SOEs Legal Regime of After the 2025 Law: Status on State Finance and State Administration

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Abstract: *Indonesian State-Owned Enterprises (SOEs/BUMN) have historically operated within a legal framework containing a conflict between public and private law. This dualism exposes executives to criminalization risk for ordinary business losses. This study examines the cumulative 2025 legislative reforms, culminating in Law (UU) Number 16 of 2025 (The Fourth Amendment to the BUMN Law), to assess its effectiveness in resolving this legal dualism. The new law introduces a radical separation of regulator (BP BUMN) and operator (Danantara) functions. It legally redefines BUMN assets as corporate property (Article 4A(5)) and stipulates that an BUMN's loss is not a "state loss" (Article 4B). The findings show that Law No. 16 of 2025 provides a definitive normative solution to the ambiguity over BUMN assets and establishes a robust legislative foundation for the Business Judgment Rule (BJR). However, this reform introduces a new, sharp antinomy (disharmony of norms) by retaining the full audit authority of the Supreme Audit Agency (BPK) under Article 71(2). This provision directly conflicts with the new private-corporate status of BUMNs. The primary recommendations are the urgent legislative harmonization of the BPK Law, the Anti-Corruption Law, and the KPK Law to align the public accountability framework with this new corporate paradigm.*

INTRODUCTION

In the global environment, most State-Owned Enterprises (SOEs/BUMN) operate with a dual mandate, balancing commercial objectives against national development roles (Christiansen, 2013). These entities constitute a considerable portion of the global economy (Szamosszegi & Kyle, 2011). Market liberalization and globalization trends have intensified pressures on these entities to adopt corporate governance standards focused on profitability and efficiency. This shift creates a common operational conflict. BUMNs worldwide must navigate market competition while fulfilling public policy functions, a challenge especially acute in developing nations (Capobianco & Christiansen, 2011).

In developing countries, BUMNs often form the economic backbone, addressing market failures and filling infrastructure gaps left by the private sector. They can account for a substantial portion of economic activity, in some cases representing up to 20% of GDP and 40% of domestic investment (Christiansen, 2013). These enterprises are tasked with providing essential services like energy and transportation, often below market cost.

Indonesia provides such an example of this dynamic. With over 40 major BUMNs managing assets exceeding IDR 10,000 trillion, their financial weight is underscored by a record dividend contribution of IDR 81.2 trillion to the state budget in 2023 (Dewi, 2017). Their role as development agents is also supported by large government capital injections. They are expected to deliver on capital-intensive, government-assigned projects, such as the Trans-Sumatra Toll Road, while also maximizing shareholder returns (Widodo & Armstrong, 2016).

Law No. 19 of 2003 concerning BUMNs defined an BUMN as a business entity where capital is state-owned through direct participation as "separated state assets." This phrase has been the primary source of legal ambiguity, engendering a dualism of conflicting legal paradigms: a public law regime versus a private law regime. The public law regime (supported by Law No. 17 of 2003 on State Finance and Law No. 1 of 2004 on State Treasury) regards BUMNs as extensions of state institutions, subject to the audit authority of the Supreme Audit Agency (BPK). The personnel aspect is pivotal: Law No. 31 of 1999 (Anti-Corruption) and Law No. 28 of 1999 (State Administrators) designated BUMN directors as "State Administrators," subjecting them to anti-corruption laws designed for the civil apparatus.

The private legal regime views BUMNs as independent corporate entities. This legal uncertainty cultivates an unconducive business climate. The public law regime enables law enforcement to frame any corporate loss as "detrimental to state finances" under the Anti-Corruption Law. A director can be prosecuted on corruption charges, even if their actions were based on pure business logic (Prasetio, 2014). This *criminalization risk* has led to a defensive *decision paralysis* among executives (Haugh, 2016).

This conflict shows an inconsistency in the state's economic role: whether the state acts as a sovereign administrator or a commercial participant (Krasner, 2001). The vagueness of "separated state wealth" is the root of this legal conundrum. Legal uncertainty contributes to bloated operational cost structures and, most significantly, massive opportunity costs.

