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RESEARCH ARTICLE

Separation of State Assets in State-Owned Enterprises from State Liability for Losses

Mulyono Dwi Purwanto [1)], Tuti Widyaningrum[2)]

Abstract

The issue of state finance and the separation of state assets in SOEs lies at the intersection of criminal law on corruption, state financial law, and state corporate law, so that the relationship between regimes must be arranged so that corporate losses are not automatically treated as state losses or vice versa. The reform of the 2025 SOE Law emphasizes corporate autonomy that is supervised through audits and the principle of lex specialis. Research Objectives Analyze the legal status of separated state assets in SOEs within the framework of state finances and examine the effect of such separation on the limits of liability for state losses. The research method used is normative juridical based on secondary data with a statutory and conceptual approach. Data were collected through a literature study of the 1945 Constitution, the Corruption Law, the State Finance Law, the 2025 SOE Law, and decisions, then analyzed qualitatively. Research Results The status of separated assets is layered on the horizon of permanent ownership including state finances according to Law 17/2003, while on the horizon of management it becomes corporate capital according to Law 1/2025 in conjunction with Law 16/2025 and the principles of good corporate governance. Losses from state-owned enterprises (SOEs) transform into state losses if they are proven to have reduced state fiscal capacity due to fiduciary violations outside the business judgment rule. Furthermore, the separation of assets creates a multi-layered accountability regime based on fault-based liability and positions the SOE Law as a lex specialis, requiring both corporate and fiscal tests before the Corruption Eradication Law is applied as the ultimum remedium.

Keyword: Separation of State Assets, State-Owned Enterprises (BUMN Persero), Accountability for State Losses.

Introduction

The discourse on state finance, the separation of state assets in state-owned enterprises (SOEs), and accountability for state losses can no longer be interpreted solely from a single legal regime. These issues lie at the intersection of three subsystems: criminal corruption law, state financial law, and state corporate law. The primary issue that arises is not simply the question of whether SOE losses constitute state losses, but rather how to structure the normative relations between regimes so that law enforcement is not delict-centric and does not negate the logic of state corporations. This common ground, as well as a point of conflict, demands the careful application of the principle of lex specialis derogat legi generali as an instrument of harmonization, not as a tool for one regime to dominate another. Constitutionally, the state is obligated to provide general welfare through the provision of public goods and services, the financing of which rests on the governance of state household finances within the state budget. The evolving role of the modern state, as formulated in the concept of public sector finance, expands the scope of state finances beyond the state budget, including state assets separated from state enterprises. Law Number 17 of 2003 concerning State Finances affirms this legal policy choice by including the separated assets of SOEs as part of state finances. Based on Articles 23 and 33 of the 1945 Constitution of the Republic of Indonesia, the state is understood not only as a fiscal regulator but also as an economic actor obligated to manage vital production sectors for the well-being of the people. The logic of public finance law places everything that stems from the rights and obligations of the state and can be valued in money as an object of state finance, subject to the principles of transparency and public accountability. This expansion of state finance objects faces serious challenges when it comes into contact with the character of state-owned enterprises (SOEs) as private legal entities. In modern corporate construction, state capital participation in SOEs constitutes a private legal act in the form of inbreng (contributions), which transforms the status of assets, such as state assets, which were previously held under the public regime, becoming corporate property, while the state holds shares as a token of controlling rights. Because SOEs have their own legal personality, their rights and obligations are separate from those of the state, as are their business risks. This situation creates a normative paradox: at the fiscal horizon, the value of SOEs remains understood as part of state assets under the State Finance Law, while at the corporate horizon, these assets become the property of SOEs under private governance that recognizes business risks. When corporate losses occur, interpretive conflicts arise as to whether the losses automatically constitute state losses or are purely corporate business risks resolved through private mechanisms. This conflict is exacerbated because corruption criminal acts place state finances as a protected legal interest, while the Corruption Law does not define this in a limited manner. Articles 2 and 3 of the Corruption Law require an unlawful act or abuse of authority that could harm state finances. The formulation is broad and formal-material, thus opening up room for interpretation not only regarding violations of written norms but also of norms of propriety. Implementation often results in overlapping interpretations: State-owned enterprise business policies that result in losses are perceived as state losses without first examining whether the losses constitute a real and definite shortage of state funds or assets under public finance law. This pattern creates a dangerous shift because commercial losses are instantly subsumed into public losses, even though the legal character of state losses requires proof of public ownership, fiscal records, and certainty of amounts based on book value and economic reality. As a result, symptoms of over-criminalization of business policies have emerged. State-owned enterprise directors or officials who make rational corporate decisions that inherently carry the risk of loss are vulnerable to being dragged into the corruption criminal regime simply because the end result is unfavorable. The subsequent impact is a chilling effect on SOE governance, such as management reluctance to take reasonable business risks, hampering innovation, and losing SOE competitiveness. Similar problems are even more extreme in SOE subsidiaries. The logic of "state finances flow wherever they go" creates an interpretive paradox when subsidiaries, which do not own shares in the name of the state and whose capital is sourced from the assets of the transformed SOE, are still positioned as part

