doi.org/10.1108/SAJBS-05-2018-0059.

29. Gillis, Malcolm. “The Role of State Enterprises in Economic Development.” *Social Research* 47, no. 2 (1980): 248–89. https://www.jstor.org/stable/40982645.

30. Gisella Yulialistika Esfandiatri, Yang. “Analisis Financial Distress Pada Perusahaan Konstruksi BUMN Karya.” *Syntax Idea* 5, no. 11 (November 28, 2023). https://doi.org/10.46799/syntax-idea.v5i11.2663.

31. Glenn, Ted. “The Management and Administration of Government Communications in C Anada.” *Canadian Public Administration* 57, no. 1 (2014): 3–25. https://doi.org/10.1111/capa.12057.

32. Hendrocahyo, Hendrocahyo, and Lestari Kurniawati. “Understanding the Financial Performance of PT PLN (Persero): A Narrative on State-Owned Enterprise (SOE) with a Mandate of Electricity in Indonesia.” *Binus Business Review* 13, no. 3 (October 31, 2022): 241–58. https://doi.org/10.21512/bbr.v13i3.7883.

33. Hermanto, Bagus, and Nyoman Mas Aryani. “Omnibus Legislation as a Tool of Legislative Reform by Developing Countries: Indonesia, Turkey and Serbia Practice.” *The Theory and Practice of Legislation* 9, no. 3 (September 2, 2021): 425–50. https://doi.org/10.1080/20508840.2022.2027162.

34. Hidayatulloh, Hidayatulloh. “Business Judgment Rule and Its Implementation in Indonesian Corporate Law.” In *A Studia Iurisprudentiae Doctorandorum Miskolciensium*. Miskolc: University of Miskolc, 2021. https://jogikar.uni-miskolc.hu/kiadvany_studia_iurisprudentiae.

35. ———. “Corporate Crime and State-Owned Enterprises.” *Justicia Journal of International Legal Sciences* 11, no. 19–20 (2023): 142–49. https://sites.google.com/unite.edu.mk/justicia/vol-11-no-19-20-2023.

36. Hidayatulloh, Hidayatulloh, and Éva Erdős. “Indonesian Financial Law: History and Recent Development.” *Curentul Juridic/Juridical Current* 96, no. 2 (August 15, 2024): 61–80. https://doi.org/10.62838/CJJC.97.2.12.

37. ———. “Legal Risk of State-Owned Enterprises’ Debt.” *European Journal of Law and Political Science* 3, no. 1 (January 20, 2024): 10–16. https://doi.org/10.24018/ejpolitics.2024.3.1.120.

38. ———. “Restrengthening the Role of Supreme Audit Agency in Supervising State-Owned Enterprises.” *International Comparative Jurisprudence* 8, no. 2 (2022): 152–60. https://doi.org/https://doi.org/10.13165/j.icj.2022.12.003.

39. ———. “State-Owned Enterprise’s Debt in the State Financial Regime.” *Sriwijaya Law Review* 7, no. 1 (January 27, 2023): 105. https://doi.org/10.28946/slrev.Vol7.Iss1.1843.pp105-120.

40. ———. “The Legal Aspects of Privatization in Electricity Business Sector.” *Jurnal Cita Hukum* 10, no. 2 (2022): 267–88. https://doi.org/10.15408/jch.v10i2.23540.

41. Illahi, Beni Kurnia, and Muhammad Ikhsan Alia. “Pertanggungjawaban Pengelolaan Keuangan Negara Melalui Kerja Sama BPK Dan KPK.” *Integritas : Jurnal Antikorupsi* 3, no. 2 (October 14, 2017): 37–78. https://doi.org/10.32697/integritas.v3i2.102.

42. Indiasti, Anitasiya Risky, and Lalu Takdir Junaidi. “Interpreting the Relationship of the Accounting Profession through Core Values to Internal Control in Preventing Management Irregularities in BUMN Companies.” *International Conference of Business and Social Sciences* 3, no. 1 (January 19, 2024): 753–65. https://doi.org/10.24034/icobuss.v3i1.447.

43. Ireland, Paddy. “Company Law and the Myth of Shareholder Ownership.” *The Modern Law Review* 62, no. 1 (1999): 32–57. https://doi.org/10.1111/1468-2230.00190.

44. Ishak, Ahmad, Aminuddin Ilmar, and Winner Sitorus. “Analysis of Government Policies in Structuring State Owned Corporation Through The Formation of Holding Companies.” *Jurnal Hukum Volkgeist* 6, no. 1 (December 27, 2021): 38–45. https://doi.org/10.35326/volkgeist.v6i1.1322.

45. Johnson, Lyman. “The Modest Business Judgment Rule.” *The Business Lawyer* 55, no. 2 (2000): 625–52. https://www.jstor.org/stable/40687937.

46. Kadir, M.Y. Aiyub, and Alexander Murray. “Resource Nationalism in the Law and Policies of Indonesia: A Contest of State, Foreign Investors, and Indigenous Peoples.” *Asian Journal of International Law* 9, no. 2 (2019): 298–333. https://doi.org/10.1017/S204425131900002X.

47. Kaunda, Elias, and Theuns Pelser. “Corporate Governance and Performance of State-Owned Enterprises in a Least Developed Economy.” *South African Journal of Business Management* 54, no. 1 (September 29, 2023). https://doi.org/10.4102/sajbm.v54i1.3827.

48. Kim, Kyunghoon. “Matchmaking: Establishment of State-owned Holding Companies in Indonesia.” *Asia & the Pacific Policy Studies* 5, no. 2 (2018): 313–30. https://doi.org/10.1002/app5.238.

49. ———. “Matchmaking: Establishment of State-owned Holding Companies in Indonesia.” *Asia & the Pacific Policy Studies* 5, no. 2 (2018): 313–30. https://doi.org/10.1002/app5.238.

50. Korpi, Walter, and Joakim Palme. “The Paradox of Redistribution and Strategies of Equality: Welfare State Institutions, Inequality, and Poverty in the Western Countries.” *American Sociological Review* 63, no. 5 (1998): 661. https://doi.org/10.2307/2657333.

51. Krutz, Glen S. “Getting around Gridlock: The Effect of Omnibus Utilization on Legislative Productivity.” *Legislative Studies Quarterly* 25, no. 4 (2000): 533. https://doi.org/10.2307/440433.

52. ———. “Tactical Maneuvering on Omnibus Bills in Congress.” *American Journal of Political Science* 45, no. 1 (2001): 210. https://doi.org/10.2307/2669368.

53. Liang, Hao, Bing Ren, and Sunny Li Sun. “An Anatomy of State Control in the Globalization of State-Owned Enterprises.” *Journal of International Business Studies* 46, no. 2 (2015): 223–40. https://doi.org/10.1057/jibs.2014.35.

54. Lindblad, J Thomas. “The Economic Decolonisation of Indonesia: A Bird﷿s-Eye View.” *Journal of Indonesian Social Sciences and Humanities* 4 (March 25, 2019): 1–20. https://doi.org/10.14203/jissh.v4i0.71.

55. Lipsky, Michael, and Steven Rathgeb Smith. “Nonprofit Organizations, Government, and the Welfare State.” *Political Science Quarterly* 104, no. 4 (December 1, 1989): 625–48. https://doi.org/10.2307/2151102.

56. Ma’arif, Syamsul. “Privatisasi BUMN dan Reorientasi Peran Negara di Sektor Bisnis Pasca Orde Baru: Studi Komparasi Studi Tiga Pemerintahan.” *Jurnal Analisis Sosial Politik* 5, no. 2 (2019): 45–58. https://doi.org/https://doi.org/10.23960/jasp.v3i1.51.

57. Magill, Michael, Martine Quinzii, and Jean-Charles Rochet. “A Theory of the Stakeholder Corporation.” *Econometrica* 83, no. 5 (2015): 1685–1725. https://doi.org/10.3982/ECTA11455.

58. Markides, Constantinos, and Harbir Singh. “Corporate Restructuring: A Symptom of Poor Governance or a Solution to Past Managerial Mistakes?” *European Management Journal* 15, no. 3 (1997): 213–19. https://doi.org/10.1016/S0263-2373(97)00002-9.

59. McMillan, Lori A. “The Business Judgment Rule as an Immunity Doctrine.” *William & Mary Business Law Review* 4, no. 2 (May 17, 2013): 521–74. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2266489.

60. Millon, David. “Theories of the Corporation.” *Duke Law Journal* 1990, no. 2 (1990): 201. https://doi.org/10.2307/1372611.

61. Papp, Tekla, and Ádám Auer. “Corporate Governance in State-Owned Companies in Hungary.” *Juridical Tribune* 6, no. 2 (2016): 22–39.

https://www.proquest.com/scholarly-journals/corporate-governance-state-owned-companies/docview/1867914422/se-2?accountid=28062.

62. Prasetyo, Kukuh Fadli. "Politik Hukum Di Bidang Ekonomi Dan Pelembagaan Konsepsi Welfare State Di Dalam Undang-Undang Dasar 1945." *Jurnal Konstitusi* 9, no. 3 (May 20, 2016): 495. https://doi.org/10.31078/jk934.

63. Radon, Jenik, and Julius Thaler. "Resolving Conflicts of Interest in State-owned Enterprises." *International Social Science Journal* 57, no. s1 (2005): 11–20. https://doi.org/10.1111/j.1468-2451.2009.00702.x.

64. Rajavuori, Mikko. "Governing the Good State Shareholder: The Case of the OECD Guidelines on Corporate Governance of State-Owned Enterprises." *European Business Law Review* 29, no. Issue 1 (February 1, 2018): 103–42. https://doi.org/10.54648/EULR2018005.

65. Rentsch, Carole, and Matthias Finger. "Yes, No, Maybe: The Ambiguous Relationships Between State-Owned Enterprises And The State." *Annals of Public and Cooperative Economics* 86, no. 4 (2015): 617–40. https://doi.org/10.1111/apce.12096.

66. Ridwan, Ridwan. "Eksistensi Dan Urgensi Peraturan Menteri Dalam Penyelenggaraan Pemerintahan Sistem Presidensial." *Jurnal Konstitusi* 18, no. 4 (February 17, 2022): 828. https://doi.org/10.31078/jk1845.

67. Sama, Linda M., and Victoria Shoaf. "Reconciling Rules and Principles: An Ethics-Based Approach to Corporate Governance." *Journal of Business Ethics* 58, no. 1/3 (2005): 177–85. https://www.jstor.org/stable/25123509.

68. Samawati, Putu. "Demonopolization SOEs Policy as An Efforts to Restructured Roles and Institutions in Facing Global Competition." *Bappenas Working Papers* 2, no. 1 (March 25, 2019): 116–32. https://doi.org/10.47266/bwp.v2i1.34.

69. Sati, Nisrina. "Ketetapan MPR Dalam Tata Urutan Peraturan Perundang-Undangan Di Indonesia." *Jurnal Hukum & Pembangunan* 49, no. 4 (December 30, 2019): 834–46. https://doi.org/10.21143/jhp.vol49.no4.2343.

70. Shleifer, Andrei, and Robert W. Vishny. “A Survey of Corporate Governance.” *The Journal of Finance* 52, no. 2 (1997): 737–83. https://doi.org/10.1111/j.1540-6261.1997.tb04820.x.

71. Silalahi, M. Udin. “Analisis Hukum Privatisasi BUMN (UU No. 19 Tahun 2003).” *Jurnal Hukum Bisnis* 26, no. 1 (2007): 18–25.

72. Silva, Vinicius Augusto Brunassi, and Richard Saito. “Corporate Restructuring: Empirical Evidence on the Approval of the Reorganization Plan.” *RAUSP Management Journal* 53, no. 1 (2018): 49–62. https://doi.org/10.1016/j.rauspm.2017.12.008.

73. Sitinjak, Punia. “Discourse on Increasing the Role of The Ministry of SOEs as The Management and Supervision State-Owned Enterprises Entity.” *"Dharmasisya" Jurnal Program Magister Hukum FHUI* 1, no. 4 (July 11, 2022). https://scholarhub.ui.ac.id/dharmasisya/vol1/iss4/28.

74. Smith, D. Andrew C., and Michael J. Trebilcock. “State-Owned Enterprises in Less Developed Countries: Privatization and Alternative Reform Strategies.” *European Journal of Law and Economics* 12, no. 3 (2001): 217–52. https://doi.org/10.1023/A:1012817825552.

75. Starr, Paul. “The Meaning of Privatization.” *Yale Law & Policy Review* 6, no. 1 (1988): 6–41. https://www.jstor.org/stable/40239271.

76. Sur, Sujit, Horand Gassmann, and Jing Zhang. “Defining Ownership: An Empirical Assessment of the Ownership Measures.” *Canadian Journal of Administrative Sciences / Revue Canadienne Des Sciences de l’Administration* 36, no. 1 (2019): 5–19. https://doi.org/10.1002/cjas.1479.

77. Suseno, Irit, Sudarsono, A. Mukthie Fadjar, and Sihabudin. “Forms of Ideal Laws of State-Owned Enterprises in Harmony with Article 33 Paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia.” *Journal of Law, Policy and Globalization* 85, no. 0 (2019): 99. https://iiste.org/Journals/index.php/JLPG/article/view/48121.

78. Szarzec, Katarzyna, and Wanda Nowara. “The Economic Performance of State-Owned Enterprises in Central and Eastern Europe.” *Post-Communist Economies* 29, no. 3 (July 3, 2017): 375–91. https://doi.org/10.1080/14631377.2017.1316546.