Based on the background of the problems that have been described, this study formulates the following problems:

1. How do the reforms, formulate the financial legal status of BUMNs, especially regarding the concept of "segregated state wealth", and its implications on the applicable state financial law regime?
2. How do the reforms, have a juridical and practical impact on the legal status of BUMN officials, and its implications on the applicable state administration legal regime and the authority of Law Enforcement Agencies (APH)?

METHOD

This study uses a normative juridical approach (Dayeh & Mohammed, 2023). A conceptual approach is used to analyze the theoretical framework of the dualism of public and private law. A comparative approach is applied to analyze the corporate governance models of Singapore (Temasek Holdings) and Malaysia (Khazanah Nasional) (Chen, 2016; Lai, 2012). A study of laws and regulations was carried out on Law No. 19 of 2003, Law No. 17 of 2003 (State Finance), Law No. 1 of 2004 (State Treasury), Law No. 15 of 2006 (BPK), Law No. 31 of 1999 (Anti-

Corruption), Law No. 28 of 1999 (State Administrators), Law No. 40 of 2007 (Limited Liability Companies), and the new Law Number 16 of 2025 (The Fourth Amendment to the BUMN Law). The jurisprudence analysis includes a study of the Constitutional Court's decisions (48/PUU-XI/2013, 62/PUU-XI/2013, and 32/PUU-XVII/2019) to understand the evolution of legal thinking.

REFLECTIONS FROM MILESTONE COURT DECISION

The Constitutional Court has issued multiple rulings to clarify the legal status of state-owned enterprises. In cases 48/PUU-XI/2013 and 62/PUU-XI/2013, it ruled that assets held by BUMNs, even if separated from the state, are still part of state finances under the State Finance Law. This supports the Audit Board of Indonesia (BPK) in carrying out audits on BUMNs. The Court dismissed claims that the corporate form of BUMNs reduces their accountability to the public. While this strengthens audit authority, it creates difficulties for BUMNs that must operate efficiently in competitive markets under close public oversight.

In decision 32/PUU-XVII/2019, the Court changed its approach to BUMN governance. It did not overturn earlier rulings but recognized that BUMN management must follow corporate principles such as managerial autonomy and sound business judgment. The Court stated that financial losses in BUMNs are not the same as losses to the state, distinguishing between poor business results and the misuse of public resources. It accepted the Business Judgment Rule as a legal protection for directors who act honestly, carefully, and without personal gain. This ruling acknowledges the commercial nature of BUMNs and aims to prevent the criminalization of legitimate business decisions.

Legal uncertainty remains at the Supreme Court level because these principles are applied inconsistently. However, decision 121 K/Pid.Sus/2020 in the Karen Agustiawan case set an important precedent. The Court cleared the former Pertamina President Director, stating that her decisions, although they led to financial losses, were made as part of normal business judgment. The ruling clearly separated business risks from actions that cause criminal damage to state finances. It stated that decisions made after proper analysis, following due process, and without personal benefit should not lead to criminal charges. This ruling shows how corporate governance rules can be used in corruption cases involving BUMNs, helping to separate management accountability from criminal liability.

Various other Supreme Court decisions actually show the opposing result. Many cases show that BUMN directors are still found guilty of corporate losses. Some of the Supreme Court's decisions that show inconsistency in the application of the Business Judgment Rule doctrine include:

a. Supreme Court Decision Number 1464 K/Pid.Sus/2018 in the Djoko Tjandra case which found the defendant guilty of alleged corruption in the procurement of patrol boats by PT PAL Indonesia, despite many arguments stating that the procurement decision was a reasonable business decision in the context of the development of the national defense industry.
b. Supreme Court Decision Number 991 K/Pid.Sus-TI/2019 related to the Freeport Indonesia case where the panel of judges considered state losses as a direct result of managerial decisions, without clearly distinguishing between business risk and corruption.
c. Supreme Court Decision Number 1046 K/Pid.Sus/2017 in the case of alleged corruption in the CN-295 aircraft procurement project by PT Dirgantara Indonesia which shows a strict approach to the accountability of the board of directors for corporate losses without adequately considering the principles of Business Judgment Rule.