Universitas 17 Agustus 1945 Jakarta

*) *corresponding author*

Mulyono Dwi Purwanto

Email: alpamajoris@gmail.com

of the state finances. This situation undermines the principles of separate legal entities and limited liability, and creates uncertainty about the boundaries of the state's rights, obligations, and risks vis-à-vis private entities controlled by corporations. The 2025 SOE regulatory reforms demonstrate that legislators themselves view this issue as a legal architectural problem. Law Number 1 of 2025 emphasizes that SOE assets are the property and responsibility of the SOE, and that profits and losses are the profits or losses of the corporation. This norm was intended to strengthen corporate autonomy, the principle of corporate personhood, and the business judgment rule. However, several provisions of the revision sparked constitutional criticism for allegedly removing safeguards of public accountability, including the removal of state-owned enterprise (SOE) officials and employees from their status as state administrators and the absence of the Supreme Audit Agency (BPK) audit mandate. The normative risks are clear: if state asset managers are completely separated from the public ethics regime, it opens up room for corporate impunity under the guise of business autonomy, while the state loses the oversight instrument for public assets historically tied to its welfare mandate. Revisions then emerged through Law Number 16 of 2025, which restored the balance between autonomy and accountability. The establishment of the State-Owned Enterprises Supervisory Agency (BP BUMN) as a regulator under the President, the separation of investment oversight and implementation functions, the elimination of the "non-state administrator" norm, and the affirmation of the BPK's authority to audit SOE finances closed the gray area of public-private relations. This revision does not repeal the principle of separation of assets, but emphasizes that separation should not be interpreted as a relinquishment of public control. The state corporate framework is moving toward regulated autonomy, where SOEs remain private legal entities operating with business logic, but are framed by public integrity mechanisms and fiscal audits. The configuration of these three regimes places the principle of lex specialis derogat legi generali in a strategic position. The Corruption Law holds the status of criminal lex specialis relative to the Criminal Code, the State-Owned Enterprises Law holds the status of state corporation lex specialis relative to general private law, while the State Finance Law serves as lex generalis, defining the scope of state fiscal matters, including separated assets. The problem is, in law enforcement practice, the principle of lex specialis is often used disproportionately. There is a tendency to criminal lex specialis penetrate the corporate veil without rigorous fiscal testing, as if every SOE loss is automatically a state loss subject to criminal penalties. Conversely, there is a tendency to relegate all SOE losses to the private sphere, thereby closing the door to public accountability. Both of these extremes undermine the integrity of the legal system: the first creates the criminalization of policies, and the second creates impunity. Therefore, the effectiveness of the lex specialis principle needs to be positioned as a tiered harmonization mechanism. The first stage consists of a fiscal-economic filter based on state financial law and an audit by the Supreme Audit Agency (BPK) to assess whether corporate losses actually reduce the state's fiscal position as a shareholder or dividend holder in a real and definite manner. Losses that are simply business fluctuations within the risk management framework cease to be considered corporate losses.