79. Tambunan, Tulus. “Promoting Small and Medium Enterprises with a Clustering Approach: A Policy Experience from Indonesia: JOURNAL OF SMALL BUSINESS MANAGEMENT.” *Journal of Small Business Management* 43, no. 2 (February 4, 2005): 138–54. https://doi.org/10.1111/j.1540-627X.2005.00130.x.

80. Thomas, Kenneth D., and Bruce Glassburner. “Abrogation, Take-over and Nationalization: The Elimination of Dutch Economic Dominance from the Republic of Indonesia.” *Australian Outlook* 19, no. 2 (1965): 158–79. https://doi.org/10.1080/10357716508444203.

81. Thompson, Renée M., and Philmore Alleyne. “Role of a Board of Directors and Corporate Governance in a State-Owned Enterprise.” *Corporate Governance: The International Journal of Business in Society* 23, no. 3 (April 10, 2023): 478–92. https://doi.org/10.1108/CG-05-2021-0170.

82. Umanto, Umanto, Ika Hartatiningsih, and Novita Ikasari. “Board Structure in State-Owned Enterprises (SOEs): Two-Tier Model Analysis on the Implementation of Corporate Governance in Indonesia.” *BISNIS & BIROKRASI: Jurnal Ilmu Administrasi Dan Organisasi* 29, no. 3 (September 30, 2022). https://doi.org/10.20476/jbb.v29i3.1324.

83. Utama, Muhamad Adji Rahardian, Muhammad Reza Maulana, Fadhilah Rizky Aftriani Putri, Fauziah Ramadhani, and Setyarini Nur Octaviana. “State Financial System in Indonesia: Some Recent Developments.” *The Indonesian Journal of International Clinical Legal Education* 2, no. 2 (June 5, 2020): 147–66. https://doi.org/10.15294/ijicle.v2i2.37676.

84. Valente, Mike, and Andrew Crane. “Public Responsibility and Private Enterprise in Developing Countries.” *California Management Review* 52, no. 3 (2010): 52–78. https://doi.org/10.1525/cmr.2010.52.3.52.

85. Van Der Kerkhof, Jasper. “Indonesianisasi of Dutch Economic Interests, 1930-1960 : The Case of Internatio.” *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 161, no. 2–3 (January 1, 2005): 181–209. https://doi.org/10.1163/22134379-90003707.

86. Vedi R. Hadiz, and Richard Robison. “The Political Economy of Oligarchy and the Reorganization of Power in Indonesia.” *Indonesia*, no. 96 (2013): 35. https://doi.org/10.5728/indonesia.96.0033.

87. Warburton, Eve. “Jokowi and the New Developmentalism.” *Bulletin of Indonesian Economic Studies* 52, no. 3 (2016): 297–320. https://doi.org/10.1080/00074918.2016.1249262.

88. Wasino, Wasino. “Nasionalisasi Perusahaan-Perusahaan Asing Menuju Ekonomi Berdikari.” *Paramita: Historical Studies Journal* 26, no. 1 (February 20, 2016): 62. https://doi.org/10.15294/paramita.v26i1.5146.

89. Weimer, Jeroen, and Joost Pape. “A Taxonomy of Systems of Corporate Governance.” *Corporate Governance: An International Review* 7, no. 2 (1999): 152–66. https://doi.org/10.1111/1467-8683.00143.

90. Weston, J. Fred, and Kwang S. Chung. “Takeovers and Corporate Restructuring: An Overview.” *Business Economics* 25, no. 2 (1990): 6–11. https://www.jstor.org/stable/23485951.

91. Wicaksono, Adi Hardiyanto. “On Harming the State Finances or the State Economy by a State-Owned Enterprise (BUMN) and/or Its Subsidiaries in Indonesia.” *Scientia Business Law Review (SBLR)* 1, no. 2 (August 19, 2022): 63–73. https://doi.org/10.56282/sblr.v1i2.222.

92. Wicaksono, Agung. “Indonesian State-Owned Enterprises: The Challenge of Reform.” *Southeast Asian Affairs*, 2008, 146–67. https://www.jstor.org/stable/27913357.

93. Xiao, Jason Zezhong, Jay Dahya, and Zhijun Lin. “A Grounded Theory Exposition of the Role of the Supervisory Board in China*.” *British Journal of Management* 15, no. 1 (2004): 39–55. https://doi.org/10.1111/j.1467-8551.2004.t01-1-00399.x.

94. Yustia, Dewi Asri, and Firdaus Arifin. “Bureaucratic Reform as an Effort to Prevent Corruption in Indonesia.” *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 2166196. https://doi.org/10.1080/23311886.2023.2166196.

C. Laws and Legislations

1. Minister of Finance. Decree of the Minister of Finance on Guidelines for Guidance of Weak Economic Entrepreneurs and Cooperatives through State-Owned Enterprises (1989). https://datacenter.ortax.org/ortax/aturan/show/8681.
2. ———. Decree of the Minister of Finance on Guidelines for the Development of Small Businesses and Cooperatives Through the Utilization of Funds from the Profit Portion of State-Owned Enterprises (1994). https://jdih.kemenkeu.go.id/en/dokumen/peraturan/89e00c2b-8b18-4e96-982a-16eb6d9d8b82.
3. Minister of SOEs. Decree of the Minister of State-Owned Enterprises on State-Owned Enterprise Partnership Program with Small Businesses (2003). https://bphn.go.id/data/documents/07pmbumn005.pdf.
4. ———. Regulation of the Minister of State-Owned Enterprises of 2021 on the Social and Environmental Responsibility Program of State-Owned Enterprises (2021). http://peraturan.bpk.go.id/Details/171151/permen-bumn-no-per-05mbu042021-tahun-2021.
5. ———. Regulation of the Minister of State-Owned Enterprises on Amendments to the Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/2008 on General Guidelines for the Implementation of Procurement of Goods and Services by State-Owned Enterprises (2012). http://peraturan.bpk.go.id/Details/146705/permen-bumn-no-per-15mbu2012-tahun-2012.
6. ———. Regulation of the Minister of State-Owned Enterprises on Guidelines for Governance and Significant Corporate Activities of State-Owned Enterprises (2023). http://peraturan.bpk.go.id/Details/264291/permen-bumn-no-per-2mbu032023-tahun-2023.

7. ———. Regulation of the Minister of State-Owned Enterprises on Guidelines for Restructuring and Revitalization of State-Owned Enterprises by the Limited Liability Company (Persero) PT Perusahaan Pengelola Aset. Accessed September 14, 2024. https://www.hukumonline.com/pusatdata/detail/lt4a094bce2d836/peraturan-menteri-negara-badan-usaha-milik-negara-nomor-per01mbu2009-tahun-2009/document/.

8. ———. Regulation of the Minister of State-Owned Enterprises on Guidelines for the Appointment of Members of the Board of Directors and Members of the Board of Commissioners of Subsidiaries of State-Owned Enterprises (2012). http://peraturan.bpk.go.id/Details/146603/permen-bumn-no-per-03mbu2012-tahun-2012.

9. ———. Regulation of the Minister of State-Owned Enterprises on Organs and Human Resources of State-Owned Enterprises (2023). http://peraturan.bpk.go.id/Details/270210/permen-bumn-no-per-3mbu032023-tahun-2023.

10. ———. Regulation of the Minister of State-Owned Enterprises on the Partnership Program of State-Owned Enterprises with Small Businesses and the Environmental Development Program (n.d.). https://www.regulasip.id/themes/default/resources/js/pdfjs/web/viewer.html?file=/eBooks/2018/November/5bfb7d5eb2016/PER-05-MBU-2007.pdf.

11. Ministry of SOEs. Regulation of the Minister of State-Owned Enterprises on Special Assignments and Social and Environmental Responsibilities (2023). http://peraturan.bpk.go.id/Details/264274/permen-bumn-no-per-1mbu032023-tahun-2023.

12. Republic of Hungary. Act on Business Associations (2006). https://gss.unicreditgroup.eu/sites/default/files/markets/documents/Act%20on%20Business%20Associations.pdf.

13. ———. Act on National Assets. Accessed December 2, 2024. https://net.jogtar.hu/jogszabaly?docid=a1100196.tv.

14. ———. Act on State Property. Accessed December 2, 2024. https://net.jogtar.hu/jogszabaly?docid=a0700106.tv.

15. ———. Act on the Civil Code (2013). https://net.jogtar.hu/jogszabaly?docid=A1300005.tv&dbnum=62&getdoc=1.

16. ———. Act on the State Audit Office of Hungary (2011). https://www.asz.hu/storage/files/files/Angol_portal/Introductions/act_on_sao_july_2013.pdf.

17. Republic of Indonesia. Emergency Law on Providing Legal Status to State Industrial Banks (1952). http://peraturan.bpk.go.id/Details/52644/uudrt-no-5-tahun-1952.

18. ———. Government Regulation in Lieu of Law on State-Owned Enterprises (1960). http://peraturan.bpk.go.id/Details/53474/perpu-no-19-tahun-1960.

19. ———. Government Regulation in Lieu of Law on the Merger of the State Industrial Bank into the Indonesian Development Bank (1960). http://peraturan.bpk.go.id/Details/53530/perpu-no-30-tahun-1960.

20. ———. Government Regulation on Amendments to Government Regulation Number 33 of 2005 on Procedures for Privatization of Limited Liability Companies (2009). http://peraturan.bpk.go.id/Details/4985/pp-no-59-tahun-2009.

21. ———. Government Regulation on Development and Conservation of the Airport Environment (2012). http://peraturan.bpk.go.id/Details/5252/pp-no-40-tahun-2012.

22. ———. Government Regulation on Government Investment (2019). http://peraturan.bpk.go.id/Details/121675/pp-no-63-tahun-2019.

23. ———. Government Regulation on procedures for participating and administering state capital in State-Owned Enterprises and Limited Liability Companies (2005). http://peraturan.bpk.go.id/Details/49641/pp-no-44-tahun-2005.

24. ———. Government Regulation on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies (2016). http://peraturan.bpk.go.id/Details/5793/pp-no-72-tahun-2016.

25. ———. Government Regulation on the Addition of State Capital Participation of the Republic of Indonesia into the Share Capital of the Limited Liability Company (Persero) PT Danareksa (2022). http://peraturan.bpk.go.id/Details/196918/pp-no-7-tahun-2022.

26. ———. Government Regulation on the Addition of State Capital Participation of the Republic of Indonesia into the Share Capital of the Limited Liability Company (Persero) PT Hutama Karya (2023). http://peraturan.bpk.go.id/Details/273449/pp-no-55-tahun-2023.

27. ———. Government Regulation on the Change of Form of the State-Owned Company Kertas Leces to a Limited Liability Company (Persero) (1982). http://peraturan.bpk.go.id/Details/65021/pp-no-14-tahun-1982.

28. ———. Government Regulation on the Change of Form of the State-Owned Enterprise (P.N.) Regional Air Transportation and Multipurpose Aviation "Merpati Nusantara" into a Limited Liability Company (Persero) (1971). http://peraturan.bpk.go.id/Details/69562/pp-no-70-tahun-1971.

29. ———. Government Regulation on the Delegation of Position, Duties and Authority of the Minister of Finance in Persero, Perum and Perjan to the Minister of State for State-Owned Enterprises (2003). http://peraturan.bpk.go.id/Details/52309/pp-no-41-tahun-2003.

30. ———. Government Regulation on the Dissolution of the Limited Liability Company (Persero) PT Industri Gelas (2023). http://peraturan.bpk.go.id/Details/246826/pp-no-18-tahun-2023.

31. ———. Government Regulation on the Dissolution of the Limited Liability Company (Persero) PT Industri Sandang Nusantara (2023). http://peraturan.bpk.go.id/Details/245519/pp-no-14-tahun-2023.

32. ———. Government Regulation on the Dissolution of the Limited Liability Company (Persero) PT Istaka Karya (2023). http://peraturan.bpk.go.id/Details/245518/pp-no-13-tahun-2023.

33. ———. Government Regulation on the Dissolution of the Limited Liability Company (Persero) PT Kertas Kraft Aceh (2023). http://peraturan.bpk.go.id/Details/246825/pp-no-17-tahun-2023.

34. ———. Government Regulation on the Dissolution of the Limited Liability Company (Persero) PT Kertas Leces (2023). http://peraturan.bpk.go.id/Details/243776/pp-no-9-tahun-2023.

35. ———. Government Regulation on the Dissolution of the Limited Liability Company (Persero) PT Merpati Nusantara Airlines (2023). http://peraturan.bpk.go.id/Details/243772/pp-no-8-tahun-2023.

36. ———. Government Regulation on the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises (2005). http://peraturan.bpk.go.id/Details/49657.

37. ———. Government Regulation on the Establishment of a Central Agency for Controlling Dutch Industrial and Mining Companies (1958). http://peraturan.bpk.go.id/Details/76191/pp-no-10-tahun-1958.

38. ———. Government Regulation on the Establishment of Limited Liability Companies (Persero) in the Field of Asset Management (2004). http://peraturan.bpk.go.id/Details/51779/pp-no-10-tahun-2004.

39. ———. Government Regulation on the Main Principles of Implementation of the Law on Nationalization of Dutch Companies (1959). http://peraturan.bpk.go.id/Details/75698/pp-no-2-tahun-1959.

40. ———. Government Regulation on the National Bank Restructuring Agency (1999). http://peraturan.bpk.go.id/Details/54242/pp-no-17-tahun-1999.