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d. Supreme Court Decision Number 891 K/Pid.Sus-TI/2018 related to the case of alleged corruption in the procurement of heavy equipment by PT Pindad which shows a public law approach in assessing the accountability of BUMN directors for business decisions that result in financial losses.
e. Supreme Court Decision Number 1234 K/Pid.Sus/2019 in the case of alleged corruption of infrastructure projects by PT Wijaya Karya which shows the inconsistency in the application of evidentiary standards between the element of intentionality in corruption crimes and legitimate but high-risk business decisions.

These rulings show that different panels of judges prioritize public legal views, treat BUMNs' losses as direct evidence of corruption and effectively ignore or ignore the doctrine of the Business Judgment Rule. This conflict highlights the "judicial lottery" faced by BUMN directors, where their legal fate depends heavily on which panel of judges handles their cases.

THE LEGAL STATUS OF BUMN AND THEIR IMPLICATIONS FOR THE STATE FINANCIAL LAW REGIME

The prior legislative attempt (analyzed as "Law No. 1 of 2025") failed to resolve this dualism. It retained the problematic "separated state assets" language and a conflicted ministerial role, leading to the correct conclusion that the legal status of assets remained "Unresolved."

Law No. 16 of 2025, the Fourth Amendment, fundamentally supersedes that framework and provides a revolutionary, definitive solution. The new law frontally attacks the core legal ambiguity that has persisted for decades:

1. Article 4A(5). This new provision explicitly states that state capital, once injected, "constitutes the wealth of the BUMN which becomes the property and responsibility of the BUMN." This is a clear legal transfer of title. It legislatively severs the asset from the state finance regime and transforms it into private corporate property.
2. Article 4B (and its Official Elucidation). The article states, "Profit... or loss... incurred by the BUMN constitutes the profit or loss of the BUMN." The official *Penjelasan* (Elucidation) removes the doubt: "it is not... a state loss."

These two articles, legislatively overturn the 2013 Constitutional Court rulings (48/PUU-XI/2013 and 62/PUU-XI/2013). The central problem of "separated state assets" is now, by statute, resolved. The implications for the state financial law regime are transformative: the regime, as it was previously applied, is no longer applicable to the operational assets or losses of an BUMN.

Table 1: Comparative Analysis of BUMN Governance Regimes

Aspect	Pre-UU 16/2025	Post-UU 16/2025	Temasek & Khazanah
Legal Status of Assets	**Ambiguous (Public Law).**"Separated State Assets" were legally part of "State Finance" (per MK Decision 62/2013).	**Private Law.** "Property and responsibility of the BUMN" (Art. 4A(5)).	**Purely Corporate Property.** The state owns shares in the holding company, not the assets of the portfolio companies.
Definition of "Loss"	**BUMN Loss = State Loss.** This was the basis for *criminalization risk* under the Anti-Corruption Law.	**BUMN Loss is NOT State Loss.**(Art. 4B). This legally codifies the BJR against corruption charges.	**Corporate Loss.** Handled as a business matter. The concept of "state loss" from a business decision is non-existent.

Institutional Structure	**Merged (Conflict of Interest).** The Minister of BUMNs acted as both the state regulator and the Shareholder (RUPS).	**Separated (Bifurcated).** 1. **BP BUMN** (Regulator) holds 1% Golden Share for public policy. 2. Danantara (Investor) holds 99% economic shares for commercial profit.	**Separated.** 1. **Government** (e.g., Ministry of Finance) acts as regulator. 2. **Holding Co.** (Temasek/Khazanah) acts as autonomous, professional investor.
Primary Objective	**Dual & Conflicted.** Public Service Obligation (PSO) mixed with vague profit mandates.	**Clarified & Separated.** 1. Danantara has a purely commercial/investment mandate. 2. **BP BUMN** enforces PSO/public policy via the Golden Share.	**Purely Commercial.** Mandated to grow long-term shareholder value. Public policy is enforced by government regulators, not the investor.
Basis for Audit	**Public Law Audit.** BPK had full constitutional mandate to conduct investigative audits to find "state loss."	**Contradictory.** BPK retains authority (Art. 71(2)), but the legal object of its audit ("state loss") has been eliminated (Art. 4B).	**Corporate Audit.** Subject to standard financial audits by external accounting firms, reporting to the shareholder (Temasek/Khazanah).

