

Financial Reconstruction of State-Owned Enterprises in Indonesia as Special State Finances: Public or Private Law?

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Abstract

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Changes to the SOEs law, particularly Law 1/2025 and Law 16/2025, pose problems because they place SOE finances and management entirely in the private domain, which contradicts the *ratio decidendi* of several Constitutional Court Decisions. This study aims to analyze reconstruction efforts related to conceptual renewal that position SOE finances as special state finances and their legal implications. This research is normative legal research that prioritizes conceptual, legislative, case, and comparative approaches. This study finds that SOE finances and management are constitutionally and systematically part of special state finances with a dual character, namely having both public and private legal dimensions. Comparative studies with China and Singapore show that although the design of state control differs, both emphasize the accountability of state assets and the operational efficiency of state-owned enterprises. The finances and management of SOEs, which are part of the state's special finances, have legal implications for the Board of Commissioners, the Board of Directors, and the Supervisory Board, who can be held criminally liable for SOE losses, unless the business decisions made were in accordance with the principles of prudence, good corporate governance, and the business judgment rule. This research recommends a thorough revision of Law 1/2025 and Law 16/2025, as well as filing for judicial review, because the substance of these two laws is not in line with the *ratio decidendi* of the Constitutional Court's decision, which states that the finances of SOEs fall within the realm of public and private law.

1. Introduction

State-Owned Enterprises (SOEs) are business entities whose ownership is fully or largely held by the state to manage economic resources to support national development and community welfare.¹ State-owned enterprises function as instruments of the state in carrying out strategic economic activities considered important to ensure national economic sovereignty and stability, as well as providing public services that cannot be fully entrusted to market mechanisms.² In the context of Indonesia's economic system, the existence of SOEs plays a vital role as the main pillar in managing state assets, strengthening the domestic economy, and creating widespread employment opportunities for the public. In addition, state-owned enterprises are also responsible for implementing the principles of good

¹ Saikhu Saikhu Et Al., "A Systematic Review Of Fraud: An Overview Of State-Owned Enterprises," *Cogent Business & Management* 12, No. 1 (December 12, 2025): 3-6, <Https://Doi.Org/10.1080/23311975.2025.2518493>.

² Dimitar Anguelov, "State-Owned Enterprises And The Politics Of Financializing Infrastructure Development In Indonesia: De-Risking At The Limit?," *Development And Change* 55, No. 3 (May 24, 2024): 493-529, <Https://Doi.Org/10.1111/Dech.12828>.

corporate governance and public accountability to ensure transparent and professional management.³

The importance of SOEs' role in Indonesia led the Indonesian lawmakers, namely the President and the House of Representatives (DPR), to regulate provisions regarding SOEs in a separate law, namely Law No. 19 of 2003 concerning State-Owned Enterprises (Law 19/2003), Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (Law 1/2025), and Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (Law 16/2025). In general, the purpose of revising the SOE law is to ensure that the management of SOEs becomes more professional, efficient, accountable, and transparent. One of these efforts is to emphasize the "private" dimension of state-owned enterprises.⁴

Efforts to clarify the management of SOEs as a private or business domain, implying that the profits or losses of SOEs are purely those of the SOEs and not part of the state's profits or losses. This is as stated in Article 4B of both Law 1/2025 and Law 16/2025, which emphasizes that the profits or losses of SOEs cannot be classified as state losses. Other provisions emphasizing the private domain's position in SOE management are also clarified in Article 94A of Law 1/2025, which is also strengthened by Article 3AA of Law 16/2025, which essentially states that the financial management of SOEs is the management of state finances that are separated, thus subject to good business governance. Regarding SOE wealth, the Explanations of Article 4B of Law 1/2025 and Article 4B of Law 16/2025 essentially emphasize that although SOE capital comes from state finances, in its management, this SOE capital becomes SOE capital, making it separated state finances. This implies that SOE profits and losses are not state losses but purely business management losses of the SOE.

Referring to the various regulations mentioned above, which do not classify SOE finances as state finances, fundamentally raises legal issues both constitutionally and factually. Constitutionally, several provisions that emphasize the private status of SOE finances and management contradict several Constitutional Court Decisions, including: Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No. 59/PUU-XVI/2018. Although these decisions address different cases, they all emphasize that the financial position of SOEs is essentially a matter of public law, even tho their management still refers to the principles of good business or corporate governance, including accommodating the business judgment rule doctrine. Factually, not classifying SOE finances as state finances could also potentially burden state finances, as data from Transparency International shows that SOE losses due to corruption between 2000 and 2024 reached 83.3 trillion Rupiah.⁵ This loss essentially accounts for nearly

³ Carlos F. Lopes, Augusta Ferreira, And Carlos Ferreira, "State-Owned Enterprises And Corporate Scandals: A Systematic Literature Review," *International Journal Of Ethics And Systems* 1, No. 1 (September 2, 2025): 1-3, <Https://Doi.Org/10.1108/IJOES-07-2024-0221>.

⁴ Yuzon Sutrirubiyanto Nova Et Al., "Theoretical Review Of The Welfare State On Private Involvement In State-Owned Enterprises," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, No. 1 (June 14, 2025): 5567-79, <Https://Doi.Org/10.31941/Pj.V24i2.6096>.

⁵ Transparency International, "Dua Dekade Korupsi BUMN Membebani Negara, Cela Kian Terbuka Di Era UU Baru," 2025, <Https://Ti.Or.Id/Dua-Dekade-Korupsi-Bumn-Membabani-Negara-Cela-Kian-Terbuka-Di-Era-Uu-Baru-1/>.