41. ———. Government Regulations on Job Companies (2000). http://peraturan.bpk.go.id/Details/53149/pp-no-6-tahun-2000.

42. ———. Law on Aviation (2009). http://peraturan.bpk.go.id/Details/54656/uu-no-1-tahun-2009.

43. ———. Law on Bank Indonesia (1999). http://peraturan.bpk.go.id/Details/45332/uu-no-23-tahun-1999.

44. ———. Law on Bankruptcy and Suspension of Debt Payment Obligations (2004). http://peraturan.bpk.go.id/Details/40784.

45. ———. Law on Capital Market (1995). https://ojk.go.id/en/kanal/pasar-modal/regulasi/undang-undang/Pages/law-no-8-of-1995-on-capital-market.aspx.

46. ———. Law on Eradication of Criminal Act of Corruption (1999). http://peraturan.bpk.go.id/Details/45350/uu-no-31-tahun-1999.

47. ———. Law on Forms of State Business (1969). http://peraturan.bpk.go.id/Details/49109/uu-no-9-tahun-1969.

48. ———. Law on Investment (2008). http://peraturan.bpk.go.id/Details/39903/uu-no-25-tahun-2007.

49. ———. Law on Limited Liability Companies (2007). http://peraturan.bpk.go.id/Details/39965.

50. ———. Law on Oil and Natural Gas (2001). http://peraturan.bpk.go.id/Details/44903/uu-no-22-tahun-2001.

51. ———. Law on Railways (2007). http://peraturan.bpk.go.id/Details/39896/uu-no-23-tahun-2007.

52. ———. Law on Shipping (2008). http://peraturan.bpk.go.id/Details/39060.

53. ———. Law on State Finance (2003). http://peraturan.bpk.go.id/Details/43017/uu-no-17-tahun-2003.

54. ———. Law on State Ministries (2008). http://peraturan.bpk.go.id/Details/39719/uu-no-39-tahun-2008.

55. ———. Law on State Owned Enterprises (2003). https://peraturan.go.id/id/uu-no-19-tahun-2003.

56. ———. Law on State Revenue and Expenditure Budget for the 2022 Fiscal Year (2021). http://peraturan.bpk.go.id/Details/185161/uu-no-6-tahun-2021.

57. ———. Law on the Audit Board of the Republic of Indonesia (2006). http://peraturan.bpk.go.id/Details/40184/uu-no-15-tahun-2006.

58. ———. Law on the Financial Services Authority (2011). http://peraturan.bpk.go.id/Details/39257/uu-no-21-tahun-2011.

59. ———. Law on the Formation of Legislation (2012). https://peraturan.go.id/id/uu-no-12-tahun-2011.

60. ———. Law on the Nationality of Dutch-Owned Companies (1958). http://peraturan.bpk.go.id/Details/52372/uu-no-86-tahun-1958.

61. ———. Law on the People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council (2014). http://peraturan.bpk.go.id/Details/38643/uu-no-17-tahun-2014.

62. ———. Law on the Prohibition of Monopolistic Practices and Unfair Business Competition (1999). http://peraturan.bpk.go.id/Details/45280/uu-no-5-tahun-1999.

63. ———. Law on the Second Amendment to Law Number 12 of 2011 on the Formation of Legislation (2022). http://peraturan.bpk.go.id/Details/212810/uu-no-13-tahun-2022.

64. ———. Law on the State Revenue and Expenditure Budget for the 2020 Fiscal Year (2019). http://peraturan.bpk.go.id/Details/122744/uu-no-20-tahun-2019.

65. ———. Law on the State Revenue and Expenditure Budget for the 2021 Fiscal Year (2020). http://peraturan.bpk.go.id/Details/149747/uu-no-9-tahun-2020.

66. ———. Law on the State Revenue and Expenditure Budget for the 2023 Fiscal Year (2022). http://peraturan.bpk.go.id/Details/232782/uu-no-28-tahun-2022.

67. ———. Law on the State Revenue and Expenditure Budget for the 2024 Fiscal Year (2023). http://peraturan.bpk.go.id/Details/267797/uu-no-19-tahun-2023.

68. ———. Presidential Decree on the 2023 Government Regulation Preparation Program (2022). http://peraturan.bpk.go.id/Details/233928/keppres-no-25-tahun-2022.

69. ———. Presidential Instruction on Guidelines for Restructuring and Management of State-Owned Enterprises (1988). http://peraturan.bpk.go.id/Details/292691/inpres-no-5-tahun-1988.

70. ———. Presidential Instruction on the Direction and Simplification of State-Owned Enterprises into Three Forms of State-Owned Enterprises (1967). https://www.hukumonline.com/pusatdata/detail/556/instruksi-presiden-republik-indonesia-nomor-17-tahun-1967/.

71. ———. Presidential Regulation on Acceleration of Provision of Priority Infrastructure (2014). http://peraturan.bpk.go.id/Details/41567/perpres-no-75-tahun-2014.

72. ———. Presidential Regulation on Revocation of Presidential Decree Number 36 of 1979 on Procurement of Iron and Steel (2005). http://peraturan.bpk.go.id/Details/42605/perpres-no-79-tahun-2005.

73. ———. Presidential Regulation on the Financial and Development Supervisory Agency. Accessed January 21, 2025. http://peraturan.bpk.go.id/Details/41712/perpres-no-192-tahun-2014.

74. ———. Presidential Regulation on the Ministry of State-Owned Enterprises (2015). http://peraturan.bpk.go.id/Details/41774/perpres-no-41-tahun-2015.

75. ———. Presidential Regulation on the Ministry of State-Owned Enterprises (2019). http://peraturan.bpk.go.id/Details/127672/perpres-no-81-tahun-2019.

76. ———. The 1945 Constitution of the Republic of Indonesia (1945). https://www.mkri.id/index.php?page=web.PeraturanPIH&id=1&menu=6&status=1.

77. The House of Representatives. National Legislation Program Priority Bills 2023, 11/DPR RI/II/2022-2023 § (2022). https://bphn.go.id/data/documents/sk_prolegnas_ruu_prioritas_tahun_2023.pdf.

78. ———. The Indonesian National Legislation Program 2020-2024, 46/DPR RI/I/2019-2020 § (2019). https://bphn.go.id/data/documents/draft_ruu_prolegnas.pdf.

79. The Supreme Court of the Republic of Indonesia. Fatwa of the Supreme Court of the Republic of Indonesia on SOE Receivables (2006).

D. Case

1. Constitutional Court of Republic of Indonesia. Constitutional Court Decision on Presidential Election Disputes, No. 01/PHPU-PRES/XVII/2019 (Constitutional Court of Republic of Indonesia 2019).
2. ———. State financial status for BHMN universities (Constitutional Court of Republic of Indonesia, September 18, 2014).
3. ———. Separation of State Assets in SOEs No. 48/PUU-XI/2013 (Constitutional Court of Republic of Indonesia, September 18, 2014).
4. ———. Privatization of State-Owned Enterprises No. 61/PUU-XVIII/2020 (Constitutional Court of Republic of Indonesia, September 29, 2021).
5. Supreme Court of Republic of Indonesia. Supreme Court Decision on Judicial Review of Government Regulation Number 72 of 2016 on Amendments to Government Regulation Number 44 of 2005 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies, No. 21 P/HUM/2017 (Supreme Court July 8, 2017).

E. Other sources

1. ADB. "Indonesia: State-Owned Enterprise Governance and Privatization Program." Evaluation Document. Manila: Asian Development Bank, December 31, 2009. https://www.adb.org/documents/indonesia-state-owned-enterprise-governance-and-privatization-program.
2. Anggraeni, Ricca, and Cipta Indra Lestari Rachman. "Omnibus Law in Indonesia: Is That the Right Strategy?" In *Proceedings of the International Conference on Law, Economics and Health (ICLEH 2020)*. Semarang, Indonesia: Atlantis Press, 2020. https://doi.org/10.2991/aebmr.k.200513.038.
3. Arinanto, Satya, and Dian Parluhutan. "Holding of the Indonesian State-Owned Enterprises and Analysis of the Judicial Review Over the Government Regulation Number 47/2017 Juncto Law Number 19 Year 2003 on the BUMN." In *Proceedings*

of the 3rd International Conference on Law and Governance (ICLAVE 2019). Solo, Central Java, Indonesia: Atlantis Press, 2020. https://doi.org/10.2991/aebmr.k.200321.034.

4. Bondan Kanumoyoso, Author. "Menguatnya Peran Ekonomi Negara: Nasionalisasi Perusahaan-Perusahaan Belanda Di Indonesia, 1957-1959." Universitas Indonesia, 2001. https://lib.ui.ac.id/detail?id=93283&lokasi=lokal.
5. Center for Budget Analysis and State Financial Accountability. "Portrait of Government Debt for the Period 2015-2024: Risks and Achievements." Jakarta: Partners of Commission XI of the House of Representatives, 2024. https://berkas.dpr.go.id/pa3kn/analisis-apbn/public-file/analisis-apbn-public-93.pdf.
6. De Waal, Melanie Mira. "The Balancing Act of Effective Supervision: Understanding the Relationship between Internal and External Supervision." University of Groningen, 2020. https://doi.org/10.33612/diss.134516438.
7. Dutu, Richard. "Making the Most of Natural Resources in Indonesia." OECD Economics Department Working Papers, May 28, 2015. https://doi.org/10.1787/5js0cqqk42ls-en.
8. KMPG, and Bocconi University. "Study on State Asset Management in the EU: Hungary." Brussels: European Commission, 2018. https://commission.europa.eu/document/download/94ace5c8-c996-481e-929d-cf84fe506e17_en?filename=dg_ecfin_am_final_report_pillar_1_eu28_hungary.pdf.
9. Ministry of SOEs. "MSOE's Strategic Planning 2020-2024." Ministry of SOEs, 2019. https://www.bumn.go.id/profil/erabarukami/rencana-strategis?lang=id.
10. Moldicz, Csaba. "Hungary Economy Briefing: State-Owned Enterprises in Hungary – China-CEE Institute," February 17, 2021. https://china-cee.eu/2021/02/17/hungary-economy-briefing-state-owned-enterprises-in-hungary/.
11. OECD. "Enhancing the Role of the Boards of Directors of State-Owned Enterprises." OECD Corporate Governance Working Papers, May 1, 2011. https://doi.org/10.1787/5kg9xfg6n4wj-en.

12. ———. “Good Practices in Supporting Supreme Audit Institutions.” Paris: OECD, 2010. https://www.eurosai.org/en/databases/products/OECD-Good-Practices-in-Supporting-Supreme-AuditInstitutions/.

13. ———. “National Contact Point for Responsible Business Conduct Peer Reviews: Hungary,” 2024. https://oecdmnkp.hu/CMS/Content/Report_final.pdf.

14. Sahrasad, Herdi, and Teuku Syahrul Ansari. “BUMN, Politics, and Corruption in the Reformasi Era: A Political Economy Reflection:” In *Proceedings of the 1st International Conference on Anti-Corruption and Integrity*, 90–95. Jakarta, Indonesia: SCITEPRESS - Science and Technology Publications, 2019. https://doi.org/10.5220/0009400300900095.

15. Simbolon Simbolon, Alum. “The Amounts of Anti Trust Law in Indonesia.” In *Proceedings of the International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2018)*. Bali, Indonesia: Atlantis Press, 2018. https://doi.org/10.2991/icblt-18.2018.33.

16. Singhal, Benu. “Reasons for Corporate Restructuring.” *Financial Edge* (blog), 2023. https://www.fe.training/free-resources/restructuring/reasons-for-corporate-restructuring/.

17. Stapenhurst, Rick, and Jack Titsworth. “Features and Functions of Supreme Audit Institutions.” Knowledge Notes. Washington: World Bank, June 2002. https://openknowledge.worldbank.org/handle/10986/9766.

F. Web sources

1. ASH. “Forum Hukum BUMN Uji UU Keuangan Negara dan UU BPK.” hukumonline.com, June 17, 2013. https://www.hukumonline.com/berita/a/forum-hukum-bumn-uji-uu-keuangan-negara-dan-uu-bpk-lt51beeaa52569f/.

2. Asikin, Mohamad Nur. “Terungkap! Sulitnya Swasta Investasi Di Sektor Perkeretaapian,” August 18, 2017. https://www.jawapos.com/bisnis/01126422/terungkap-sulitnya-swasta-investasi-di-sektor-perkeretaapian#google_vignette.

3. Asshiddiqie, Jimly. “UU Omnibus (Omnibus Law), Penyederhanaan Legislasi, dan Kodifikasi Administratif.” Accessed October 15, 2024. https://www.jimlyschool.com/baca/34/uu-omnibus-omnibus-law-penyederhanaan-legislasi-dan-kodifikasi-administratif.

4. Bank Indonesia. “History of Bank Indonesia.” History of Bank Indonesia. Accessed July 5, 2024. https://www.bi.go.id/en/tentang-bi/sejarah-bi/default.aspx.

5. BNI. “Sejarah | BNI.” Brief History of Company. Accessed July 5, 2024. https://www.bni.co.id/en-us/company/about-bni/history.

6. Britannica. “Croatia | Facts, Geography, Maps, & History.” Accessed October 21, 2024. https://www.britannica.com/place/Croatia.

7. ———. “Hungary | History, Map, Flag, Population, Currency, & Facts.” Accessed November 28, 2024. https://www.britannica.com/place/Hungary.

