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Insight

Amendments to the State-Owned Enterprises Act: A Paradigm Shift in the Treatment of State-Owned Enterprise Assets—from Public Finance Logic to Corporate Asset Logic

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Introduction

In business law, legal entities are generally divided into two main categories: public legal entities and private legal entities. Public legal entities are those established by the government, whereas the private sector establishes private legal entities. However, Indonesia also recognises a distinct category of legal entities in which all or the majority of the capital is owned by the state through direct investment, or in which the state holds special rights, known as State-Owned Enterprises (SOEs).

SOEs, particularly those organised as limited liability companies, are established with the primary objective of generating profits. The legal framework governing SOEs in Indonesia is set out in Law No. 19 of 2003 on State-Owned Enterprises. A limited liability company may change its status to a public limited company if its capital and the number of its shareholders meet certain criteria, or if it conducts a public offering in accordance with the provisions of legislation governing the capital market. In other words, a public limited company is not a purely public legal entity, but rather a private legal entity under state ownership that remains subject to Law Number 40 of 2007 on Limited Liability Companies.

However, there is some ambiguity regarding the interpretation of state assets that are placed or invested in SOEs. For example, Article 16 Paragraph 1 of Regulation of the Minister of Finance No. 179/PMK.02/2022 stipulates that one of the bases for determining the amount of Non-Tax State Revenue payable, derived from dividends/the Government's share of profits, shall be determined based on the resolution of the General Meeting of Shareholders for a limited liability company. In other words, this legal basis grants the Ministry of Finance the authority to receive and manage dividends from state-owned enterprises. Moreover, Law Number 1 of 2004 on the State Treasury Act prohibits the seizure of money or securities belonging to the State or local authorities, whether held by government agencies or third parties, as well as movable property belonging to the State or local authorities that is in the possession of government agencies or third parties. This indicates that the State is not regarded as a shareholder, but rather as a public authority.

Law No. 16 of 2025 concerning the Fourth Amendment to Law No. 19 of 2003 concerning State-Owned Enterprises seeks to resolve the ambiguity surrounding the legal status of SOEs' finances. First, Article 3F transfers the authority to manage dividends from state-owned enterprises, which was previously held by the Minister of Finance, to BP Danantara. Second, from a normative perspective, the redefinition of state assets under the latest amendment to the State-Owned Enterprises Law has significant legal implications, as it confirms that, once a capital injection has been made, the relevant assets become the full property of the SOEs and are subject to private law, specifically the Limited Liability Companies Act. This can be seen in the explanatory notes to Article 4B, which explicitly state that any profit or loss incurred by a SOE constitutes a profit or loss of that enterprise, rather than a profit or loss of the state. From a normative perspective, this reflects a paradigm shift regarding SOEs' assets, from a public finance logic to a corporate asset logic.

Implications of the Paradigm Shift in the Treatment of State-Owned Enterprises Assets: From Public Finance Logic to Corporate Asset Logic and Its Significance for Legal Certainty in SOE Business Activities

A paradigm shift in the interpretation of state wealth as SOEs' assets can provide legal certainty for SOEs themselves in the conduct of their business activities. Directors of SOEs are often embroiled in corruption cases because their business policies that cause losses to the enterprises are deemed to be detrimental to the state's finances. In the business world, no one seeks to incur a loss. However, business conditions can be highly dynamic and difficult to predict, such that business strategies and decisions that were initially expected to be profitable may ultimately produce the opposite result. For instance, the cases involving the Managing Directors of BJB and Bank Jateng, and the Director of Bank DKI, resulted in acquittals in the Sritex case.

Another example is the corruption case involving the former Chief Executive of PT ASDP Indonesia Ferry, Ira Puspadewi. The case attracted considerable attention because one of the judges issued a dissenting opinion in the judgment. The presiding judge, Sunoto, opined that Ira Puspadewi and her co-defendants should have been acquitted due to the lack of sufficient evidence establishing the existence of corruption. Apart from the fact that no state funds were involved, ASDP's acquisition of PT JN was purely a business decision; treating it as an act of corruption would create a chilling effect on SOEs and discourage them from making legitimate business decisions.