Method

This research is a normative juridical legal study that views law as a living norm within the statutory system and court decisions. The study focuses on the Separation of State Assets in State-Owned Enterprises (SOEs) with respect to State Loss Liability, particularly following the enactment of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises and Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises. The approach used includes a legislative approach to examine the alignment and priority of norms, as well as a conceptual approach to emphasize the legal character of SOEs as state corporate entities and the consequences of the separation of their assets on the burden of state losses. The data sources are secondary data consisting of primary, secondary, and tertiary legal materials. The primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 31 of 1999 in conjunction with Law Number 31 of 1999 in conjunction with Law Number 31 of 1999 in conjunction with Law Number 31 of 1999 in conjunction with Law Number 31 of 1999 in conjunction with Law Number 31 of 1999 in conjunction with Law Number 31 of 1999 in conjunction with Law Number 31 of 2003 ... Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law Number 17 of 2003 concerning State Finance, Law Number 1 of 2004 concerning State Treasury, Law Number 19 of 2003 concerning State-Owned Enterprises and its amendments in 2025. Secondary legal materials include books, journals, dissertations/theses, and official publications of relevant state institutions, while tertiary legal materials include legal dictionaries and encyclopedias. Data were collected through literature studies, then analyzed qualitatively with the stages of reduction and classification of legal materials, as well as grammatical, systematic, and teleological interpretations, resulting in a descriptive-analytical description of the position of separation of state assets in State-Owned Enterprises and the limits of state loss liability within the national legal framework.

Results and Discussion

The Legal Status of State-Owned Assets Separated in State-Owned Enterprises Within the Framework of State Finance

The legal status of state-owned enterprises (SOEs) separated in the framework of state finance must be read as the result of the confluence of two different yet mutually binding normative regimes. Law Number 17 of 2003 concerning State Finance places separated assets within the scope of state finances at the ownership level, while the revised 2025 SOE Law encourages the interpretation of such assets as corporate capital with private governance. This confluence is not coincidental, but rather a logical consequence of the broadening of the concept of state finance toward public sector finance, which recognizes the state as acting through various institutional instruments, including state-owned enterprises. Such a framework necessitates a multi-layered reading of the status of separated assets, to avoid becoming trapped in a narrow dichotomy of "state-owned" versus "corporate-owned" that obscures the underlying legal dynamics.

The transformation of the status of state assets following the enactment of Law Number 1 of 2025 and Law Number 16 of 2025 is evident in the shift in management regime from public fiscal to corporate capital. Article 1, paragraph 10 of Law Number 1 of 2025, emphasizes that state-owned enterprise assets are assets owned by the state-owned enterprise. Article 62A places the board of directors as the authorized party to manage assets based on the principles of good corporate governance, including treating assets as objects of civil law that can be transferred or assigned as long as they do not involve strategic sectors. This formulation shifts the locus of management from a budgetary administration logic to a corporate logic oriented toward efficiency and productivity. At the same time, Article 4A paragraph (5) and Article 4B emphasize that the invested state capital becomes state-owned enterprise assets, and any profits or losses are the profits or losses of the state-owned enterprise itself. This assertion demonstrates that the separation of capital is not merely an accounting technique, but rather a legal shift from state patrimony to corporate patrimony. The status of state-owned enterprises (BUMN) as private legal subjects places a new emphasis on the distinction between state losses and corporate losses. The reconstruction of Article 3H and Article 4B of Law Number 16 of 2025 emphasizes that investment profits or losses constitute the company's profits or losses before reserves are allocated, and SOE profits or losses belong to the SOE. This formulation establishes a clear separation of responsibilities: the state functions as a shareholder, while SOEs bear their own business risks as entities with independent legal personality. This interpretation aligns with the principles of separation of patrimony and limited liability, namely the separation of shareholder wealth from corporate assets. Once capital participation is realized in the form of shares, the relationship between the state and state-owned enterprises (SOEs) changes to a civil one, so that fluctuations in corporate profits and losses cannot be automatically equated with the state's fiscal profits and losses. The risk-reserving mechanism in Article 3H paragraph (3) even emphasizes prudential management-based regulations, positioning SOEs as business actors authorized to autonomously manage risks before dividends are paid to the state. However, corporate autonomy poses two potential problems. First, autonomy can be misunderstood as immunity from public scrutiny