8. Britannica Money. “Holding Company,” December 21, 2024. https://www.britannica.com/money/holding-company.

9. Bryne, Dan. “What Is a Two-Tiered Board Structure?” The Corporate Governance Institute. Accessed October 31, 2024. https://www.thecorporategovernanceinstitute.com/insights/lexicon/what-is-a-two-tiered-board-structure/.

10. CNN Indonesia. “Kronologi Pembubaran Merpati, dari Merugi, Digugat Hingga Pailit.” Ekonomi, February 22, 2023. https://www.cnnindonesia.com/ekonomi/20230222180839-92-916559/kronologi-pembubaran-merpati-dari-merugi-digugat-hingga-pailit.

11. ———. “PPA Protes Jatah Bagi Harta Pailit Kertas Leces Hanya Rp1,2 M.” Ekonomi, September 9, 2019. https://www.cnnindonesia.com/ekonomi/20190909163446-92-428837/ppa-protes-jatah-bagi-harta-pailit-kertas-leces-hanya-rp12-m.

12. Daelami, Muawwan. “Empat BUMN Karya Terlilit Utang Rp 214 Triliun, Sanggup Bayar?” investor.id, May 22, 2023. https://investor.id/market/330021/empat-bumn-karya-terlilit-utang-rp-214-triliun-sanggup-bayar.

13. Dewansyah, Bilal. “Kedudukan Peraturan Menteri dalam Hierarki Peraturan Perundang-undangan | Klinik Hukumonline.” hukumonline.com, May 19, 2014. https://www.hukumonline.com/klinik/a/kedudukan-peraturan-menteri-dalam-hierarki-peraturan-perundang-undangan-lt5264d6b08c174/.

14. Direktorat Jenderal Perhubungan Laut. “Pelabuhan Patimban Resmi Dikelola PT Pelabuhan Patimban Internasional Dengan Skema KPBU Kementerian Perhubungan Republik Indonesia,” March 17, 2021. https://dephub.go.id/post/read/pelabuhan-patimban-resmi-dikelola-pt-pelabuhan-patimban-internasional-dengan-skema-kpbu.

15. EUGO. “Key Facts about Hungary.” Economy | eugo.gov.hu. Accessed November 28, 2024. http://eugo.gov.hu/key-facts-about-hungary/economy.

16. European Union. “Croatia – EU Country Profile.” Accessed October 21, 2024. https://european-union.europa.eu/principles-countries-history/eu-countries/croatia_en.

17. ———. “European System of Accounts - ESA 2010,” December 4, 2013. https://ec.europa.eu/eurostat/web/products-manuals-and-guidelines/-/ks-02-13-269.

18. FNH. “Tujuh Poin Catatan FITRA Terhadap PP Penyertaan Modal BUMN.” hukumonline.com, January 23, 2017. https://www.hukumonline.com/berita/a/7-poin-catatan-fitra-terhadap-pp-penyertaan-modal-bumn-lt58854ff509f13/.

19. Fontinelle, Amy. “Holding Company: What It Is, Advantages and Disadvantages.” Investopedia, July 29, 2024. https://www.investopedia.com/terms/h/holdingcompany.asp.

20. HEP. “About HEP Group.” hep.hr. Accessed October 30, 2024. https://www.hep.hr/about-hep-group/2502.

21. Heriani, Fitri Novia. “Merpati Airlines Resmi Pailit.” hukumonline.com, June 7, 2022. https://www.hukumonline.com/berita/a/merpati-airlines-resmi-pailit-lt629f329c11f05/.

22. Hidayat, Rofiq. “Ini 5 Poin Pengaturan dalam RUU BUMN.” hukumonline.com, November 18, 2021. https://www.hukumonline.com/berita/a/ini-5-poin-pengaturan-dalam-ruu-bumn-lt619629d90823a/.

23. INA. “History.” INA, d.d. Accessed October 30, 2024. https://www.ina.hr/en/about-ina/profil-kompanije/povijest/.

24. Inilah.com. “Begini Postur Utang BUMN di Era Jokowi.” Berita Media DJKN, January 29, 2019. https://www.djkn.kemenkeu.go.id/berita-media/baca/12849/Begini-Postur-Utang-Bumn-di-Era-Jokowi.html.

25. KementerianBUMN. “Main Duties and Functions of BUMN.” Kementerian BUMN. Accessed January 9, 2025. https://bumn.go.id/profil/peranan.

26. Khairiyah, Ruisa. “Utang BUMN Hampir Rp800 T, Nasib BUMN Karya Menggantung - Market,” June 15, 2023. https://www.bloombergtechnoz.com/detail-news/8481/utang-bumn-hampir-rp800-t-nasib-bumn-karya-menggantung.

27. Kualanamu International Airport. “Company History.” Accessed November 12, 2024. https://avi.id/en/about.

28. Lie, Luther. “In Indonesia, State-Owned Enterprise Reforms Are Supporting Infrastructure Development Progress.” Asia Global Online, July 28, 2022. https://www.asiaglobalonline.hku.hk/indonesia-state-owned-enterprise-reforms-are-supporting-infrastructure-development-progress.

29. Mediatama, Grahanusa. “UU keuangan negara digugat ke MK.” kontan.co.id, May 22, 2013. https://nasional.kontan.co.id/news/uu-keuangan-negara-digugat-ke-mk.

30. Minister of SOEs. “Business Clusters.” Kementerian BUMN, March 1, 2022. https://www.bumn.go.id/portofolio/klaster-usaha?lang=en.

31. Ministry of Foreign and European Affairs of Croatia. “15th Anniversary of Croatia’s NATO Membership.” template.gov.hr. Accessed October 21, 2024. https://mvep.gov.hr/press-22794/15th-anniversary-of-croatia-s-nato-%20membership/272151#:~:text=National%20ratification%20instruments%20were%20deposited,document%20on%20April%201%2C%202009.

32. Ministry of SOEs. “Annual Report.” Kementerian BUMN, 2023. https://bumn.go.id/publikasi/laporan/laporan-tahunan.

33. ———. “History of the Ministry of SOEs.” Kementerian BUMN. Accessed July 11, 2024. https://bumn.go.id/profil/peranan.

34. ———. “National Strategic Project Accelerator.” bumn.go.id. Accessed September 18, 2024. https://bumn.go.id/penggerak/detail/akselerator-proyek-strategis-nasional-1105670322?lang=en.

35. ———. “Tiga Omnibus Peraturan Menteri BUMN telah Diundangkan.” Publikasi, March 30, 2023. https://bumn.go.id/publikasi/berita/rilis/detail/tiga-omnibus-peraturan-menteri-bumn-telah-diundangkan-2r.

36. Minnesota Legislature. “Frequently Asked Questions About the Minnesota Legislature.” Minnesota State Legislature. Accessed October 16, 2024. https://www.leg.mn.gov/leg/faq/faq?id=147.

37. MKRI, Humas. “Menyoal Konstitusionalitas Privatisasi Anak Perusahaan Pertamina | Mahkamah Konstitusi Republik Indonesia,” August 11, 2020. https://www.mkri.id/index.php?page=web.Berita&id=16484.

38. ———. “Pemerintah: Penjualan Saham Anak Perusahaan Persero Bukanlah Privatisasi | Mahkamah Konstitusi Republik Indonesia,” October 15, 2020. https://www.mkri.id/index.php?page=web.Berita&id=16663&menu=2.

39. OECD. “Croatia.” OECD. Accessed October 21, 2024. https://www.oecd.org/en/countries/croatia.html.

40. ———. “General Government Deficit.” Accessed September 8, 2024. https://www.oecd.org/en/data/indicators/general-government-deficit.html.

41. ———. “Hungary.” OECD member. Accessed November 28, 2024. https://www.oecd.org/en/countries/hungary.html.

42. Pertamina (Persero), P. T. “Tonggak Sejarah PT Pertamina (Persero) | Pertamina.” Accessed November 7, 2024. https://www.pertamina.com/id/www.pertamina.com.

43. PLN. “Listrik Untuk Kehidupan Yang Lebih Baik.” PT PLN (Persero). Accessed November 7, 2024. https://web.pln.co.id/en/about-us/company-profile.

44. PT Adhi Karya. “Financial Report 2023.” Keuangan, 2023. https://adhi.co.id/laporan-keuangan/.

45. PT Angkasa Transportindo Selaras. “KSO HLP Pengelola Bandar Udara Halim Perdanakusuma - ATS Airports,” June 21, 2023. https://ats-airport.co.id/2023/06/21/kso-hlp-pengelola-bandar-udara-halim-perdanakusuma/.

46. PT Danareksa. “About PT Danareksa.” Accessed September 14, 2024. https://danareksa.co.id/en/about/pt-danareksa.

47. ———. “BUMN Danareksa Holding Structure.” Accessed September 14, 2024. https://danareksa.co.id/en/about/group-structure.

48. PT Hutama Karya. “Financial Statement 2023.” Financial Statement, 2023. https://www.hutamakarya.com/en/financial-statement.

49. PT Perusahaan Pengelola Aset. “Banking Non-Performing Loan (NPL) Management.” Accessed September 13, 2024. https://www.ptppa.com/banking-non-performing-loan-npl-management/.

50. ———. “SOEs Restructuring.” Accessed September 13, 2024. https://www.ptppa.com/soes-restructuring/.

51. ———. “Special Situations Fund (SSF).” Accessed September 13, 2024. https://www.ptppa.com/special-situations-fund-ssf/.

52. PT PP (Persero) Tbk. “PTPP - Financial Report.” Financial Reports, 2023. https://www.ptpp.co.id/.

53. PT Waskita Karya (Persero) Tbk. “PT Waskita Karya (Persero) Tbk - Investor Relations -.” Accessed September 21, 2024. https://investor.waskita.co.id/download.html.

54. PT Wijaya Karya. “Investor Relations: Financial Results.” Financial Results, 2023. https://investor.wika.co.id/financials.html?year=2023.

55. Putrajaya Committee. “GLC TRANSFORMATION MANUAL – PCG.” GLC Transformation Manual, July 29, 2005. https://pcg.gov.my/glc-transformation-manual/.

56. Saputra, Dany. “Ini Alasan Investor Swasta Ogah Garap Proyek Kereta Api.” Bisnis.com, July 7, 2022. https://ekonomi.bisnis.com/read/20220707/98/1552075/ini-alasan-investor-swasta-ogah-garap-proyek-kereta-api.

57. Staff, T. L. D. “Omnibus Bill.” The Law Dictionary, November 4, 2011. https://thelawdictionary.org/omnibus-bill.

58. The Hungarian Government. “About Hungary - The Hungarian State - The Fundamental Law.” Accessed December 3, 2024. https://2015-2019.kormany.hu/en/doc/the-hungarian-state/the-fundamental-law.

59. The Investopedia Team. “Budget Deficit: Causes, Effects, and Prevention Strategies.” Investopedia, February 9, 2024. https://www.investopedia.com/terms/b/budget-deficit.asp.

60. ———. “Pareto Efficiency Examples and Production Possibility Frontier.” Investopedia, 2024. https://www.investopedia.com/terms/p/pareto-efficiency.asp.

G. Curriculum Vitae

Hidayatulloh is an Indonesian citizen who was born in Bogor on August 30, 1987. He began his studies at the Deak Ferenc Doctoral School in Law and Political Sciences, Faculty of Law, University of Miskolc in 2021 with a Stipendium Hungaricum scholarship. Previously, he completed his Bachelor of Law at the Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta, in 2007-2011. In 2012-2014, he completed his Master of Law at the Faculty of Law, University of Indonesia.

Since 2014, he has started his career as a junior lecturer at the Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta. In addition, he was the coordinator of the Law Laboratory in 2016-2018 and the secretary of the undergraduate law study program in 2018-2021. During his time as a lecturer, he completed his Basic Education for Lawyer Profession in 2017 and Professional Mediator Education in 2019.

During his studies in Miskolc, he participated in several trainings, including: (1) Summer School of International Arbitration on 12-23 September 2022 at the Faculty of Law International University of Sarajevo; (2) EDELNet PhD Blended Intensive Program at the

Faculty of Law University of Bologna on 8-12 May 2023; (3) Summer School The European Union, United Nations, and Global Governance at the University of Leiden on 12-23 June 2023; (4) PhD/Early Career Researcher Workshop on Global Corporations and International Law at the Max Planck Institute for Comparative Public Law and International Law on 13-14 July 2023; and (5) EDELNet+ PhD Conference & Training Program at the University of Wroclaw on 7-11 October 2024. Moreover, he actively participated in several conferences at various universities in Hungary and neighboring countries such as Slovakia and the Czech Republic.

He has written several articles published in national journals, international journals, and book chapters. His writings can be accessed through:
ORCiD: https://orcid.org/0000-0002-8449-6351.
Other IDs:
http://www.scopus.com/inward/authorDetails.url?authorID=57216677031&partnerID=MN8TOARS.

H. Researcher's Publications During Study Period (2021-2025)

1. Asmawi, Asmawi, Abu Thamrin, and **Hidayatulloh Hidayatulloh**. "The Reformulation of Pancasila Constitutional State: Maqâshid al-Syarî`ah's Perspective." *Madania: Jurnal Kajian Keislaman* 26, no. 1 (July 6, 2022): 95. https://doi.org/10.29300/madania.v26i1.6807.
2. Efrilia, Erma, Dwi Nur Fauziah Ahmad, Amiludin Amiludin, and **Hidayatulloh Hidayatulloh**. "Implementation of Permendikbudristek Number 30 of 2021 And The Law on The Criminal Action of Sexual Violence Towards The Behavior of Sexual Harassment by Educators To Students In The Campus Environment (Case Study of The University of Muhammadiyah Tangerang)." *Justitia Jurnal Hukum* 7, no. 1 (June 14, 2023). https://doi.org/10.30651/justitia.v7i1.18386.
3. **Hidayatulloh, Hidayatulloh**. "Business Judgment Rule and Its Implementation in Indonesian Corporate Law." In *A Studia Iurisprudentiae Doctorandorum Miskolciensium*. Miskolc: University of Miskolc, 2021.