15% of the state's investment in SOEs between 2005 and 2021, which totaled 369.17 trillion Rupiah.⁶ This raises the issue that not classifying SOE finances as state finances actually makes the burden on state finances heavier because losses incurred by SOEs due to corruption also essentially harm state finances.⁷ Based on the problem description above, this research offers novelty in the form of a conceptual reconstruction of state-owned enterprise finance as a special form of state finance. The term "special state finances" is the author's term, based on several Constitutional Court Decisions, such as Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No. 59/PUU-XVI/2018, which affirm that the finances of SOEs are state finances, even to their management must adhere to the principles of good business or corporate governance, including accommodating the business judgment rule doctrine.⁸

Based on the problem description above, this research offers novelty in the form of a conceptual reconstruction of state-owned enterprise finance as a special form of state finance. The term "special state finances" is the author's term, based on several Constitutional Court Decisions, such as Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No. 59/PUU-XVI/2018, which affirm that the finances of State-Owned Enterprises (SOEs) are state finances, even tho their management must refer to the principles of good business or corporate governance, including accommodating the business judgment rule doctrine. This reinforces that some provisions, such as Article 4B in both Law 1/2025 and Law 16/2025, Article 94A in Law 1/2025 which is also strengthened by Article 3AA in Law 16/2025, and the Explanations of Article 4B in Law 1/2025 and Article 4B in Law 16/2025, are not in line with the three Constitutional Court Decisions mentioned above, which essentially mandate that SOE finances are special state finances, even to this term is not explicitly mentioned in the legal considerations of the Constitutional Court judges. There are two legal issues that this research attempts to answer: first, the nature of the concept of state control in relation to finance and the management of state-owned enterprises: is it public or private domain? and second, the reconstruction related to the concept of state finances, specifically in the finances and management of SOEs and their legal implications. Previous research related to finance in the SOE environment has essentially been conducted by several previous researchers, such as Kurniawan et al. (2025), whose research novelty emphasizes that criminal traps for SOE Directors can be applied as long as

⁶ Hidayat Salam, "Pemisahan Kerugian BUMN Dari Kerugian Negara Di UU BUMN Hambat Pemberantasan Korupsi" (Kompas.Id, 2025), <Https://Www.Kompas.Id/Artikel/Pemisahan-Kerugian-Bumn-Dari-Kerugian-Negara-Di-Uu-Bumn-Menghambat-Pemberantasan-Korupsi>.

⁷ Bambang Sugiri Fauzan Prasetya, Milda Istiqomah, "The Losses Of State-Owned Subsidiaries That Are Equal To State-Owned Enterprises In The Perspective Of Corruption In Indonesia After The Third Amendment To The Law On State-Owned Enterprises," *Pena Justitia: Media Komunikasi Dan Kajian Hukum* 24, No. 2 (2025): 3171-82, <Https://Doi.Org/Https://Doi.Org/10.31941/Pj.V24i2.6312>.

⁸ Agnes Harvelian Et Al., "Interpretation Of The Constitution On The Arrangement Of State-Owned Enterprises In The National Economic System Based On The Decision Of The Constitutional Court," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, No. 1 (June 30, 2023): 171-88, <Https://Doi.Org/10.19109/Nurani.V23i1.17109>.

the Directors are not aligned with the business judgment rule doctrine.⁹ Another study was conducted by Nur, et al. (2025), with the research novelty being that corruption in SOEs, particularly at P.T. Pertamina, should require an internal monitoring mechanism as an early warning system to prevent acts of corruption.¹⁰ Further research was also conducted by Habibie et al. (2025), whose novelty lies in discussing the existence of the business judgment rule doctrine after the revised state-owned enterprise law was passed, which provides greater legal certainty for directors of state-owned enterprises.¹¹

From the three previous studies mentioned above, the analysis of conceptual renewal regarding SOE finances as special state finances has not been comprehensively discussed by the three previous studies. Therefore, this research is original and different from the three previous studies.

2. Methods

This research, with its analytical focus on efforts to reconstruct the conceptual updates that position SOE finances as special state finances and their various legal implications, is normative legal research. Normative legal research, commonly known as doctrinal legal research, essentially focuses on analyzing authoritative legal materials such as legislation and court decisions. This analysis is then conducted comprehensively, referencing legal principles, legal theories, legal concepts, and legal doctrines.¹² The primary legal materials in this study are the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), Law No. 19 of 2003 concerning State-Owned Enterprises (Law No. 19/2003), Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (Law No. 1/2025), and Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (UU 16/2025), as well as court decisions, namely: Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No. 59/PUU-XVI/2018. The secondary legal materials used in this study are all research findings that discuss state finances and state-owned enterprise finances, specifically regarding their management, whether in the form of journal articles, books, or other research results. The non-legal materials used are legal dictionaries and research on state-owned enterprises (SOEs) that are not legal research, such as the financial aspects of SOEs from a business science perspective. The approach used is a conceptual, legislative, comparative, and case study approach. The legal material analysis is

⁹ Rahmad Alan Et Al., "Analisis Delik Pidana Korupsi Dalam Pengelolaan Keuangan BUMN Oleh Pejabat Direksi BUMN," *Cosmos: Jurnal Ilmu Pendidikan, Ekonomi Dan Teknologi* 2, No. 3 (2025): 3046-4846.

¹⁰ Hilman Nur Et Al., "Legal Analysis Of PT Pertamina Corruption Case And Its Impact On SOE Governance," *Sanskara Hukum Dan HAM* 4, No. 01 (2025): 227-34, <Https://Doi.Org/10.58812/Shh.V4.I01>.

¹¹ Muhammad Mirza Habibie, Yuliani Catur Rini, And Kartika Winkar Setya, "Business Judgment Rule In The Amendment Of The State-Owned Enterprises Law," *Jurnal Hukum In Concreto* 4, No. 2 (2025): 271-85.