if not balanced by effective external controls. Second, the risk-reserving norm has the potential to expand executive discretion if not accompanied by objective derivative parameters. This point demonstrates that strengthening the private sector regime cannot be separated from the need to maintain the separation of the public dimension of wealth. The Supreme Audit Agency (BPK) oversight in Article 71 paragraph (2) of Law Number 16 of 2025 serves as a public anchor to ensure that separation does not turn into a release of accountability, but rather into a rational, multi-layered form of accountability. The BJR serves a dual function within the separated assets architecture. The first function maintains the business acumen of state corporations, preventing them from being hampered by criminal fears, allowing SOEs to continue to carry out their economic mandates competitively. The second function serves as a tool to distinguish between honest mistakes and culpable negligence, namely, failures arising from business risks and failures resulting from fiduciary irregularities. Good corporate governance-based asset management requires documentation of the rationality of decisions, such as meeting minutes, feasibility studies, internal audits, and legal opinions; all of which serve as evidence of good faith and due care. Criminal consequences are only appropriate when these governance barriers are breached intentionally or through gross negligence. The limitation of criminal law jurisdiction over corporate actions is a crucial link connecting the status of assets separated from the accountability for state losses. Corporate actions such as investments, acquisitions, restructuring, or asset transfers initially fall within the realm of private law and must be assessed through the standards of organ authority, compliance with corporate procedures, and the rationality of the BJR. Criminal assessments should not be based solely on losses as a result, but rather rely on verification of the process for identifying conflicts of interest, self-dealing, information manipulation, or abuse of authority. The starting point for criminal prosecution lies in unlawful acts that breach the governance barriers, not ordinary business risks. The criminal threshold is further tightened by the nature of material offenses in Articles 2 and 3 of the Corruption Eradication Law, which require real and definite state losses along with a verified causal relationship. Corporate losses are only criminally relevant if they can be proven to reduce the state's economic position as a shareholder or eliminate measurable fiscal benefits, after taking into account risk reserves. This evidentiary model requires multiple standards, including the corporate process test, the personal fault test, and the fiscal loss test. Failure to meet any of these standards requires reverting the case to the corporate or administrative pathway, so that criminal law remains the ultimum remedium.

The overall synthesis shows that the legal status of separated state assets in state-owned enterprises (BUMN) cannot be understood as a severance of public relations, but rather as a modernization of state-corporate relations. Separated assets remain within the scope of state finances within the constitutional ownership horizon, but operate as private capital within the managerial horizon. The distinction between state and corporate losses, the strengthening of the BJR (Regional Financial Reporting System), and the limitation of criminal jurisdiction create a harmonizing mechanism to prevent capital separation from being interpreted as automatic criminalization or corporate impunity. The success of this framework requires consistent application of the lex specialis principle, professionalism in the BPK's fiscal audits, and the maturity of law enforcement in interpreting business risk as a legitimate part of the dynamics of state corporations. With this systemic work, the separation of state assets in BUMN can produce a fair balance between economic efficiency, legal certainty, and public accountability.

Separation of Assets in State-Owned Enterprises Affects Accountability for State Losses

The reorientation toward a state corporation regime deepens the meaning of separation of assets in state-owned enterprises (BUMN) by shifting the emphasis of accountability for losses from a public fiscal logic to a private corporate logic that remains publicly monitored. Separation of assets is not merely a budget administration technique, but rather a normative design that restructures who is responsible, what the object of the loss is, and when criminal corruption instruments may be activated. This reorientation found its foundation in Law Number 1 of 2025, the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises, which was then refined through Law Number 16 of 2025, the Fourth Amendment, with affirmation of institutional and accountability for state audits.