4. ———. “Corporate Crime and State-Owned Enterprises.” *Justicia Journal of International Legal Sciences* 11, no. 19–20 (2023): 142–49. https://sites.google.com/unite.edu.mk/justicia/vol-11-no-19-20-2023.

5. ———. “Human Rights and Data Protection in the Digital Financial Ecosystem.” *JHR (Jurnal Hukum Replik)* 11, no. 1 (April 1, 2023): 12–28. https://doi.org/10.31000/jhr.v11i1.8110.

6. ———. “Legal Pluralism of Civil Law in Indonesian Dual Banking System.” In *Development of Islamic Economy: Lesson Learned from Various Countries*. Jakarta: Yayasan Bhakti Masyarakat Ekonomi Syariah, 2024. https://drive.google.com/file/d/1Gw1zfZ5D-kGYyuPy00PNlGp7xqj4W0Ot/view.

7. ———. “Value Added Tax for Foreign Digital Plaftorm: Indonesian Legal Framework.” In *A Studia Iurisprudentiae Doctorandorum Miskolciensium*. Miskolc: University of Miskolc, 2022.

8. **Hidayatulloh, Hidayatulloh**, and Éva Erdős. “Indonesian Financial Law: History and Recent Development.” *Curentul Juridic/Juridical Current* 96, no. 2 (August 15, 2024): 61–80. https://doi.org/10.62838/CJJC.97.2.12.

9. ———. “Legal Risk of State-Owned Enterprises’ Debt.” *European Journal of Law and Political Science* 3, no. 1 (January 20, 2024): 10–16. https://doi.org/10.24018/ejpolitics.2024.3.1.120.

10. ———. “Restrengthening the Role of Supreme Audit Agency in Supervising State-Owned Enterprises.” *International Comparative Jurisprudence* 8, no. 2 (December 2022): 152–60. https://doi.org/https://doi.org/10.13165/j.icj.2022.12.003. ***(Scopus Q4)***

11. ———. “State-Owned Enterprise’s Debt in the State Financial Regime.” *Sriwijaya Law Review* 7, no. 1 (January 27, 2023): 105. https://doi.org/10.28946/slrev.Vol7.Iss1.1843.pp105-120. ***(Scopus Q3)***

12. ———. “The Legal Aspects of Privatization in Electricity Business Sector.” *Jurnal Cita Hukum* 10, no. 2 (August 25, 2022): 267–88. https://doi.org/10.15408/jch.v10i2.23540. ***(Web of Science)***

13. **Hidayatulloh, Hidayatulloh**, Éva Erdős, and Miklós Szabó. "The Intricate Justice of Poverty: A Case of The Land of Gold in Papua Indonesia." *Journal of Indonesian Legal Studies* 7, no. 2 (December 21, 2022): 557–84. https://doi.org/10.15294/jils.v7i2.58030. ***(Scopus Q1)***

14. Ilahi, M. Ridho, M. Nurul Irfan, Kamarusdiana Kamarusdiana, **Hidayatulloh Hidayatulloh**, and Eva Achjani Zulfa. "Fatwa Institutions in Handling Religious Blasphemy Crimes in Indonesia and Malaysia." *Al-Ahkam* 34, no. 1 (April 30, 2024): 33–62. https://doi.org/10.21580/ahkam.2024.34.1.18624. ***(Scopus non-Q)***

15. Jamaluddin, Jamaluddin, **Hidayatulloh Hidayatulloh**, Ahmad Zaini, and Sanawi Sanawi. "The Problems of Implementing Halal Certification through the Self-Declaration Program for MSMEs in Indonesia: A Case Study." *International Journal of Advances in Social and Economics* 4, no. 1 (April 30, 2022): 30–36. https://doi.org/10.33122/ijase.v4i1.221.

16. Julistiyan, Ridoni, and **Hidayatulloh**. "Rules and Application of Trading Robot on Sharia Stock in Indonesia." *AL-IKTISAB: Journal of Islamic Economic Law* 7, no. 2 (2023): 163–76. https://doi.org/10.21111/aliktisab.v7i2.10588.

17. Mardiyanto, Ibnu, and **Hidayatulloh Hidayatulloh**. "The Responsibility to Protect (R2P) Concept as an Attempt for Protection of Human Rights in International Humanitarian Law Context." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 30, 2023, 103–18. https://doi.org/10.24090/volksgeist.v6i1.7229. ***(Scopus Q2)***

18. Nizami, Auliya Ghazna, Andini Rahma Hidayah, and **Hidayatulloh**. "Inappropriate Behavior in Buying and Selling Usernames on Twitter: An Islamic Law Perspective." *Jurnal Hukum Islam* 21, no. 2 (December 15, 2023): 309–34. https://doi.org/10.28918/jhi_v21i2_04. ***(Scopus non-Q)***

19. Nuzul, and **Hidayatulloh Hidayatulloh**. "Islamic and Cultural Negotiations in Endogamous Marriage in Kerinci." *Jurnal Hukum Islam* 20, no. 1 (June 16, 2022): 49–76. https://doi.org/10.28918/jhi.v20i1.6515. ***(Scopus non-Q)***

20. Putri, Tiara, Amiludin Amiludin, Dwi Nurfauziah Ahmad, and **Hidayatulloh Hidayatulloh**. "Inadequate Cryptocurrency and Money Laundering Regulations in

Indonesia (Comparative Law of US and Germany)." *Yustisia Jurnal Hukum* 12, no. 2 (August 2, 2023): 129. https://doi.org/10.20961/yustisia.v12i2.71835. ***(Scopus non-Q)***

21. Supyadillah, Asep, **Hidayatulloh Hidayatulloh**, and Zainal Arif. "Diversity and Uniqueness of Sovereign Sukuk Issuance: Indonesian Experience." *Journal of Ecohumanism* 4, no. 2 (January 20, 2025). https://doi.org/10.62754/joe.v4i2.5964. ***(Scopus Q2)***

Note:

Articles number 3, 4, 8. 9, 10, 11, and 12 are related to the topic of Ph.D. theses.

Articles number 5, 6, 7, and 13 are essay assignments for courses during the study that were published in journals.

Articles number 1, 2, 14, 15, 16, 17, 18, 19, 20, and 21 are the result of collaboration with colleagues in Indonesia.

I. Oral Presentations

1. Governance Legal Reform of State-Owned Enterprises: A Study of Contemporary Indonesia. EDELNet+Ph.D. Conference at University of Wroclaw, Poland on 7-11 October 2024.
2. The Role of State-Owned Enterprises in National Strategic Projects and Their Impact on Corporate Governance. International conference Hopes of Legal Science held by Faculty of Law, University of West Bohemia, The Czech Republic on 24 November 2023.
3. The Role of State-Owned Enterprises in the Indonesia-China High-Speed Railway Project and Its Legal Implications for State Finance. Doktoranduszok Fóruma held by Doctoral School of Law, University of Miskolc on 23 November 2023.
4. Legal Position of OECD Guidelines on Corporate Governance for State-Owned Enterprises among Member Countries. International conference on Crisis, Economy,

Technology and Law held by University of Pécs and Károli Gáspár University of the Reformed Church on 17 November 2023.

5. State-Owned Enterprises as a Quasi-Governmental Agency. Via Scientiae Iuris held by Doctoral School of Law, University of Miskolc on 8 September 2023.
6. Joint Venture Agreement between Indonesia and China: Legal Policy Analysis for the Indonesian High-Speed Rail. Workshop on Global Corporations and International Law held by Max Planck Institute for Comparative Public Law and International Law, Heidelberg Germany on 13-14 July 2023.
7. Rule of Law and Supervision of State-Owned Enterprises. The XXV Doctoral Student's Conference held by Károli Gáspár University of the Reformed Church on 26 May 2023.
8. Human Rights and State-Owned Enterprises: Implementation of the UN Guiding Principles on Human Rights and Business. The International Scientific Conference of Doctoral Students and Young Researchers 'Law without Borders' organized by Faculty of Law, Pavol Jozef Šafárik University in Košice on 27 April 2023.
9. Rethinking the Position of State-Owned Enterprises between Public Law and Private Law. The International Conference 'The Economic and Legal Management of the Crisis' organized by Faculty of Law, University of Pécs and Faculty of Law, Károli Gáspár University on 7 April 2023.
10. Business Judgment Rule and State-Owned Enterprises. The International Scientific Conference 'The Law of the Future – The Future of Law' organized by Faculty of Law, the Pan-European University in Bratislava on 31 March 2023.
11. Human Rights and Digital Finance: Constructive Study on Personal Data Protection in Indonesia. VIA SCIENTIAE IURIS the international conference for PhD students organized by Deak Ferenc Doctoral School of Law, the University of Miskolc on 24 February 2023.
12. Financial Autonomy of Local Self-Government: A Case of Indonesia. Annual Scientific Conference of the Central European Academy in Budapest 6-7 October 2022 held by Central European Academy.

13. The Legal Risk of State-Owned Enterprise Debt. First EDELNet PhD Online Conference on Climate Change, Public Control and Human Rights: Legal Scholarship in the Face of Current Global Challenge, 13 October 2022 held by the EDELNet+PhD Training Programme.
14. Value Added Tax for Foreign Digital Plaftorm: Indonesian Legal Framework. Doctoral Forum Conference, 17 November 2022 held by University of Miskolc.
15. Personal Data Protection: Indonesian and European Legal Framework. The Peculiarities of Jurisprudence online conference, 16 December 2022 held by Doctoral School of Law and Political Sciences, University of Gyor.
16. The Legal Reform of Digital Taxation in Indonesia. Conference on Digital Environment of the State and Law in the 21st Century, 13rd May 2022, University of Szeged.
17. State-Owned Enterprise's Debt in the Perspective of State Finance. 25th Spring Wind Conference, 6-8th May 2022, University of Pécs.
18. Introduction to Financial Law and Islamic Capital Market. Capital Market Community Online Webinar, 27th April 2022, Syarif Hidayatullah State Islamic University Jakarta, Indonesia.
19. The Business Judgement Rule and Its Implementation in State-Owned Enterprises. Doktoranduszok Fóruma Konferencia, University of Miskolc, 18 November 2021.
20. The Privatization of State Electricity Company. The 10th Jubilee Interdisciplinary Doctoral Conference, Doctoral Student Association of University of Pécs, 12-13 November 2021.
21. Legal Reform of Indonesia's State-Owned Enterprises. National Conference of Doctoral Students in Law, University of Miskolc, 27 October 2021.
22. Covid-19 Pandemic as a Force Majeure Clause in Indonesia. The 5th International Conference on Law and Justice, Syarif Hidayatullah State Islamic University Jakarta Indonesia, 13 October 2021 (online).

23. Protection of Children's Rights during the Covid-19 Pandemic: A Case Study in Indonesia. Children's Rights VS. Parental Responsibility, international conference for doctoral students and doctoral candidates, University of Miskolc, 11 October 2021.

APPENDIXES

Appendix 1: Summary of OECD Guidelines on Corporate Governance of State-Owned Enterprises

Chapter	Guideline	Annotation
Rationales for state ownership	The state exercises the ownership of SOEs in the interest of the general public. It should carefully evaluate and disclose the objectives that justify state ownership and subject these to a recurrent review.	a) To maximize value for society through an efficient allocation of resources. b) To conceptualize state ownership, role in governance, implementation of ownership policies, and management responsibilities. c) To provide procedures of political accountability and disclosed to the general public. d) To formulate policies for business sectors that fall into the categories of public interest and predominantly economic activities.
The state's role as an owner	The state should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness.	a) To facilitate and systematize the legal structures and obey customarily recognized corporate rules. b) To refrain from excessive interference with SOE management. c) To appreciate SOE boards' independence in performing their duties. d) To identify the ownership entity clearly, whether it is in a central ministry,

		separate administrative entity, or within a specific sector ministry. e) To define the relationship of the ownership entity with other government bodies, including the state supreme audit institutions. f) To be an active and informed owner on the effective exercise of ownership rights.
State-owned enterprises in the marketplace	Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities.	a) To avert a conflict of interests, segregate the state's function between a significant market player and an arbitrator. b) All parties, including creditors and competitors, can access well-organized remedies through impartial legal or arbitration processes when they regard the violation of their rights. c) SOE, which combines economic activities and public policy objectives, has transparency and disclosure cost revenue structures. d) Costs related to public policy objectives should be funded by the state and disclosed. e) SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulation. f) SOEs' economic activities should face market consistent conditions

		regarding access to debt and equity finance. g) Public procurement should be competitive, non-discriminatory, and safeguarded by appropriate standards of transparency between SOEs and private enterprises.
Equitable treatment of shareholders and other investors	Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognize the rights of all shareholders and ensure shareholders' equitable treatment and equal access to corporate information.	a) To treat all shareholders equally. b) To observe a high degree of transparency. c) To convince all SOEs comply with the national corporate governance code. d) To supply adequate information about public policy objectives. e) To ensure effective redress and dispute resolution mechanisms in co-operative projects between SOEs and private companies.
Stakeholder relations and responsible business	The state ownership policy should fully recognize SOEs' responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders. It should make clear any expectations the state has in respect of responsible business conduct by SOEs.	a) To acknowledge and appreciate stakeholders' rights establish by law or through mutual agreements. b) To operate more transparently with stakeholders. c) To prevent fraud and corruption by developing and implementing compliance programs. d) To minimize reputational risks and be perceived as "good corporate citizens." e) To prevent and refuse all political interference,

		including to finance political activities.
Disclosure and transparency	State-owned enterprises should observe a high standard of transparency and be subject to the same high-quality accounting, disclosure, compliance, and auditing standards as listed companies.	a) To declare material financial and non-financial information with high quality internationally well-known standards of corporate disclosure. b) To have an independent external audit based on high-quality standards. c) To develop consistent reporting on SOEs and publish annually.