¹² Wibren Van Der Burg Taekema, Sanne, *Contextualising Legal Research: A Methodological Guide* (Edward Elgar Publishing., 2024).

conducted prescriptively, where the collected legal materials are then analyzed and legal solutions are formulated as presented in the legal issues.¹³

3. Results and Discussion

3.1. The Nature of the Concept of State Control in Relation to Finance and the Management of State-Owned Enterprises: Public or Private Domain?

SOEs are generally understood as corporations whose capital, in part or in whole, comes from the state. State-owned enterprises are expected to generate profits to increase national income.¹⁴ Constitutionally, SOEs are a manifestation of the mandate of the constitution, particularly in the provisions of Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which emphasizes that important branches of production for the country and those that control the basic needs of society are controlled by the state. The meaning of this country being controlled by the state is, among other things, that the state manages production branches that are important to the country and controls the basic needs of society, one of which is through SOEs.¹⁵ This reinforces the idea that SOEs are an extension of the state to generate profit or gain, while also ensuring that production branches important to the country and controlling the basic needs of society can produce the greatest possible prosperity for the people.¹⁶

The concept of state control, as emphasized in Article 33 paragraphs (1) to (3) of the UUD NRI 1945, can be said to be the identity of the constitution, where these three substances are the basic values of the constitution and also the direction for the Indonesian economy, which is based on the "cooperative system."¹⁷ This cooperative system, as stated by Indonesia's founding leaders, particularly Moh. Hatta, who emphasized that the cooperative system is a distinctive feature of Indonesia's economic democracy, where the state plays an important role in efforts to control and manage, in the public sense, various aspects that affect the livelihoods of society, so that social justice can be achieved for the Indonesian people.¹⁸ The concept of economic democracy as stipulated in Article 33 paragraphs (1) to (3) of the UUD NRI 1945 can be said to be core constitutional value and serves as a guide for the implementation of

¹³ Saepul Rochman Kelik Wardiono, Khudzaifah Dimyati, Wardah Yuspin, Tasyha Panji Nugraha, Arief Budiono, "Epistemology Of Legal Studies: Research Method Characteristics Of Theoretical Law Bearers In Indonesia," *Journal Of Ecohumanism* 3, No. 1 (2024): 814-54.

¹⁴ Roberto Cardinale, Matteo Landoni, And Zhifu Mi, "Global State-Owned Enterprises In The 21st Century: Rethinking Their Contribution To Structural Change, Innovation, And Public Policy," *Structural Change And Economic Dynamics* 68, No. 1 (March 2024): 468-72, <Https://Doi.Org/10.1016/J.Strueco.2024.01.013>.

¹⁵ Z. Rasji, Yuniati, & Syafiqah Aggistri, "Perubahan Regulasi Pengelolaan Keuangan BUMN Menurut Undang-Undang No 1 Tahun 2025 Tentang Badan Usaha Milik Negara: Tinjauan Filosofi Hukum," *Jurnal Hukum Lex Generalis* 5, No. 10 (2025), <Https://Doi.Org/Https://Doi.Org/10.56370/Jhlg.V5i10.945>.

¹⁶ Weikai Chen, Ningzhi He, And Hao Qi, "The Evolving Role Of State-Owned Enterprises In China's Economic Stabilization," *Science & Society: A Journal Of Marxist Thought And Analysis* 1, No. 1 (July 7, 2025): 1-3, <Https://Doi.Org/10.1177/00368237251334301>.

¹⁷ Didi Sukardi, Fatin Hamamah, And Abdul Karim, "Cooperatives Based On The Values Of Dignified Justice In Indonesia And Comparison With USA, Sweden, South Korea And India," *Cogent Social Sciences* 11, No. 1 (December 31, 2025), <Https://Doi.Org/10.1080/23311886.2025.2573153>.

¹⁸ Yudi Latif, "Building The Soul Of The Indonesian Nation: Mohammad Hatta On Religion, The State Foundation, And Character Building," *Studia Islamika* 32, No. 2 (August 29, 2025): 241-78, <Https://Doi.Org/10.36712/Sdi.V32i2.45220>.

Indonesia's economic system, particularly concerning the authority of SOEs.¹⁹ Although not comprehensively explained in the constitution and laws, the term "controlled by the state" in Article 33 of the UUD NRI 1945 has undergone significant development, particularly in the Constitutional Court Decision 001-021-022/PUU-I/2003, which subsequently interpreted "controlled by the state" as encompassing five important aspects: supervision, management, policy formulation, regulation, and administration.²⁰ These five things are essentially cumulative, meaning that in order to control important branches of production and those that are essential to the lives of many people, the state must implement these five aspects as a manifestation of its control efforts.²¹

Based on the above understanding of the development of the meaning of state control, it can be understood that conceptually, the meaning of state control is public control and cannot be interpreted in terms of private control, which tends to mean ownership. This essentially confirms that the existence of SOEs is inherently inseparable from the constitutional provision of Article 33 paragraph (2) of the UUD NRI 1945, which concerns public state control over important branches of production that are vital to the lives of many people.²² In this case, the state is authorized to supervise, manage, formulate policies, regulate, and oversee state-owned enterprises (SOEs) as a manifestation of the meaning of state control as mandated by the constitution. This substantive interpretation of the state's control over meaning by the Constitutional Court affirms the importance of the value of a living constitution, which also evolves to complement the text of the constitution.²³ The text of the Constitution cannot be interpreted narrowly and textually, but must be interpreted through deep understanding by conducting a "moral and constitutional reading" as proposed by Ronald Dworkin, resulting in constitutional values that complement the application of constitutional values.²⁴

The utilization of constitutional values to complement the text of the constitution is essentially in line with Satjipto Rahardjo's idea of placing legal text not as a final framework.²⁵ Legal texts (including constitutional texts) must be understood in their purpose to serve

¹⁹ Dharma Setiawan Negara And Rahmi Jened, "Economic Democracy Value Erroring Through The Establishment Of Soe Holding," *Migration Letters* 21, No. 4 (2024): 360-61.