The demarcation of criminal liability between managers as individuals and corporate entities in state-owned enterprises (BUMN) is the first point of this reorientation. The fault-based liability norm, formulated in Article 3Y of Law 1/2025, upholds the principle that managers cannot be held automatically responsible simply because of business losses. Management has the right to exculpation as long as they can prove that the losses did not arise from their own error or negligence, that the decisions were made in good faith and with professional prudence, that there was no conflict of interest, and that there was no unlawful personal gain. This construction adopts the logic of the corporate veil and limited liability, positioning the corporation as a separate legal entity, so that business risks are borne by the legal entity, not by individuals vicarious actions. Similar provisions are also evident in Article 9F, Article 39, and Article 43M of Law 1/2025, which emphasize that liability only arises in the event of gross negligence or bad faith, making the dividing line between "reasonable failure" and "legal deviation" a prerequisite for criminal imputation. The second key point of reorientation is the position of the 2025 State-Owned Enterprises Law as lex specialis over the Corruption Law. The priority of the State-Owned Enterprises Law is not interpreted as reducing state financial protection, but rather as a "methodological filter" that must be passed before a Corruption offense can be subsumed. The State-Owned Enterprises Law establishes the status of assets as corporate assets, determines the authority of organs, and provides prudential standards and exclusions not provided by the Corruption Law. Therefore, legal incidents in State-Owned Enterprises must first be assessed through a corporate test to determine whether the decision remains within the realm of business judgment rules and good corporate governance or constitutes a deviation. Only then is a fiscal test conducted based on the state's financial regime to determine whether the deviation diminishes the value of state ownership or eliminates measurable fiscal benefits. Only if these two criteria are met can the Corruption Eradication Law be used as ultimum remedium. The BPK's audit authority over SOEs strengthens fiscal review before criminal prosecution is activated, while simultaneously eliminating the possibility of absolute privatization, as previously mentioned in the third amendment to the SOE Law. Constitutional Court Decision No. 128/PUU-XXIII/2025 concerning the prohibition on concurrent ministerial/deputy ministerial positions in SOEs also reinforces the professionalization and separation of political and corporate functions, thus providing a more focused framework for proving abuse of power. The third key point is the principle of prudence and rationality in business decisions as the basis for directors' accountability. The norms of Article 3Y and Article 9F of Law 1/2025 and its amendment in Law 16/2025 institutionalize the duty of care and good faith as objective measures. This measure requires legal assessors to prioritize business processes, not solely the consequences of losses. Investment, expansion, or corporate action decisions are considered legitimate if supported by adequate information, proper risk assessments, approval from required organs, and free from conflicts of interest. The business judgment rule principle serves as a safeguard to prevent directors from being affected by the chilling effect, as state-owned enterprises (BUMN) require the courage to take risks to survive in the market. Professional misconduct only becomes criminal if the decision is implemented without a rational basis, violates good governance, or is accompanied by mens rea to enrich oneself or others. The jurisprudence of the Jiwasraya and Asabri cases demonstrates situations where the principle of prudence is seriously violated, resulting in corporate losses transforming into state fiscal losses that are criminally relevant. Conversely, the precedent set by Karen Agustiawan in the alleged corruption case of liquefied natural gas (LNG) procurement between 2011 and 2021 confirms that business losses arising from rational decisions are not criminally punishable. Critically, the success of the reorientation toward a state-corporate regime remains determined by the culture and professionalism of law enforcement officials. Inconsistent application of lex specialis, the habit of equating state-owned enterprise losses with state losses, or criminalizing solely on the basis of outcomes will reverse the objectives of reform and create legal uncertainty. Conversely, discipline in the corporate-fiscal-criminal review sequence will strengthen legal certainty, maintain the rationality of state

corporations, and ensure that state fiscal protection is effective. This reorientation demonstrates that the separation of assets within state-owned enterprises does not diminish public accountability but rather improves the accountability mechanism by positioning criminal law as a sharp, selective instrument, rather than a general one.

Conclusions and Recommendations

1. The legal status of state assets separated into state-owned enterprises (BUMN Persero) is a multi-layered construct resulting from the intersection of state financial regimes and state corporate regimes. Law No. 17 of 2003 places them as part of state finances within the public ownership horizon, while Law No. 1 of 2025 in conjunction with Law No. 16 of 2025 affirms them as corporate capital managed privately through the principles of good corporate governance. Consequently, losses to SOEs do not automatically constitute state losses unless proven to undermine the state's fiscal position as a shareholder and arise from fiduciary irregularities that go beyond the business judgment rule. Public oversight remains intact through audits by the Supreme Audit Agency (BPK) and SOE regulatory mechanisms, so the separation of assets is interpreted as a modernization of governance that balances corporate autonomy, legal certainty, and public accountability.
2. The separation of state assets into state-owned enterprises (BUMN Persero) creates a multi-layered accountability regime that prioritizes private corporate logic while remaining under public oversight. Law No. 1 of 2025 in conjunction with ... Law Number 16 of 2025 emphasizes fault-based liability, meaning that business losses do not automatically constitute state losses, and managers can only be punished if proven to have violated their fiduciary obligations in bad faith or gross negligence. The State-Owned Enterprises Law's status as lex specialis requires prior corporative and fiscal testing before the Corruption Eradication Law is activated as the ultimum remedium. The precautionary principle and the business judgment rule serve as primary safeguards to prevent criminalization of rational business decisions, while deviations that harm the state's fiscal position can still be firmly prosecuted.

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