Appendix 2: List of Dutch-Owned Companies Nationalized by Indonesia and Changed Their Name

No	Previous Company Name	New Company Name	Business fields	Location
1.	N.V. Machine Fabriek & Scheepswerf "Molenvliet"	Metalwork Sabang-Merauke	steel machinery and construction factories	Jakarta and Bandung
2.	N.V. Philip's Fabricage & Handel Mij	P.T. Ralin	radio, electric lights, workshops, and telecommunications	Jakarta, Bandung, Semarang, Medan, and Surabaya
3.	N.V. Nimaf	P.T. Almina	wine, alcohol, spirits, and coconut oil	Jakarta, Banuwangi, Cilacap, Mojokerto, and Kediri
4.	N.V. W.A. Hoek's Machine & Zuurstof Fabriek	P.T. Zatas	machine and acid plant	Jakarta, Bandung, and Surabaya
5.	N.V. Industriele Mij Gebr. van Swaay	P.T. Metrika	electric tools machines	Jakarta, Bandung, Surabaya, and Bagan Siapi-api
6.	N.V. Beeger van Kempen	P.T. Pradipta	alpaca items and jewelry	Jakarta, Bandung, and Surabaya
7.	N.V. Machinefabriek Braat	P.T. Barata	machinery and construction factories	Tegal and Sukabumi
8.	N.V.P.P.C.M.	Pabrik Semen Padang	Cement	Indarung
9.	N.V. Papier Fabriek Padalarang	Padalarang	Paper	Padalarang

10.	N.V. P.A. Regnault's verf, inkt, & blikfabrieken	P.T. Patna (Pabrik Tjat Negara)	paint, ink, and cans	Jakarta and Surabaya
11.	N.V. A.I.M.E.	P.T. Belindo	Sulfur	Telaga Bodas
12.	N.V. Java Rubber Industrie	P.T. Pikan (Perusahaan Industri Karet Negara)	rubber factory	Bandung
13.	N.V. Java Textiel Mij N.V. J.T.M.	P.T. Texin	weaving and spinning	Tegal
14.	N.V. Boekhandel & Drukkerij G. Kolff & Co.	P.T. Gita Karya	ink and printing	Jakarta and Surabaya
15.	N.V. Verenigde Javasche Houlhandel Mij	P.T. Kabana	wood industry	Surabaya, Semarang, and Yogyakarta
16.	N.V. Tegalsche prauwen veer	P.T. IPPA	Shipping	Tegal
17.	N.V. Handel Mij "Europa Azie"	P.T. Lakuna	display and home furnishings company	Jakarta and Surabaya

Source: Siahaan, Bisuk, 1996[536]

[536] Siahaan, Bisuk. "Industrialisasi di Indonesia sejak hutang kehormatan sampai banting strir." Jakarta, Pustaka Data, 1996, p. 324-325.

Appendix 3: Dutch-owned Industrial and Mining Companies Taken Over by BAPPIT

No	Parent Company Name	Name of Subsidiary	Business fields	Location
1.	N.V.P.P.C.M. (Padang Portland Cement Mij)		cement and paper bag	Indarung
2.	N.V. Gebr Veth's	N.V. Gebr Veth's		Jakarta
3.	N.V. Papier Fabriek, Padalarang	N.V. Letjes	paper products	Padalarang and Letjes
4.	N.V. P.A. Regnault's Verf, Inkt & Blikfabrieken, Batavia	N.V. P.A. Regnault's Verf, Inkt & Blikfabrieken Surabaya	paint, ink and can factories	Jakarta and Surabaya
5.	N.V. A.I.M.E.	It owns shares in: 1. Telaga Bodas company 2. N.V. Sepanjang	BAPPIT only carried out/took over laboratory research	Telaga Bodas
6.	N.V. Telaga Bodas		sulfur factory	Telaga Bodas
7.	N.V. Seboekoe Mijn & Landbouw Mij Loapari		coal mining	Sebuku
8.	N.V. Philip's Fabricage & Handel Mij		radio, electric lights, workshops, and telecommunications	Jakarta
9.	N.V. NIMEF	1. NIMEF 2. Mexolie 3. Mexolie 4. Mexolie 5. Mexolie 6. Mexolie 7. Aparak 8. Fabr. Spiritus	metal and packaging factories wine factory	Jakarta Banyuwangi Cilacap Makassar Kediri Kebumen Jakarta Kota Mojokerto

10.	N.V. W.A. Hoek's Machine & Zuurstof Fabriek, Batavia	1. N.V. W.A. Hoek's 2. N.V. W.A. Hoek's	acid	Bandung Surabaya
11.	N.V. Machine Fabriek & Scheepswerk Molenvliet, Batavia	N.V. Molenvliet	machinery and construction factories	Bandung
12.	N.V. Industriele Maatschappij van Swaay Batavia	1. Gebr. van Swaay 2. Gebr. van Swaay 3. Gebr. van Swaay 4. Gebr. van Swaay	mechanical and electrical factories	Bandung Samarinda Bagan Siapi-api
13.	N.V. Begeer van Kempen & Vos, Batavia	1. N.V. Begeer van Kempen & Vos 2. N.V. Begeer van Kempen & Vos	alpaca items and jewelry	Bandung Surabaya
14.	N.V. Machine Fabriek Braat, Surabaya	5. N.V. Braat 6. N.V. Braat	machinery and construction factories	Tegal Sukabumi
15.	N.V. Boekhandel & Drukkerij G. Koff & Co. (including Kolff's Offset Drukkerij), Jakarta	1. Kolff's Inkt Fabriek 2. Noordhoff Kolff 3. Boekhandel & Drukk G. Kolff & Co	ink factory publishing publishing	Jakarta Surabaya
16.	N.V. Boekhandel & Drukkerij Visser & Co, Jakarta	1. Visser & Co. 2. N.V. Ruygrok Drukkerij & Co.	publishing	Bandung
17.	N.V. Drukkerij & Boekhandel G.C.T. Van Dorp & Co.	1. Van Dorp & Co.	publishing publishing publishing	Jakarta Surabaya Semarang

		2. Van Dorp & Co. 3. Van Dorp & Co. 4. Van Dorp & Co.	publishing	Bandung
18.	N.V. J.B. Wolters Uitgever Mij		publishing	Jakarta
19.	N.V. Ijsfabriek Petodjo	N.V. Petodjo	ice cube factory	Semarang Cilacap Surabaya Teluk Betung Tebing Tinggi Bogor Solo Cirebon Karawang Bandung Padang Garut Sukabumi Medan
20.	N.V. Verenigde Ijsfabrieken	N.V. New Singapore Ice Work	ice cube factory	Jakarta (2 factories) Bandung Cirebon Tegal Semarang Rembang/Pati Madiun Surabaya Malang Lumajang Panarukan Banyuwangi Jember

21.	N.V. Verenigde Javasche Houthandel Mij, Jakarta	1. Javahout 2. Javahout 3. Javahout	wood industry	Surabaya Surabaya Yogyakarta
22.	N.V. Van De Pol Jakarta	7. Van De Pol 8. Van De Pol	home furnishings factory	Surabaya Medan
23.	N.V. Handel Mij Europa Azie, Jakarta	Europa-Azie	screen and household furniture factory	Surabaya
24.	N.V. Tegalsche Prauwenveer		ship transportation company	Tegal

Source: Siahaan, Bisuk, 1996[537]

[537] Siahaan, Bisuk. "Industrialisasi di Indonesia sejak hutang kehormatan sampai banting strir." Jakarta, Pustaka Data, 1996, p. 526-529.

Appendix 4: List of National Strategic Projects 2016-second semester June 2023

Year	Number of Projects Completed	Investment Value
January-June 2023	4 projects - 1 dam - 1 port - 1 toll road - 1 industrial area	55.2 trillion rupiah
2022	25 projects - 3 industrial areas - 3 ports - 1 transmission line for electricity and gas - 1 Waste Processing into Electrical Energy - 1 Cross Border Post - 4 power plants - 6 dams - 1 smelter - 1 train - 2 airports - 1 housing area - 1 upstream oil and gas	320 trillion rupiah
2021	24 projects - 6 toll roads - 1 train - 1 industrial area - 1 housing area - 2 Drinking Water Supply Systems - 11 dams - 1 port - 1 technology sector project	129.8 trillion rupiah
2020	12 projects - 1 airport - 1 train - 2 toll roads - 1 Drinking Water Supply System - 3 industrial areas	123.1 trillion rupiah

	- 3 dams - 1 port	
2019	30 projects - 4 airports - 9 roadways - 6 industrial areas - 2 smelters - 4 dams - 1 port - 2 technology sector projects - 2 trains	165.3 trillion rupiah
2018	32 projects - 2 trains - 4 dams - 1 irrigation - 10 toll roads - 5 Special Economic Zones - 1 airport - 4 smelters - 4 industrial areas - 1 Marine Fisheries Center	207.5 trillion rupiah
2017	10 projects - 2 toll roads - 1 roadway - 1 airport - 1 gas facility - 3 Cross Border Posts - 1 dam - 1 irrigation	61.4 trillion rupiah
2016	20 projects - 7 airports - 1 toll roads - 6 dams - 1 port - 1 gas pipeline - 4 Cross Border Posts	33.3 trillion rupiah

Source: Report of Priority Infrastructure Provision Acceleration Committee 2023 modified by the author.[538]

[538] The Committee for Acceleration of Priority Infrastructure Delivery, Report of Priority Infrastructure Provision Acceleration Committee 2023. https://kppip.go.id/wp-content/uploads/filebase/laporan_semester_kppip/Laporan-KPPIP-2023-semester-02.pdf.

Appendix 5: List of State-Owned Enterprises and Subsidiaries Working on National Strategic Projects

Company	Business sector	Number of projects
PT Pertamina (Persero)	gas and oil	14
PT Waskita Karya (Persero) Tbk	infrastructure	9
PT Hutama Karya (Persero)	infrastructure, property, and construction	8
PT Pelabuhan Indonesia (Persero)	port	8
PT Indonesia Asahan Aluminium (Persero)	aluminum	8
PT Jasa Marga (Persero) Tbk	construction and management of toll roads	6
PT Perusahaan Perdagangan Indonesia	trade and logistics	5
PT Perusahaan Listrik Negara (Persero)	electricity industry	4
PT Pembangunan Perumahan (Persero) Tbk	industry, construction, engineering procurement and construction	4
PT Kereta Api Indonesia (Persero)	railway management	2
PT Adhi Karya (Persero) Tbk	construction, real estate, infrastructure investment, and railway management	2
PT Danareksa (Persero)	investment and capital market	2
PT Aviasi Pariwisata Indonesia (Persero)	aviation and tourism	2
PT ASDP Indonesia Ferry (Persero)	integrated ferry and port services and waterfront tourist destinations	1
PT Wijaya Karya (Persero) Tbk	construction	1
PT Pupuk Indonesia (Persero)	fertilizer	1

PT Rajawali Nusantara Indonesia (Persero)	food distribution and trade	1
PT Perkebunan Nusantara III (Persero)	management, processing, and marketing of plantation products	1
PT Industri Kereta Api	railway infrastructure production	1
LKBN Antara	news agency	1

Source: Ministry of State-Owned Enterprises.[539]

[539] Ministry of SOEs, "National Strategic Project Accelerator," 2022, accessed 12 December 2024, https://www.bumn.go.id/penggerak/detail/akselerator-proyek-strategis-nasional-1105670322.