²⁰ Chadir Ali And Fatmawati, "Formal Constitutional Review Paradox: The Law On Legislation Making Between Legal Procedure And Constitutional Norms," *As-Siyasi: Journal Of Constitutional Law* 5, No. 1 (June 15, 2025): 195-214, <Https://Doi.Org/10.24042/As-Siyasi.V51.27578>.

²¹ Adrianus Masnun, Muh. Ali, Noviyanti, Santoso, Irwan Bagyo, Wedhatami, Bayangsari, Abiyoga, "Water As A Fundamental Right: State Responsibilities And Regional Water Supply System Solutions," *Indonesian Journal Of Administrative Law And Local Government (IJALGOV)* 1, No. 1 (2024): 1-3.

²² Dicky Eko Prasetyo And Muh. Ali Masnun, "Beneficiary Pays Principle : Rekonstruksi Pengaturan Pelindungan Lingkungan Dalam Mewujudkan Kelestarian Sumber Daya Air," *Jurnal Hukum Lingkungan Indonesia* 11, No. 1 (October 9, 2025): 1-22, <Https://Doi.Org/10.38011/Jhli.V11i1.957>.

²³ Dicky Eko Prasetyo, Muh. Ali Masnun, And Noviyanti Noviyanti, "Post-Election Reconciliation In 2024 As A Constitutional Convention In Indonesia: A Progressive Legal Culture Perspective," *Jambura Law Review* 7, No. 1 (January 31, 2025): 176-96, <Https://Doi.Org/10.33756/Jlr.V7i1.26999>.

²⁴ Agam Ibnu Asa, "The Evolution Of Ronald Dworkin's Legal Philosophy: From Interpretivism To Integrity," *Abjad Journal Of Humanities & Education* 3, No. 2 (2025): 117-19, <Https://Doi.Org/Https://Doi.Org/10.62079/Abjad.V3i2.88>.

²⁵ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas, 2010).

humanity, which is constantly undergoing massive development.²⁶ In this context, legal interpretation plays an important role in subsequently constructing legal and constitutional values within legal texts.²⁷ This is essentially what underpins the understanding that the meaning of state control over SOEs must be understood based on a systematic constitutional interpretation. The term "systematic constitutional interpretation" in this study essentially refers to the characteristics of systematic interpretation, which emphasizes the importance of interpreting legal texts broadly so that they are connected within a single legal system.²⁸ This systematic constitutional interpretation in exploring state control over finances and the management of state-owned enterprises emphasizes the need to systematize the constitutional basis related to the meaning of state control and state finances in the constitution. If the meaning of state control as referred to in Article 33 paragraph (2) of the UUD NRI 1945 has been expanded to include supervision, management, policy formulation, regulation, and administration, then state finances as the main capital of SOEs are also clarified by Article 23C of the UUD NRI 1945, which emphasizes that matters related to state finances are regulated by law. The provisions of Article 33 paragraph (2) and Article 23C of the UUD NRI 1945 must be read systematically, meaning that state finances in general must be regulated by law, emphasizing five important aspects: supervision, management, policy formulation, regulation, and administration.

Regarding the finances and management of SOEs, a constitutional and systematic interpretation based on Article 33 paragraph (2) and Article 23C of the UUD NRI 1945 affirms that the financial capital of SOEs derived from state finances must be regulated separately in special laws and that it is necessary to emphasize five important aspects of the state's relationship with SOEs, namely supervision, management, policy formulation, regulation, and administration. Essentially, the capital of SOEs, which is partially or fully derived from the state, raises issues regarding the financial position and management of SOEs, specifically whether they fall under private or public law.²⁹ This division of law based on private or public dimensions refers to Paul Scholten's view, which essentially developed from Roman law, where public law is associated with legal aspects that have a relationship or connection between the state and citizens, while private law essentially regulates legal relationships between citizens.³⁰ If we refer to this simple understanding, there is indeed a problem regarding the finances or management of SOEs, where SOEs are essentially "companies" and

²⁶ Dicky Eko Prasetyo Et Al., "The Construction Of The Lex Sportiva Principle In Indonesia's Sports Law: Implications And Future Arrangements," *UUM Journal Of Legal Studies* 16, No. 2 (July 31, 2025): 58-69, <Https://Doi.Org/10.32890/Uumjls2025.16.2.4>.

²⁷ A. Raghuwanshi, "The Many Interpretations Of Constitutional Morality," *Kutafin Law Review* 12, No. 2 (July 15, 2025): 407-27, <Https://Doi.Org/10.17803/2713-0533.2025.2.32.407-427>.

²⁸ Harvelian Et Al., "Interpretation Of The Constitution On The Arrangement Of State-Owned Enterprises In The National Economic System Based On The Decision Of The Constitutional Court."

²⁹ Bart Jansen, "The Juridical Disclosure Of Ethics In The Netherlands And Indonesia," In *The Juridification Of Business Ethics* (Cham: Springer Nature Switzerland, 2023), 41-66, Https://Doi.Org/10.1007/978-3-031-39908-4_3.

³⁰ Jansen.

therefore subject to private or civil law.³¹ However, on the other hand, the capital of SOEs comes from the state, which can indicate that the finances and management of SOEs are essentially within the realm of public law.