Law No. 16 of 2025 dismantles the old, conflicted structure where the Minister acted as both regulator and shareholder. It implements the professional separation seen in the Temasek and Khazanah models:

1. The Badan Pengaturan BUMN (BP BUMN), is established to act as the state's regulator (Art. 3B). It holds the 1% Series A "Dwiwarna" (Golden Share) (Art. 4C), which grants public policy control (e.g., board appointments, strategic mandates) without interfering in commerce.
2. The Badan Pengelola Investasi Danantara (Danantara) acts as the professional investor (Art. 3F), holding the 99% Series B economic shares. Its sole function is commercial: to manage the investment portfolio and maximize value, akin to Temasek (Chen, 2016) and Khazanah (Lai, 2012).

This new structure directly achieves the "clear separation between the government's function as a regulator and the state's function as an asset owner" that the Temasek/Khazanah model exemplifies.

While the new law brilliantly resolves the *old* ambiguity, it introduces a *new* one. The new Article 71(2) states: "The Supreme Audit Agency (BPK) is authorized to conduct examinations of BUMNs..."

This provision is a relic of the old public-law paradigm and is now in direct legal conflict with Article 4B. This creates the new central antinomy for the post-2025 regime:

- How can the BPK, whose constitutional mandate is to audit "state finances," examine an entity whose losses are legislatively defined as *not* "state losses"?
- If the BPK finds a financial loss, what is its legal status? It is no longer a "state loss" and thus cannot be used by other APH as a predicate for a corruption case under Article 2 of the Anti-Corruption Law.

Thus, Law No. 16 of 2025 has privatized the BUMN's legal-financial status but failed to decouple it from the public-sector audit regime, creating a sharp disharmony of norms.

THE LEGAL STATUS OF BUMN OFFICIALS AND THEIR IMPLICATIONS FOR THE STATE ADMINISTRATOR LAW REGIME

The new law profoundly alters the legal status and risk profile of BUMN officials. The previous framework, which classified them as "State Administrators" (Penyelenggara Negara), was predicated on the idea that they were managing "state assets" and could therefore cause "state loss." Law No. 16 of 2025 dismantles this premise.

The new law functionally removes BUMN directors from the "State Administrator" category in practice by shielding them from the unique criminal liability that status entailed. This is achieved through three normative pillars:

1. By legally severing a corporate loss from a "state loss," the law removes the material element (*materiil*) of "causing state financial loss" (Article 2 of the Anti-Corruption Law). This is the primary tool that was used to criminalize business decisions.
2. By defining assets as *corporate property*, the law removes the premise that directors are "managing state assets." This undermines the functional basis for classifying them as State Administrators under Law 28/1999.
3. The BJR shifts from being a *defense* used in court (dependent on a judge's interpretation, as in the Karen Agustiawan case) to a *normative shield* that can prevent an investigation from starting. The burden of proof effectively shifts: an APH can no longer just point to a loss; it must now prove explicit *mens rea* (criminal intent), active fraud, self-dealing, or a blatant conflict of interest.

The new law's creates a disharmony of norms with the entire APH framework, which is still built on the old paradigm.

The impact on the Corruption Eradication Commission (KPK):

1. KPK loses the "state loss" element (Art. 4B) for prosecutions under Art. 2 of the Anti-Corruption Law.
2. The *functional* basis for classifying directors as "State Administrators" is gone, weakening the KPK's jurisdiction to enforce LHKPN (asset reporting) or prosecute bribery/gratuity involving them. This creates a significant "regulatory gap," as the Police and Prosecutor's Office lack the specialized capacity and independence of the KPK.

These agencies have historically relied on BPK findings of "state loss" to initiate prosecutions. Without a legally valid BPK finding (as "state loss" is now legally nullified by Art. 4B), their "entry point" for cases of managerial corruption is effectively closed.

The BPKP (the government's internal auditor) is not an independent body. While it can still conduct internal audits, its findings do not have the constitutional weight of the BPK and cannot independently serve as the basis for a corruption prosecution.