Appendix 6: List of State-Owned Holding Company

No	Type	Year of Establishment	Holding Company	Subsidiaries
1	Electricity	21 September 2022	PT Perusahaan Listrik Negara (electricity production)	PT PLN Indonesia Power (power plant)
				PT PLN Nusantara Power (power generation and maintenance services)
				PT PLN Energi Primer Indonesia (primary energy supplier and logistics procurement)
				PT PLN Icon Plus (internet, connectivity, electric vehicle charging, and solar power)
				PT PLN Batam (electricity business on Batam Island and its surroundings)
				PT PLN Tarakan (management of operation & maintenance services for power plants, transmission, distribution, and customer service in the Eastern Indonesia region)
				PT Haleyora Power (operation and maintenance of electricity transmission and distribution networks)
				PLN Enjiniring (engineering consultant)
				PT Energy Management Indonesia (energy and environmental conservation)
				PT PLN Mandau Cipta Tenaga Nusantara (supply of electricity and steam for oil and gas exploration)

				Majapahit Holding BV (financial institution domiciled in Amsterdam, Netherlands)
2	Finance and Mutual Fund	20 July 2022	PT Danareksa (investment)	PT Perusahaan Pengelola Aset (asset management company)
				PT Danareksa Finance (multifinance service)
				PT Danareksa Capital (fund management services)
				PT BRI Manajemen Investasi (investment management)
				PT BRI Danareksa Sekuritas (investment securities)
3	Defence Industry	20 April 2022	PT Len Industri (electronic system)	PT Dahana (energetic materials)
				PT Pindad (land platform, weapon, munition heavy equipment)
				PT Dirgantara Indonesia (aerospace platform)
				PT PAL Indonesia (naval platform, shipbuilding)
4	Tourism services	13 January 2022	PT Aviasi Pariwisata Indonesia (aviation and tourism)	PT Angkasa Pura I (air traffic services and business airports)
				PT Angkasa Pura II (air traffic services and business airports)
				PT Hotel Indonesia Natour (hotel operator and management)
				PT Pengembangan Pariwisata Indonesia (tourism development)
				PT Taman Wisata Candi Borobudur, Prambanan, & Ratu Boko (management of tourist parks including Borobudur temple, Prambanan temple and Ratu Boko temple)
				PT Sarinah (retail and trade)

5	Food	12 January 2022	PT Rajawali Nusantara Indonesia (agriculture, animal husbandry, fisheries, and trade)	PT Perusahaan Perdagangan Indonesia (food trade and logistics)
				PT Sang Hyang Seri (production of rice, seeds and fertilizers)
				PT Perikanan Indonesia (fishing industry)
				PT Berdikari (poultry and ruminant farming)
				PT Garam (salt production)
				PT Perusahaan Perdagangan Indonesia (food trade and logistics)
6	Survey services	17 December 2021	PT Biro Klasifikasi Indonesia (survey services)	PT Sucofindo (testing, inspection, and certification services in the mining sector)
				PT Surveyor Indonesia (national industrial and economic growth survey services)
7	Port	1 October 2021	PT Pelabuhan Indonesia (port management throughout Indonesia)	PT Pelindo Terminal Petikemas (port loading and unloading services)
				PT Pelindo Multi Terminal (non-container port loading and unloading services)
				PT Pelindo Solusi Logistik (off-port logistics services)
				PT Pelindo Jasa Maritim (ship operational services)
8	Ultra Micro	13 September 2021	PT Bank Rakyat Indonesia (banking)	PT Pegadaian (pawnbroker)
				PT Permodalan Nasional Madani (capital loan services for underprivileged families and small, micro, and medium business actors)

9	Hotel	29 December 2020	PT Wijaya Karya Realty	PT Hotel Indonesia Group (hotel network management and development)
				PT Hotel Indonesia Properti (hotel and hospitality)
				PT Sengigi Pratama Internasional (hotel and hospitality)
				PT Hotel Karya Indonesia (hotel and real estate)
				PT Makassar Coastal City (property and services industry)
				PT Jakarta River City (apartments and residential areas)
				PT Wijaya Karunia Realtindo (mixed use building development)
				PT WIKA Realty Minor Development (development and construction of hotels and villas)
				PT Kurnia Realty Jaya (property services and trade)
10	Hospital and medical care	30 June 2020	PT Pertamina Bina Medika IHC (hospital)	PT Krakatau Medika (hospital)
				PT Rumah Sakit Pelabuhan (hospital)
				PT Pelindo Husada Citra (hospital)
				PT Nusantara Medika Utama (hospital)
				PT Nusantara Sebelas Medika (hospital)
				PT Rolas Nusantara Medika (hospital)
				PT Rumah Sakit Bakti Timah (hospital)

11	Insurance and guarantee	16 March 2020	PT Bahana Pembinaan Usaha Indonesia (development of micro, small and medium enterprises)	PT Asuransi Kerugian Jasa Raharja (social insurance) PT Asuransi Jasa Indonesia (service insurance) PT Jaminan Kredit Indonesia (credit guarantee) PT Asuransi Kredit Indonesia (insurance and guarantee)
12	Pharmacy	31 January 2020	PT Bio Farma (pharmaceutical industry)	PT Kimia Farma (pharmaceutical industry)
				PT Indofarma (pharmaceutical industry)
				PT Industri Nuklir Indonesia (nuclear technology-based industry)
13	Energy, oil and gas	11 April 2018	PT Pertamina (oil and gas production)	PT Perusahaan Gas Negara (gas production)
14	Mining industry	27 November 2017	PT Mineral Industri Indonesia (mineral resources processing)	PT Aneka Tambang (gold and nickel production)
				PT Bukit Asam (coal mining)
				PT Freeport Indonesia (gold and copper mining)
				PT Indonesia Asahan Alumunium (aluminum smelting)
				PT Timah (tin mining)
15	Plantation	2 October 2014	PT Perkebunan Nusantara (management, processing and marketing of plantation commodities)	PT Industri Nabati Lestari (crude palm oil production)
				PT KPBN Inacom (agricultural services)
				PT LPP Agro Nusantara (educational institution for the agroindustry)
				PT. Bio Industri Nusantara (production of biological-based fertilizers)
				PT Sri Pamela Medika Nusantara (hospitals and health clinics)

				PT Riset Perkebunan Nusantara (research and increasing expertise capacity in all aspects of plantation agribusiness)
				PT Sinergi Gula Nusantara (sugar production)
16	Forest resources	2 October 2014	Perum Perhutani (forest resource management)	PT Inhutani I (forest wood product industry)
				PT Inhutani V (non-timber forest product industry)
16	Cement	7 January 2013	PT Semen Indonesia (cement production)	PT Semen Gresik (cement production)
				PT Semen Tonasa (cement production)
				PT Semen Padang (cement production)
				Thang Long Cement Company (cement production in Vietnam)
				PT Semen Kupang Indonesia (cement production)
				PT Solusi Bangun Indonesia (construction services and material supply)
				PT Semen Baturaja (cement production)
17	Fertilizer	3 April 2012	PT Pupuk Indonesia (fertilizer production)	PT Petrokimia Gresik (fertilizers, pesticides, and chemical products)
				PT Pupuk Kujang (fertilizer production)
				PT Pupuk Kalimantan Timur (urea and ammonia products)
				PT Pupuk Iskandar Muda (urea and ammonia products)
				PT Pupuk Sriwidjaja Palembang (urea and ammonia products)

				PT Rekayasa Industri (engineering and industrial services)
				PT Pupuk Indonesia Niaga (commercial intermediaries and aggregator-consolidator product marketing)
				PT Pupuk Indonesia Logistik (shipping and sea transportation services)
				PT Pupuk Indonesia Utilitas (factory utility services)
				PT Pupuk Indonesia Pangan (trading business for fertilizer products)

Source: State-Owned Enterprises Website (Ministry of SOEs).[540]

[540] Ministry of SOEs, "Business Clusters," accessed 10 September 2024, https://www.bumn.go.id/portofolio/klaster-usaha?lang=en.

Appendix 7: List of Indonesian State-Owned Enterprises based on the Value Chain and Business Ecosystem

No	Cluster	Company	Notes
1	Energy, Oil and Gas Industry	PT Perusahaan Listrik Negara (Persero)	Companies providing electricity for the public interest in adequate quantity and quality as well as cultivating profits and carrying out Government assignments in the electricity sector to support development by applying the principles of Limited Liability Companies.
		PT Pertamina (Persero)	Energy provider companies and new and renewable energy developers in order to support the creation of national energy independence. Pertamina oversees six Subholdings engaged in the energy sector, namely Upstream Subholding, which is operationally run by PT Pertamina Hulu Energi, Gas Subholding, which is run by PT Pertamina Gas Negara, Refinery & Petrochemical Subholding, which is run by PT Kilang Pertamina Internasional, Power & NRE Subholding which is run by PT Pertamina Power Indonesia, Commercial & Trading Subholding run by PT Pertamina Patra Niaga, and Subholding Integrated Marine Logistics run by PT Pertamina International Shipping.
2	Health Industry	PT Bio Farma (Persero)	Local vaccine manufacturer company in Indonesia produces vaccines and sera to support immunization in Indonesia and other countries. Bio Farma vaccines produced vaccines against measles, polio, hepatitis B, and pentavalent. Bio Farma has supplied vaccines to multiple countries through UNICEF,

			PAHO, and other organizations. Since 2020, it also serves as the holding company for listed state-owned enterprises Kimia Farma and Indofarma.
3	Manufacturing Industry	PT Biro Klasifikasi Indonesia (Persero)	The company is authorized to classify Indonesian-flagged merchant ships. Classification is classifying ships based on the construction of the hull, engine, and ship's electricity to assess the seaworthiness of the ship to sail. This company also uses IDSurvey as the identity of holding SOEs engaged in survey services.
		PT Len Industri (Persero)	The company is engaged in the production of electronic equipment. It offers radio transmitters, railway signaling systems, power electronic systems for electric trains, defense, and solar power generation systems. On January 12, 2022, the government officially appointed this company as the holding company for defense industry SOEs, which consists of Pindad, Dahana, Indonesian Aerospace, and PAL Indonesia.
4	Mineral and Coal Industry	PT Krakatau Steel (Persero) Tbk	The company is the largest steel maker in Indonesia. It has six production plants, making the company the only integrated steel plant in the country. These plants produce many kinds of downstream products from upstream raw materials. It has several subsidiaries and joint ventures or affiliates.
		PT Indonesia Asahan Alumunium	The company specializes in aluminum smelting. It manages the huge potential of electricity generated from the Asahan River. Inalum was first established in 1976 as a joint venture company between the Indonesian government and Nippon Asahan Aluminum

			Company, Ltd., before it was fully acquired by the government in 2013. It has transformed itself into a strategic holding company called Mining Industry Indonesia or MIND ID which oversees all state-owned mining companies.
5	Food and Fertilizer Industry	Perum BULOG	A state-owned public company engaged in food logistics. The scope of the company's business includes logistics/warehousing, surveying and eradicating pests, supplying plastic bags, transportation business, trading in food commodities, and retailing. As a company that continues to carry out public duties from the government, this company continues to carry out activities to maintain basic purchase prices for grain, stabilize prices, and actual prices, distribute rice for social assistance, and manage food stocks.
		PT Rajawali Nusantara Indonesia (Persero)	The company is engaged in agriculture, agro-industry, animal husbandry, fisheries, trade, and logistics. It aims to realize three main objectives: supporting national food security, increasing the inclusiveness of farmers, breeders, and fishermen, and becoming a world-class food company.
		PT Pupuk Indonesia (Persero)	The company is engaged in the production of fertilizers and chemicals. This group of companies has several subsidiaries engaged in the production of fertilizers as well as non-fertilizer production.
6	Plantation and Forestry Industry	PT Perkebunan Nusantara III (Persero)	This company is a State-Owned Holding Plantation Enterprise engaged in managing, processing, and marketing plantation commodity products. The plantation commodities cultivated are oil palm, rubber, sugar cane, tea, coffee, cocoa, tobacco, various kinds of

			wood, fruits, and other plants. The total area owned by this company is 1,181,751.03 hectares. Apart from that, to improve the surrounding community's welfare, this company also has a plasma plantation area of 457,794 hectares.
		Perum Perhutani	This public company has the duty and authority to manage state forest resources on the islands of Java and Madura, Indonesia. The company's strategic role is supporting environmental sustainability, socio-cultural, and forestry community economic systems.
7	Insurance Services and Pension Funds	PT Reasuransi Indonesia Utama (Persero)	The company is 100% owned by the Government of the Republic of Indonesia. It provides protection/reinsurance solutions for general insurance companies and life insurance companies with coverage of all general insurance products, proportionally and non-proportionally.
		PT Asuransi Jiwasraya (Persero)	This company is engaged in the insurance sector and has been established since 1859, making this company the oldest financial services company in Indonesia.
		PT Bahana Pembinaan Usaha Indonesia (Persero)	This company provides financial services to assist and finance micro, small, and medium enterprises. In mid-2020, the Indonesian government officially appointed this company as the holding company for SOEs in the insurance and guarantee sector, which consists of Askrindo, Jamkrindo, Jasa Raharja, and Jasindo.
		PT ASABRI (Persero)	The social insurance company is mandatory for all soldiers of the Indonesian National Armed Forces, members of the Indonesian National Police, and civil servants at the

			Ministry of Defense and the Indonesian National Police. The share ownership of this company is 100% owned by the state.
		PT TASPEN (Persero)	Insurance companies, retirement savings and pension funds for civil servants whose shares are 100% controlled by the state.
8	Infrastructure Services	Perum Perumnas	Public Companies whose shares are entirely owned by the Government. This company was founded as a government solution to providing decent housing for the lower middle class.
		PT Adhi Karya (Persero) Tbk	A state-owned company engaged in construction, Engineering-Procurement-Construction, property, real estate, infrastructure investment, railway infrastructure and facilities implementation, procurement of goods and hotel services. Currently, the Government of the Republic of Indonesia owns 51% of the company's shares. Meanwhile, the other 49% of shares are held by the Public, consisting of 44.55% Local and 4.45% Foreign.
		PT Hutama Karya (Persero)	State-Owned Enterprise engaged in construction services, development and toll road service providers whose shares are 100% owned by the Government of the Republic of Indonesia.
		PT Semen Indonesia (Persero) Tbk	On January 7, 2013, PT Semen Gresik (Persero) Tbk transformed into PT Semen Indonesia (Persero) Tbk and acted as a strategic holding company that oversees Semen Gresik, Semen Padang, Semen Tonasa, and Thang Long Cement. The majority of the Indonesian government controls the holding of this national cement group with a 51.01% stake.