The financial position and management of state-owned enterprises, which fall under public law, are essentially in line with several *ratio decidendi* in Constitutional Court Decisions, including Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No. 59/PUU-XVI/2018. Essentially, the *ratio decidendi* is the considerations and analysis undertaken by the judge, which are then concluded in the court's decision.³² The *ratio decidendi* in a court decision also has the same binding force as the decision itself and must therefore be obeyed.³³ Regarding the financial position and management of SOEs, this refers to the Constitutional Court Decision No. 48/PUU-XI/2013, which affirms that constitutionally, SOEs essentially carry out the mandate of the constitution as stated in Articles 31 to 33 of the 1945 Constitution of the Republic of Indonesia, which are the long arm of the state for managing important branches of production and controlling the basic needs of the people, so that SOEs cannot be fully subject to private law.³⁴ The *ratio decidendi* in Constitutional Court Decision No. 48/PUU-XI/2013 essentially affirms the position of SOEs as an extension of the state, while also demonstrating that the finances and management of SOEs have a public legal dimension, as stated in the phrase, "not entirely subject to private law." The meaning of "not entirely subject to private law" must be understood as meaning that SOEs are subject to private law in certain aspects, particularly in management, although it must be generally understood that SOEs are not entirely private, meaning that SOE finances are generally within the realm of public law.³⁵ This Constitutional Court Decision No. 48/PUU-XI/2013 essentially reinforces that the finances and management of SOEs fall within a mixed legal domain, between public and private.

The *ratio decidendi* of the Constitutional Court Decision No. 62/PUU-XI/2013 also clarifies that the capital of SOEs comes from state finances, where the separation of state assets for SOE capital is not a form of transfer of rights from the state to the SOEs.³⁶ Therefore, the assets of SOEs, as state assets that have been separated, are essentially state assets. The *ratio*

³¹ Larassati Putri Syaflizar, "Business Judgment Rule: Sebuah Prinsip Tanggung Jawab Direksi Atas Kerugian Dalam Pengelolaan Bumn (Persero)," *Jurnal Privat Law* 11, No. 1 (2023): 140, <Https://Doi.Org/10.20961/Privat.V11i1.45950>.

³² Yuniar Riza Hakiki And Taufiqurrahman, "The Idea Of Structuring National Legislation Based On The Ratio Of Decidendi & Obiter Dictum Constitutional Court Decision," *Jurnal Konstitusi* 20, No. 1 (2023): 78-99, <Https://Doi.Org/10.31078/Jk2015>.

³³ Noviyanti Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, "Discrimination Related To Labour Age Limitation In Indonesia : A Human Rights And Comparative Law Perspective," *Suara Hukum* 6, No. 2 (2024): 228-54.

³⁴ Mohammad Rafi Al Farizy, Fiska Maulidian Nugroho, And Bhim Prakoso, "State Financial Position As State Equity Participation In Indonesia Investment Authority," *JURNAL USM LAW REVIEW* 7, No. 3 (December 3, 2024): 1528-41, <Https://Doi.Org/10.26623/Julr.V7i3.10453>.

³⁵ Waluyo Waluyo, Hilaire Tegnan, And Noni Oktiana Setiowati, "Aligning State Finance Regulations With SOE Bankruptcy Policy: Evidence From The United States," *Journal Of Human Rights, Culture And Legal System* 5, No. 1 (March 30, 2025): 246-78, <Https://Doi.Org/10.53955/Jhcls.V5i1.470>.

³⁶ R. Narendra Jatna Et Al., "Strengthening The Business Judgment Rule In Indonesia: Lessons From Malaysia," *Journal Of Sustainable Development And Regulatory Issues (JSDERI)* 3, No. 3 (September 29, 2025): 568-89, <Https://Doi.Org/10.53955/Jsderi.V3i3.157>.

decidendi of Constitutional Court Decision No. 62/PUU-XI/2013 further clarifies that the state's financial position is essentially within the realm of public law. A similar view was also expressed in the *ratio decidendi* of Constitutional Court Decision No. 59/PUU-XVI/2018, which emphasizes that the separation of state finances and assets in SOEs and regional SOEs is not essentially a transfer of rights to SOEs or regional SOEs, and therefore remains part of the state's finances and assets.³⁷ If understood constitutionally and systematically, the *ratio decidendi* in Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No. 59/PUU-XVI/2018 essentially affirms that the finances of SOEs are special state finances, where their status is state finances subject to public law provisions, but their management refers to private law mechanisms, particularly the principles of good corporate governance, including accommodating the business judgment rule doctrine. This essentially reinforces that constitutionally, SOE finances are special state finances subject to both public and private law mechanisms.

This special state financial concept attached to the finances and management of SOEs essentially contains three important dimensions: first, special state finances for SOE finances affirm a mixed domain, encompassing both public and private aspects simultaneously. This confirms that there is a duality of financial domains in SOE finance, making it special. Second, the public law domain in state finance is special, as in SOE finance, which reinforces that SOE capital sourced from the state remains state finance in essence, so separated state finance does not change the status of SOE finance sourced from state finance, thus remaining subject to public law. Third, although SOE finance has a public law dimension, its management still adheres to private law dimensions, particularly the principles of good corporate governance, including accommodating the business judgment rule doctrine. This relates to efforts to manage state-owned enterprises, which will be hampered if based solely on public legal mechanisms.

Based on the above explanation, through a constitutional-systematic interpretation, the finances and management of SOEs are essentially state finances of a special nature. This specific state finance emphasizes its regulatory aspects, which are both public and private. In the dimension of public law, the finances of SOEs must also accommodate the state's role in overseeing, managing, formulating policies, regulating, and managing finances as stipulated by law. In the dimension of private law, this relates to the management of SOE finances, which focuses on the business and commercial activities of SOEs, adhering to the principles of good corporate governance, including accommodating the business judgment rule doctrine. Therefore, to ensure that the financial losses of SOEs, which are special state finances, are prevented, testing must first be conducted based on the principles of good corporate governance and the business judgment rule doctrine. This normative test and analysis based on the business judgment rule doctrine are necessary to ensure that the losses incurred by SOEs are losses within the realm of public law or state finances, becoming state losses, or are

³⁷ Muhammad Hykhal Shokat Ali, "Status Keuangan BUMN Sebelum Dan Sesudah Undang-Undang Nomor 1 Tahun 2025: Reorientasi Hubungan Keuangan Negara-Korporasi," *AL WASATH Jurnal Ilmu Hukum* 6, No. 2 (October 12, 2025): 95–106, <Https://Doi.Org/10.47776/Alwasath.V6i2/1797>.

losses from the business and commercial practices of SOEs that are entirely subject to the realm of private law.