Strengthening the Business Judgment Rule under the Fourth Amendment to the State-Owned Enterprises Act

The fourth amendment to the State-Owned Enterprises Act, which has transformed the State's status from that of a public authority holding shares in State-Owned Enterprises into that of an ordinary shareholder, has also strengthened SOE governance through the application of the Business Judgment Rule (BJR). Business Judgment Rule is a legal doctrine in the common law system. This doctrine serves as a guiding framework for the board of directors to ensure that it does not act rashly when making business decisions. As every business decision may have far-reaching consequences, directors must, when making decisions, uphold the principle of prudence, act in good faith and in the best interests of the company, and comply with the provisions of the company's articles of association and applicable laws and regulations.

In Indonesia, the application of the BJR doctrine to directors is enshrined in Article 97 Paragraph (5) of Law Number 40 of 2007 on Limited Liability Companies Act. The four conditions set out in this section are cumulative; that is, all four conditions must be satisfied for the board of directors to be exempt from personal liability. However, it should be emphasised that the board of directors cannot invoke the BJR if its decisions are found to involve fraud, conflicts of interest, illegality, or gross negligence.

Thus, the focus of the application of the BJR lies in the mechanisms and procedures followed by the board of directors prior to making a decision, rather than in the substance of the decision itself. In principle, the BJR is closely linked to the presence or absence of elements of intent - namely, knowledge and intention - on the part of the directors when making the decision.

This principle is contained in Law No. 1 of 2025 concerning the Third Amendment to Law No. 19 of 2003 concerning State-Owned Enterprises. Several provisions introduced by the Third Amendment were not amended by the Fourth Amendment, one of which is Article 9F. Article 9F expressly adopts the BJR principle. The provision states that the board of directors and the board of commissioners of a State-Owned Enterprise cannot be held liable for investment losses, provided that the relevant business decision was made based on rational considerations, without any personal interest, and in good faith for the benefit of the company. Consequently, this article provides legal certainty and promotes professionalism in business decision-making within state-owned enterprises.

The existence of this provision has driven a transformation in the governance of SOEs, bringing them more closely in line with private-sector practices. This is because, until now, boards of directors have often refrained from making certain business decisions for fear that such decisions might expose them to legal action, even where those decisions were based on sound business analysis. With the legal protection afforded by the BJR, boards of directors have greater freedom to undertake corporate actions, such as expansion, mergers, acquisitions, and business diversification, without fear of criminal consequences should the outcome result in a loss.

Conclusion

Law No. 16 of 2025 concerning the Fourth Amendment to Law No. 19 of 2003 concerning State-Owned Enterprises marks a significant paradigm shift in the legal treatment of state-owned enterprises, particularly with respect to the status of state assets invested in SOEs and the management of SOEs' dividends. By reaffirming that assets invested as capital become the property of the SOEs and are subject to the legal regime governing limited liability companies under Law Number 40 of 2007 on Limited Liability Companies. The amendment also strengthens the distinction between state assets and corporate assets. This shift moves the legal framework governing SOEs away from a predominantly public finance logic towards corporate asset logic, thereby providing greater legal certainty in the conduct of SOE business activities.

This development is particularly important for SOE directors, whose business decisions may involve substantial commercial risks. Article 4B explicitly states that any profit or loss incurred by an SOE constitutes a profit or loss of the enterprise, rather than a profit or loss of the State. In other words, a director should not be held criminally liable merely because a legitimate business decision ultimately results in a loss. However, the exemption of the directors of a SOE from criminal liability applies only if the directors satisfy the requirements of the BJR, namely, that they act in good faith, without personal interests, and in the best interests of the company. The legality of a business decision should instead be assessed by examining the decision-making process, the considerations underlying the decision, and the director's compliance with applicable laws and corporate governance requirements.

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