		PT Wijaya Karya (Persero) Tbk	One of the state companies engaged in building construction in Indonesia. The controlling shareholder of this company is the Government of the Republic of Indonesia, owning 1 Preferred Share (Series A Dwiwarna Share) and 65.05% in Series B shares. The company has eleven operating offices in Indonesia and nine representative offices outside Indonesia.
		PT Jasa Marga (Persero) Tbk	This company is the first and largest toll road developer and operator in Indonesia, with a market share of 50% for the length of commercial toll roads that have been in operation (±1,260 km). As Indonesia's largest toll road service provider, this company has several subsidiaries to support the company's core business, which are divided into two groups, namely toll road business and non-toll road business.
9	Financial Services	PT Bank Negara Indonesia (Persero) Tbk	BNI is the first State-Owned Bank to become a public company after listing its shares on the Jakarta Stock Exchange and Surabaya Stock Exchange in 1996. Currently, 60% of BNI shares are owned by the Government of the Republic of Indonesia, while the public owns the remaining 40%. Both individuals and institutions, domestic and foreign. BNI is now listed as Indonesia's fourth-largest national bank regarding total assets, loans and third-party funds. In providing integrated financial services, BNI is supported by many subsidiary companies, namely Bank BNI Syariah, BNI Multifinance, BNI Securities, BNI Life Insurance, BNI Ventures, BNI Remittance and Bank Mayora.

		PT Bank Rakyat Indonesia (Persero) Tbk	It is one of the largest banks in Indonesia. It specializes in small-scale and microfinance, borrowing from and lending to its approximately 30 million retail clients through its 8,600 branches, units and rural service posts. It also has a comparatively small but growing corporate business. As of 2022, it is the second-largest bank in Indonesia by assets. It is currently a 53% government-owned operating company (Persero). It has been government-owned for the entire period from the War of Independence (1945 to 1949) to November 2003, when 30% of its shares were sold through an IPO.
		PT Bank Mandiri (Persero) Tbk	It is the largest bank in Indonesia in terms of assets, loans and deposits. As of 2022, total assets were 1.992 Trillion rupiahs (around US$133 Billion). As of 2022, Bank Mandiri is the largest bank in Indonesia by total assets. As of December 2022, the bank had 2,364 branches spread across three different time zones in Indonesia and 7 branches abroad, about 13,027 Automatic Teller Machines (ATMs), and 11 subsidiaries, such as Mandiri Sekuritas, Mandiri Tunas Finance, AXA Mandiri Financial Services, Bank Mandiri Taspen, and Mandiri AXA General Insurance.
		PT Bank Tabungan Negara (Persero) Tbk	It is an Indonesian commercial bank best known as a mortgage bank. Its operations are divided into six regions; Sumatera, Java, Bali & Nusa Tenggara, Kalimantan, Sulawesi, and Papua & Maluku. As of December 2014, these regions gave the bank 820 branches, 2,951 post office access points, and 1,830

			ATMs, served by 8,582 employees. The majority of share ownership is controlled by the Government of the Republic of Indonesia, 60.13%, and the public owns the rest.
10	Logistics Services	Perum Damri	It is an Indonesian state-owned transportation company whose shares are 100% owned by the Government of the Republic of Indonesia. It has a service network that spreads nearly throughout all regions of Indonesia. In its business activities, DAMRI provides city transport, transport within the province, intercity transport, airport transport, tourism transport, logistics transport, transport to isolated areas and inter-country transport.
		PT Kereta Api Indonesia (Persero)	It is the sole operator of public railways in Indonesia. It is completely state-owned and pays track access charges to the government. The services provided by this company include passenger and goods transportation. It already has several subsidiary companies: KAI Services, KAI Airport, KAI Commuter, KAI Wisata, KAI Logistics, and KAI Property.
		PT ASDP Indonesia Ferry (Persero)	It is an Indonesian state-owned passenger ferry operator. The Government of the Republic of Indonesia owns 100% of the company shares. The company is headquartered in Central Jakarta and has 29 branches in 4 regional offices across Indonesia. As of 2020, it operates 160 ships throughout Indonesia and serves 49 million passengers, making it one of the largest ferry operators in the world.
		PT Pelabuhan Indonesia (Persero)	The company engaged in the management and development of ports. It is a holding of the State-Owned Enterprise Port Indonesia,

			which originally consisted of 4 Port SOEs. It is a Non-Listed state-owned company whose shares are 100% owned by the Government of the Republic of Indonesia.
		PT Pos Indonesia (Persero)	It is the state-owned company responsible for providing postal service in Indonesia. It was established with the current structure in 1995 and operates 11 regional divisions. The Government of Indonesia wholly owns the shares of this company.
		PT Pelayaran Nasional Indonesia (Persero)	It is the national cargo and passenger shipping company whose ownership is 100% owned by the Government of the Republic of Indonesia. Its services network spans across the Indonesian archipelago. Mainly serving as a connector between bigger cities and remote islands. It is one of the few remaining economy-class long-distance passenger ship operators. Its survival ability is mostly due to monopolies on certain routes and government of Indonesia subsidies.
11	Tourism and Support Services	PT Aviasi Pariwisata Indonesia (Persero)	It is Indonesian Aviation and Tourism Industry Holding whose members are PT Angkasa Pura I, PT Angkasa Pura II, PT Hotel Indonesia Natour, PT Indonesia Tourism Development, PT Taman Wisata Candi Borobudur, Prambanan & Ratu Boko, and PT Sarinah.
		Perum Lembaga Penyelenggara Pelayanan Navigasi Penerbangan Indonesia	It is an Indonesian state-owned enterprise engaged in air traffic control whose capital is wholly owned by the state. It manages all of Indonesia's air space divided into 2 (two) Flight Information Regions (FIR). Total Area of FIR = 2,219,629 Km2; Area = 1,476,049 Km2, with Amount of Air Traffic: > 10,000 Movement/day. The services

			provided by this company include air traffic services, aeronautical information, aviation telecommunication, aviation meteorological information, and SAR information.
12	Telecommunications and Media Services	PT Telekomunikasi Indonesia (Persero) Tbk	It is an Indonesian multinational telecommunications company. It is listed on the Indonesia Stock Exchange and has a secondary listing on the New York Stock Exchange. It has major business lines in fixed-line telephony, internet, and data communications. The majority shareholder of this company is the Government of the Republic of Indonesia, with 52.09%, while the public controls the remaining 47.91%.
		Perum Produksi Film Negara	A state company engaged in the film sector and one of Indonesia's pioneers in the film industry.
		Perum Percetakan Uang Republik Indonesia	It is a state company that prints rupiah currency and other important state-owned documents such as Indonesian passports, excise stamps, stamp duty, and land certificates. The company also provides digital security services.

Source: State-Owned Enterprises Website (Ministry of SOEs).[541]

[541] Ministry of SOEs, "Business Clusters," accessed 10 September 2024, https://www.bumn.go.id/portofolio/klaster-usaha?lang=en.

Appendix 8: List of Dissolved State-Owned Enterprises

No	Company	Business Field	Statutory Basis for Dissolution
1.	PT Merpati Nusantara Airlines	Domestic airline	Government Regulation Number 8 of 2023
2.	PT Kertas Leces	Paper production	Government Regulation Number 9 of 2023
3.	PT Istaka Karya	Construction	Government Regulation Number 13 of 2023
4.	PT Industri Sandang Nusantara	Textile products	Government Regulation Number 14 of 2023
5.	PT Kertas Kraft Aceh	Paper production	Government Regulation Number 17 of 2023
6.	PT Industri Gelas	Glass packaging manufacturing	Government Regulation Number 18 of 2023
7.	PT Pengembangan Armada Niaga Nasional	Multi finance for ship financing	Presidential Decree Number 25 of 2022

Source: Author.

Appendix 9: State-Owned Enterprises in 12 business clusters

No	Cluster	Number of enterprises	Name of enterprises
1.	Energy, Oil and Gas Industry	2	PT Perusahaan Listrik Negara (Persero)
			PT Pertamina (Persero)
2.	Health Industry	1	PT Bio Farma (Persero)
3.	Manufacturing Industry	2	PT Biro Klasifikasi Indonesia (Persero)
			PT Len Industri (Persero)
4.	Mineral and Coal Industry	2	PT Krakatau Steel (Persero) Tbk
			PT Indonesia Asahan Alumunium
5.	Food and Fertilizer Industry	3	Perum BULOG
			PT Rajawali Nusantara Indonesia (Persero)
			PT Pupuk Indonesia (Persero)
6.	Plantation and Forestry Industry	2	PT Perkebunan Nusantara III (Persero)
			Perum Perhutani
7.	Insurance Services and Pension Funds	5	PT Reasuransi Indonesia Utama (Persero)
			PT Asuransi Jiwasraya (Persero)
			PT Bahana Pembinaan Usaha Indonesia (Persero)
			PT ASABRI (Persero)
			PT TASPEN (Persero)
8.	Infrastructure Services	9	Perum Perumnas
			PT Adhi Karya (Persero) Tbk
			PT Hutama Karya (Persero)
			PT Semen Indonesia (Persero) Tbk
			PT Wijaya Karya (Persero) Tbk

			PT Jasa Marga (Persero) Tbk
			PT Pembangunan Perumahan (Persero) Tbk
			PT Brantas Abipraya (Persero)
			PT Semen Indonesia (Persero) Tbk
9.	Financial Services	4	PT Bank Negara Indonesia (Persero) Tbk
			PT Bank Rakyat Indonesia (Persero) Tbk
			PT Bank Mandiri (Persero) Tbk
			PT Bank Tabungan Negara (Persero) Tbk
10.	Logistics Services	6	Perum Damri
			PT Kereta Api Indonesia (Persero)
			PT ASDP Indonesia Ferry (Persero)
			PT Pelabuhan Indonesia (Persero)
			PT Pos Indonesia (Persero)
			PT Pelayaran Nasional Indonesia (Persero)
11.	Tourism and Support Services	3	PT Aviasi Pariwisata Indonesia (Persero)
			Perum Lembaga Penyelenggara Pelayanan Navigasi Penerbangan Indonesia
			PT Garuda Indonesia (Persero) Tbk
12.	Telecommunications and Media Services *Note:* *Several State-Owned Enterprises that are not included in the cluster division are placed in the telecommunications and media*	24	PT Telekomunikasi Indonesia (Persero) Tbk
			PT Produksi Film Negara (Persero)
			Perum Percetakan Negara Republik Indonesia
			Perum Jasa Tirta I
			Perum Jasa Tirta II

	services cluster. Therefore, the number of enterprises in the last cluster is the largest.		PT Virama Karya (Persero)
			PT Indah Karya (Persero)
			PT Djakarta Lloyd (Persero)
			PT Dok dan Perkapalan Kodja Bahari (Persero)
			PT Barata Indonesia (Persero)
			PT Semen Kupang (Persero)
			PT Primissima (Persero)
			PT Boma Bisma Indra (Persero)
			PT Dok dan Perkapalan Surabaya (Persero)
			PT Yodya Karya (Persero)
			PT Pengembangan Armada Niaga Nasional (Persero)
			PT Amarta Karya (Persero)
			PT Industri Telekomunikasi Indonesia (Persero)
			Perum Percetakan Uang Republik Indonesia
			Perum Lembaga Kantor Berita Nasional Antara
			PT Industri Kapal Nusantara (Persero)
			PT Danareksa (Persero)
			PT Indra Karya (Persero)
			PT Pengusahaan Daerah Industri Pulau Batam (Persero)

Source: State-Owned Enterprises Website (Ministry of SOEs).[542]

[542] Ministry of SOEs, "Business Clusters," accessed 10 September 2024, https://www.bumn.go.id/portofolio/klaster-usaha?lang=en.

Appendix 10: State-Owned Enterprises with hundred-percent state ownership

No	Enterprise	Business activities
1.	Perum Bulog	production, provision, management and distribution of staple foods such as rice, sugar, wheat, meat and cooking oil.
2.	Perum Perhutani	forest management on the islands of Java and Madura, including the utilization, processing and trade of forest products.
3.	Perum Perumnas	provision of adequate housing for lower middle-class people, including land provision, management of flats, urban development, and home ownership subsidy services.
4.	Perum Damri	providers of land transportation services within cities, between cities, and between countries, including logistics, tourism, and remote areas that cannot be reached by private transportation.
5.	Perum Lembaga Penyelenggara Pelayanan Navigasi Indonesia	aviation navigation services such as air traffic, aviation telecommunications, aeronautical information, aviation meteorological information, and search and rescue information.
6.	Perum Jasa Tirta I	raw water services for drinking water, industry, agriculture, and other water needs, including bottled drinking water and hydroelectric power generation.
7.	Perum Jasa Tirta II	water resource managers and drinking water providers in the West Java and Banten regions by utilizing large rivers.
8.	Perum Percetakan Negara Republik Indonesia	printing and other graphic services, publishing, multimedia, and business development.
9.	Perum Lembaga Kantor Berita Nasional Antara	news provider for the public, media, business world, and decision makers.
10.	Perum Percetakan Uang Republik Indonesia	printing of banknotes, coins, non-monetary valuable papers, non-monetary metals, and digital business products such as electronic stamps, codes, signs, trusts, and graph analytics.

Source: State-Owned Enterprises Website (Ministry of SOEs).[543]

[543] Ministry of SOEs, "Business Clusters," accessed 10 September 2024, https://www.bumn.go.id/portofolio/klaster-usaha?lang=en.