3.1. Reconstruction of the Concept of Special State Finances in the Finance and Management of State-Owned Enterprises and Their Legal Implications

The finances and management of SOEs, which are special state finances as discussed earlier, represent a conceptual reconstruction with significant implications for the finances and management of SOEs in Indonesia. Essentially, the term "state finances" has never been clearly defined, either in legislation or in Constitutional Court decisions. This specific concept of state finances is an effort at reconstruction and exploration based on a constitutional-systematic interpretation, referring to the provisions of Article 33 of the UUD NRI 1945 and the *ratio decidendi* in Constitutional Court Decisions related to BUMN finances, such as Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No. 59/PUU-XVI/2018. In general, this specific concept of state finance is a concept of state finance that has both public and private dimensions. This is essentially relevant to the finances of SOEs, which also fall under both public and private law.³⁸ Although this specific concept of state finance has been clarified in various *ratio decidendi* in Constitutional Court Decisions regarding SOE finances, it has actually created problems, especially when the law-making bodies, namely the government and the DPR, revise the SOE law through Law 1/2025 and Law 16/2025.

Some provisions in Law 1/2025 and Law 16/2025 actually contradict the three main points of the previous Constitutional Court Decisions, which placed SOE finances as special state finances subject to both public and private law. Some provisions in Law 1/2025 and Law 16/2025 actually reinforce the position of SOE finances and management as being entirely within the realm of private law, as stated in Article 4B of both Law 1/2025 and Law 16/2025, Article 94A of Law 1/2025 which is also strengthened by Article 3AA of Law 16/2025, and the Explanations of Article 4B of Law 1/2025. The conflict or contradiction between the substance of Law 1/2025 and Law 16/2025 with the *ratio decidendi* in Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No. 59/PUU-XVI/2018 essentially raises legal issues because Constitutional Court decisions, as the official interpretation of the constitution, should be followed by the legislature. This aligns with the view of *Abbé de Sieyès*, who stated that obedience to the constitution is essential for all parties, including lawmakers, because disregarding the constitution essentially renders it meaningless.³⁹

The Constitutional Court's decision is essentially a court verdict or judgment to adjudicate a specific case, but as a court decision with judicial review authority, the Constitutional Court's decision, under certain conditions, becomes the final interpretation of

³⁸ Andi Wahyu Wibisana, "Optimizing The Implementation Of Compliance Audit Functions In State-Owned Enterprises: An Analysis Through The Lens Of Indonesian Corruption Law," *Beijing Law Review* 16, No. 03 (2025): 1559–96, [Https://Doi.Org/10.4236/Blr.2025.163078](https://doi.org/10.4236/blr.2025.163078).

³⁹ Hananto Widodo Dicky Eko Prasetyo, "Ius Constituendum Pengujian Formil Dalam Perubahan Konstitusi," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, No. 1 (2022): 2.

the constitution, thus holding the same status as the constitution itself.⁴⁰ This reinforces that the *ratio decidendi* in the Constitutional Court's decision, which contains the mandate and command of the constitution, is hierarchically higher than the law, so if there is a law that contradicts the *ratio decidendi* in the Constitutional Court's decision, it should not have binding legal force.⁴¹ Regarding the various provisions in Law 1/2025 and Law 16/2025, which place SOE finances entirely within the realm of private law, this can be said to contradict the *ratio decidendi* in Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No. 59/PUU-XVI/2018. Therefore, it must be stated that the substance of Law 1/2025 and Law 16/2025, which places SOE finances entirely within the realm of private law, has no binding legal force.

The concept of state finances, specifically in the context of SOEs, is fundamentally based on the position of SOEs as an extension of the state in managing branches of production that affect the lives of many people. Therefore, state control is necessary through various aspects, namely supervision, management, policy formulation, regulation, and administration. Despite this, on the other hand, to optimize business practices and the business fields of SOEs, the management of SOEs also refers to the realm of private law, in this case, the principles of good corporate governance and the business judgment rule doctrine. In other countries, the status of SOEs as an extension of the state and the role of the state in overseeing and regulating these SOEs can also be found in the SOE regulations and practices in China. SOE regulations and practices in China are based on a socialist market economy system where the economy, on the one hand, relies on the development of market mechanisms, although it must still be under state control.⁴²

SOEs in China have undergone significant changes, reflecting a shift from the traditional model of being entirely managed and owned by the state to a modern model that adopts a joint-stock company system.⁴³ This revolution emerged alongside economic reforms that encouraged many large state-owned enterprises in China to transform into more corporate entities, where the state's role remained dominant as the majority shareholder thru special institutions such as SASAC (State-owned Assets Supervision and Administration Commission) at the central level, regional SASACs at the provincial and city levels, and state investment institutions like China Investment Corporation (CIC).⁴⁴ The financial accountability of state-owned enterprises in China remains fundamentally directed toward the public interest because the state is the majority shareholder with strict oversight, including

⁴⁰ Muhammad Zulfa Aulia Et Al., "The Use Of Progressive Law Phrase In Constitutional Court Decisions: Context, Meaning, And Implication," *Jurnal Konstitusi* 20, No. 3 (2023): 423-50, <Https://Doi.Org/10.31078/Jk3034>.

⁴¹ Daniel Hemel, "Formalism, Functionalism, And Nonfunctionalism In The Constitutional Law Of Tax," *The Supreme Court Review* 2024, No. 1 (June 1, 2025): 327-63, <Https://Doi.Org/10.1086/735428>.