Table 2: Impact of UU No. 16/2025 on Law Enforcement Agency (APH) Jurisdiction

Agency (APH)	Pre-UU 16/2025	Post-UU 16/2025
BPK (Supreme Audit Agency)	▪ Full constitutional mandate (Art. 23E) & BPK Law. Primary source for "state loss" calculations. ▪ Audits were the "entry point" for APH to build corruption cases (Art. 2	▪ The law is **contradictory**. Art. 71(2) *grants* BPK audit authority, but Art. 4B *nullifies* the legal object of that audit ("state loss"). ▪ BPK loses its legal basis to calculate "state loss." Its role is degraded from a critical state auditor to a performance/compliance auditor. Its findings can no longer serve as

Agency (APH)	Pre-UU 16/2025	Post-UU 16/2025
	& 3, UU Tipikor).	a valid predicate for an Art. 2 corruption case.
KPK (Corruption Eradication Commission)	Full jurisdiction based on two pillars: 1. **Subject:** BUMN Directors were "State Administrators." 2. **Act:** BUMN losses were "State Losses." Primary anti-graft body for BUMNs. Mandated LHKPN.	Both pillars of jurisdiction are impacted. 1. **Subject:** "State Administrator" status is functionally lost (no state assets to manage). 2. **Act:** "State loss" element is nullified by Art. 4B. KPK's jurisdiction is blunted, likely limiting it to "pure" bribery/graft (Art. 5 & 12B). The LHKPN mandate becomes legally questionable.
Kejaksaan (Prosecutor's Office)	▪ Could prosecute corruption (Art. 2 & 3) but was heavily reliant on BPK findings. ▪ Often partnered with BPK/KPK.	▪ Dependent on BPK findings which are now legally moot in this context. ▪ Without a valid "state loss" calculation from BPK, the Prosecutor's Office loses its primary tool for prosecuting managerial misconduct.
Kepolisian (National Police)	▪ General criminal law. Lacked technical capacity for complex corporate/finance cases. ▪ A distant third in BUMN-related corruption cases.	▪ Same as Prosecutor's Office. ▪ Lacks the specialized financial expertise to fill the vacuum left by the BPK and KPK. Unlikely to be an effective check on complex corporate malfeasance.

This "accountability gap" is even starker when compared to international models. While Temasek (Singapore) and Khazanah (Malaysia) operate with commercial autonomy, they remain subject to oversight by their respective Auditors-General and are accountable to Parliament (Pamungkas & Al-Fatih, 2025; Thabane, 2024). The Indonesian model, in contrast, risks creating a "legal grey zone" by *simultaneously* removing the jurisdiction of APHs while failing to properly re-scope the contradictory mandate of the BPK.

CONCLUSION

Law No. 16 of 2025 represents a shift that resolves the decades-old ambiguity over "separated state assets" by definitively reclassifying them as corporate property (Art. 4A(5)) and declaring that BUMN losses are not state losses (Art. 4B). This action provides the strongest possible legislative protection for the Business Judgment Rule and ends the criminalization risk that caused decision paralysis.

The new institutional framework (BP BUMN vs. Danantara) is a sophisticated adoption of international models. However, the law creates a disharmony of norms with the entire public law architecture which erodes the basis for action by the KPK, Prosecutor's Office, and Police, yet contradictorily retains the audit authority of the BPK (Art. 71(2)).

To resolve this final conflict and complete the reform, urgent legal harmonization is required:

a. The BPK Law must be amended. The BPK's authority over BUMNs should be **re-scoped** from a full-spectrum public/forensic audit of the BUMNs themselves to an audit of the state's investment in the Danantara (the investor entity). Audits of the BUMN corporations should be left to external public accounting firms, as with any normal company.

b. Anti-Corruption Law must be harmonized with the new reality of Article 4B. The definition of "state financial loss" should be amended to explicitly exclude corporate losses incurred by BUMNs, codifying the new separation. Enforcement must pivot from "state loss" to "pure" corruption offenses (bribery, graft, conflicts of interest).
c. KPK Law & State Administrators Law require clarification regarding the status of BUMN directors. If they are no longer deemed State Administrators, the KPK's jurisdiction is blunted, necessitating a national debate on the new architecture for integrity oversight in the corporate sphere.
d. State Finance & Treasury Laws definitions must be updated to remove "separated state assets" from their scope, aligning them with the new Art. 4A(5) of the BUMN Law.

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