⁴² Xiaoming Tian And Fei Wu, "China's Market Socialism Reforms: Unraveling Historical Shifts, Economic Transformation, And The Rise Of Individualism, Materialism, And Inequality," *Critique* 52, No. 4 (October 15, 2024): 517-31, <Https://Doi.Org/10.1080/03017605.2024.2416751>.

⁴³ Haiyan Xue Et Al., "The Role Of State-Owned Capital In The Innovation Of Private-Owned Enterprises: Evidence From China," *Pacific-Basin Finance Journal* 1, No. 1 (December 2025): 103031, <Https://Doi.Org/10.1016/J.Pacfin.2025.103031>.

⁴⁴ R.K. Mishra, "Understanding State-Owned Enterprises Reforms In China," *Indian Journal Of Public Administration* 71, No. 3 (September 2025): 642-49, <Https://Doi.Org/10.1177/00195561251369065>.

audits by the National Audit Office (NAO).⁴⁵ Regarding the supervision of state-owned enterprises in China, it is carried out through intensive and integrative control involving various institutions, with the dominant role of the Communist Party of China (CPC) being the most prominent. SASAC acts as the representative of the central government, serving as the holder of state asset ownership rights, regulating the appointment, evaluation, and compensation of SOE managers to ensure the preservation of state assets and the approval of important business strategies.⁴⁶

The regulations and practices in China mentioned above are essentially similar to the concept of state finance, specifically for SOE finances in Indonesia, while still ensuring state oversight and control, and guaranteeing effective business practices. As with the regulations in China, the regulations and practices of SOEs in Singapore also implement a system of SOE management proportionate to the role and control of the state, while on the other hand, still ensuring good business and enterprise management. The management model for State-Owned Enterprises (SOEs) in Singapore is often considered one of the most successful in the world, with its key lies in the clear separation between state ownership, strategic oversight, and company operations. Unlike the direct model, Singapore adopted an indirect ownership structure, where the government does not operationally manage state-owned enterprises. The government acts as the main shareholder thru two primary channels: first, initially thru Temasek Holdings, a private investment company wholly owned by the Singapore Ministry of Finance and serving as the shareholder of various Government-Linked Companies (GLCs) such as Singapore Airlines, DBS Bank, SingTel, Keppel Corporation, and ST Engineering; and second, thru direct government ministries and agencies that manage companies in certain strategic sectors such as energy, water, and defense technology, for example, Minister for Finance Incorporated (MFI).⁴⁷ In this context, a company can be categorized as a GLC if a government entity, particularly Temasek, holds a significant stake and controls the appointment of directors, which signifies a clear and professional ownership structure.

Singapore's GLCs are unequivocally in the private sector, with legal status as private or public limited companies subject entirely to the Singapore Companies Act.⁴⁸ GLC funding comes entirely from commercial sources, such as the capital market through the issuance of shares and bonds, operating profits, and commercial bank loans, without receiving direct subsidies from the government budget for routine operations. The public aspect of managing state-owned enterprises in Singapore is based on strictly maintained financial accountability reports that are audited by independent auditors and overseen by the Monetary Authority of Singapore (MAS), following international accounting standards (SFRS/IFRS) and with reports

⁴⁵ Mishra.

⁴⁶ Kasper Ingeman Beck And Kjeld Erik Brødsgaard, "Corporate Governance With Chinese Characteristics: Party Organization In State-Owned Enterprises," *The China Quarterly* 250, No. 1 (June 2022): 486–508, [Https://Doi.Org/10.1017/S0305741021001351](https://doi.org/10.1017/S0305741021001351).

⁴⁷ Tebello Thabane, "Rebooting State-Owned Companies In South Africa: Exploring The Viability Of Singapore's State Holding Company (Temasek) Model Of Ownership And Control," *Potchefstroom Electronic Law Journal* 27, No. 1 (October 17, 2024): 3–5, [Https://Doi.Org/10.17159/1727-3781/2024/V27i0a17022](https://doi.org/10.17159/1727-3781/2024/V27i0a17022).

⁴⁸ Bunga Dita Rahma Cesaria, "State As Shareholder: Comparison Between Indonesia And Singapore," *Justice Voice* 4, No. 1 (June 30, 2025): 13–26, [Https://Doi.Org/10.37893/jv.v4i1.1159](https://doi.org/10.37893/jv.v4i1.1159).

open to the public.⁴⁹ Although the capital invested by Temasek is state wealth, each GLC is required to operate commercially independently and be able to survive in intense market competition, thus affirming its operational independence and business orientation while still being indirectly overseen and controlled by the government.

From the differences in the management arrangements and practices of state-owned enterprises between China and Singapore mentioned above, it can generally be seen that the difference lies only in the type of supervision and control exercised by the state, where China implements direct control and supervision, while Singapore implements indirect control and supervision. Nevertheless, substantively, in China and Singapore, the management of state-owned enterprises is essentially subject to both private and public regulations, with continued control and oversight by the government or the state. This is essentially in line with the concept of state finances, specifically within state-owned enterprises in Indonesia, where the regulation and management of state-owned enterprise finances fall within both the public and private domains.

The financial position of SOEs as state finances with a special nature, making them both public and private, has legal implications in various aspects. One aspect of this relates to the legal accountability of the Board of Commissioners, Members of the Board of Directors, and the Supervisory Board of SOEs when losses occur at SOEs. Given the financial position of SOEs as special state finances, the Board of Commissioners, Members of the Board of Directors, and the Supervisory Board can be held accountable for potential state losses resulting from SOE losses. This can be seen from data from Indonesia Corruption Watch (ICW) that between 2016 and 2023, there were 212 corruption cases involving SOEs that were recorded as having been acted upon by law enforcement officials, resulting in losses to the state amounting to 64 trillion Rupiah.⁵⁰ Of these cases, at least 349 SOE officials were identified as perpetrators of corruption, with 84 suspects holding the position of Director, another 124 suspects being middle management, and 129 suspects being SOE employes.⁵¹ This phenomenon confirms that corruption within SOEs is already widespread, which, of course, contradicts the purpose of establishing SOEs, which is to generate the greatest possible profit for the country.

Corruption within SOEs often exhibits characteristics of political corruption, as noted by Artidjo Alkostar.⁵² This type of corruption within SOEs is structured and systematic, involving officials and political elites.⁵³ Although the Board of Commissioners, Members of the Board of Directors, and the Supervisory Board can be held legally accountable, particularly on the criminal law aspect related to the potential for state losses in state-owned enterprises, this can be excluded if the Board of Commissioners, Members of the Board of Directors, and the

⁴⁹ Cesaria.

⁵⁰ Indonesia Corruption Watch (ICW), "Pasca UU BUMN Terbaru, Korupsi Di Perusahaan Pelat Merah Akan Semakin Menjamur!," 2025, <Https://Antikorupsi.Org/Id/Pasca-Uu-Bumn-Terbaru-Korupsi-Di-Perusahaan-Pelat-Merah-Akan-Semakin-Menjamur>.

⁵¹ Indonesia Corruption Watch (ICW).

⁵² Artidjo Alkostar, *Korupsi Politik Di Negara Modern*, 2nd Ed. (Yogyakarta: FH UII Press, 2015).

⁵³ Dicky Eko Prasetyo, "Menelisik Perjuangan Artidjo Alkostar: Dari Paradigma Hukum Profetik Hingga Penegakan Hukum Korupsi Politik" (Kediri: Syakal.Iainkediri.Ac.Id, 2021), <Https://Syakal.Iainkediri.Ac.Id/Menelisik-Perjuangan-Artidjo-Alkostar-Dari-Paradigma-Hukum-Profetik-Hingga-Penegakan-Hukum-Korupsi-Politik/>.

Supervisory Board, in managing the finances of state-owned enterprises, have acted in accordance with the principles of good corporate governance and the business judgment rule doctrine. This is to anticipate potential arbitrary actions by law enforcement officials, such as arresting every member of the Board of Commissioners, the Board of Directors, and the Supervisory Board in cases of financial losses at SOEs. Members of the Board of Commissioners, the Board of Directors, and the Supervisory Board in cases of financial losses at SOEs cannot be held criminally liable for financial losses at SOEs as long as the losses did not occur due to their negligence or fault, they managed the company with care and good faith in accordance with the objectives of the SOE, they had no direct or indirect conflicts of interest, and they took preventive measures to ensure that losses did not arise or continue.

Reconstructing the concept of state finances, specifically in the context of SOEs finances and management, is fundamentally necessary because it reflects SOEs position as an extension of the state in managing production sectors that are vital to the livelihoods of many people. This position demands state control through various mechanisms such as supervision, management, policy formulation, regulation, and governance, which genuinely consider the public interest. However, the management of state-owned enterprises does not solely refer to the realm of public law, but also adopts principles of private law, particularly the principles of good corporate governance and the business judgment rule doctrine, which allow for efficient and professional business practices. The legal implications of the special state financial position in the management of SOEs make the Board of Commissioners, Members of the Board of Directors, and Supervisory Board legally accountable criminally for any losses incurred by the SOE. However, the Board of Commissioners, Members of the Board of Directors, and Supervisory Board can be released from criminal legal liability if the losses did not occur due to their errors or negligence, and as long as the management has fulfilled their obligations in good faith, with due care, without conflicts of interest, and has taken preventive measures to avoid losses. Thus, this specific concept of state finances demands a balance between strict state oversight of SOEs' public assets and functions, while respecting the principles of governance and business autonomy, to optimize BUMN's role as an instrument of development while ensuring accountability and legal protection for its managers.

4. Conclusions

The essence of SOE finance and management, based on a constitutional-systematic interpretation, is essentially a part of special state finance that has dual characteristics: it is both public and private law. From a public law perspective, the state plays a crucial role in overseeing, managing, regulating, and formulating policies as stipulated by law, ensuring the state's function as the public stakeholder in SOEs. Meanwhile, from a private law dimension, the management of SOEs must adhere to the principles of good corporate governance and the business judgment rule, considering that SOE activities are also competitive business ventures. Therefore, to distinguish whether losses incurred are part of state financial losses in the public law domain or business risks in the private law domain, normative testing is required by applying the principles of good governance and the business judgment rule. In other words, the state's control over the finances and management of SOEs must be understood as management inherent in both the public and private domains, demanding a comprehensive

legal and supervisory approach for the benefit of the state and the sustainability of SOE operations.

The reconstruction of the concept of state finances, specifically in the management of SOEs, positions SOEs as entities that combine public functions and private business principles, demanding strong state oversight as well as professional and transparent corporate governance. Comparative studies with models in China and Singapore show that although the methods of state supervision and control differ, the essence remains the same: prioritizing the balance between accountable management of state assets and operational efficiency of state-owned enterprises in market competition. The legal implications of the concept of state finances, specifically in the management of SOEs, are that the Board of Commissioners, members of the Board of Directors, and the Supervisory Board of SOEs can be held criminally liable if SOE financial losses occur. However, this can be excluded if the SOE financial losses have been analyzed under the business judgment rule doctrine and are based on the principles of prudence and good faith. This research recommends a thorough revision of Laws 1/2025 and 16/2025, which are not in line with the *ratio decidendi* of the Constitutional Court's decision, which substantively places SOE finances as special state finances. Another recommendation is the need for judicial review efforts at the Constitutional Court against Laws 1/2025 and 16/2025, which contradict the *ratio decidendi* of the Constitutional Court's decision, which substantively places SOE finances as special state finances and not within the realm of private law, as stated in Laws 1/2025 and 16/2025.

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