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Reclassifying SOE Directors as Non-State Officials: Implications for Fiduciary Duties and Board Accountability Under Indonesian Corporate Law

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Abstract

This article examines the corporate law consequences of reclassifying directors, commissioners, and supervisory board members of Indonesian state-owned enterprises as non-state officials under Law No. 1/2025, and the subsequent reversal by Law No. 16/2025 within eight months. Employing doctrinal legal research combined with a structured comparative inquiry across Singapore, Malaysia, the United Kingdom, and the United States, this article advances three original contributions. First, it demonstrates that the non-state official classification strengthens the formal application of the duty of care and duty of loyalty under Law No. 40/2007 by eliminating competing public-law obligations. Second, it identifies an 'accountability vacuum' created by the transition period, characterised by the removal of public-law oversight before corporate law accountability mechanisms were sufficiently developed. Third, it establishes that the rapid reversal by Law No. 16/2025 exposes a structural inadequacy that neither classification alone can resolve without accompanying institutional reform. The article concludes with a four-part normative framework for a coherent SOE corporate governance regime.

1. Introduction

State-owned enterprises (SOEs) occupy a peculiar position in Indonesian economic law: they are simultaneously instruments of state economic policy and legally distinct commercial entities incorporated as limited liability companies (*perseroan terbatas*). This dual nature has long generated doctrinal ambiguity about the precise legal position of their governing boards.[1] Under Law Number 19 of 2003 concerning State-Owned Enterprises (Law No. 19/2003), directors of SOEs (*Direksi BUMN*) were never expressly classified as state officials (*penyelenggara negara*), yet neither were they fully insulated from public-law obligations.[2] This ambiguity was ostensibly resolved (at least momentarily) by the enactment of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (Law No. 1/2025), which introduced Article 9G explicitly declaring that members of the Board of Directors, Board of Commissioners, and Supervisory Board of SOEs are not state officials.[3] The provision came into force on 24 February 2025, only to be deleted by Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning

[1] Selamat Lumban Gaol, *The Business Judgment Rule In Corporate Law: A Comparative Study Of Indonesia And Singapore Selamat Lumban Gaol The Business Judgment Rule In Corporate Law: A Comparative Study Of Indonesia And Singapore*, vol. 12, 2025.
[2] Selamat Lumban Gaol, Gunarto, and Eko Soponyono, "Legal Reconstruction of Business Judgment Rule as Reason for Deleting Personal Criminal Liability of Limited Company Directors in Making Loss Business Policies Based on Justice Value," *International Journal of Law* 9, no. 1 (2023): 95–99.
[3]Article 9G, Law No. 1 of 2025: 'Anggota Direksi, Dewan Komisaris, dan Dewan Pengawas BUMN bukan merupakan Penyelenggara Negara.'

State-Owned Enterprises (Law No. 16/2025), effective 6 October 2025.[4] This legislative oscillation (a window of less than eight months) left the corporate law community grappling with profound questions about the governance architecture of Indonesian SOEs.

The corporate law implications of this reclassification are far-reaching. If SOE directors are unambiguously classified as private corporate organs, the full suite of fiduciary obligations under Law Number 40 of 2007 concerning Limited Liability Companies (Law No. 40/2007) applies without qualification.[5] Conversely, their re-absorption into public-law categories may dilute the clarity of corporate accountability norms, including the duty of care, duty of loyalty, and the business judgment rule.[6] These are not merely academic concerns; they have direct consequences for how shareholders, with the Indonesian state as dominant shareholder, exercise oversight and how courts adjudicate claims of directorial negligence or self-dealing. Comparative scholarship underscores the universality of this governance tension. Pargendler has identified the inherent conflict in state capitalism between the government's role as regulator and its role as shareholder, noting that this dual function distorts incentive structures for SOE boards.[7] The OECD Guidelines on Corporate Governance of State-Owned Enterprises (2023) similarly recommend that SOE boards be governed primarily by private corporate law norms to ensure clear accountability lines and managerial independence.[8]

Within the Indonesian context, scholars have noted the persistent tension between the public accountability framework applicable to state officials and the corporate governance framework applicable to company directors.[9] The enactment of Article 9G of Law No. 1/2025 was the first legislative attempt to resolve this tension conclusively in favour of the private-law framework,[10] yet its swift deletion by Law No. 16/2025 reversed course within the same

[4]Article I point 26, Law No. 16 of 2025, which expressly deleted Article 9G effective 6 October 2025.
[5] Ernest W K Lim, "Concentrated Ownership, State-Owned Enterprises and Corporate Governance," *Oxford Journal of Legal Studies* 41, no. 3 (September 25, 2021): 663–91, doi:10.1093/ojls/gqaa050.
[6] Iman Sjahputra Tunggal, Hukum Perseroan Terbatas (Jakarta: Harvarindo, 2021).
[7] Mariana Pargendler, "State Ownership and Corporate Governance," *SSRN Electronic Journal*, 2011, doi:10.2139/ssrn.1854452.
[8] *OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024* (OECD Publishing, 2024), doi:10.1787/18a24f43-en.
[9] Lumban Gaol, *The Business Judgment Rule In Corporate Law: A Comparative Study Of Indonesia And Singapore Selamat Lumban Gaol The Business Judgment Rule In Corporate Law: A Comparative Study Of Indonesia And Singapore*; Selamat Lumban Gaol, Gunarto, and Eko Soponyono, "Legal Reconstruction of Business Judgment Rule as Reason for Deleting Personal Criminal Liability of Limited Company Directors in Making Loss Business Policies Based on Justice Value."
[10]DPR RI, 'Laporan Singkat Rapat Panja RUU BUMN,' Komisi VI DPR RI, 1 Februari 2025 (Sekretariat Jenderal DPR RI, Jakarta, 2025); lihat juga Kompas.com, 'DPR Resmi Sahkan Revisi UU BUMN Jadi Undang-Undang,' 4 Februari 2025, https://nasional.kompas.com/read/2025/02/04/11191721. The legislative history of UU 1/2025 indicates drafters were motivated by concerns about the chilling effect of corruption prosecutions on SOE directors' business decisions.

calendar year,[11] leaving Indonesian SOE governance in a state of renewed uncertainty.[12] The scholarly response to this legislative development has been limited. While European and American corporate law scholarship has extensively theorised fiduciary obligations of directors in mixed public-private enterprises,[13] the specific implications of reclassifying SOE directors under a civil law system with a dominant state shareholder have not been systematically examined in the Indonesian context. This article addresses that gap through a systematic literature review, doctrinal analysis, and comparative inquiry.

This article makes three original contributions to the existing literature. First, it provides the first systematic doctrinal analysis of the fiduciary duty implications of the non-state official classification introduced by Law No. 1/2025, demonstrating that such classification strengthens the formal application of duty of care and duty of loyalty norms under Law No. 40/2007 while simultaneously weakening state oversight capacity. Second, it introduces the concept of an 'accountability vacuum' to characterise the transitional governance failure created by the legislative oscillation, and analyses the institutional preconditions—judicial capacity, an independent ownership entity, and clear derivative suit procedures—that must be developed for corporate law accountability mechanisms to function effectively. Third, it articulates a normative framework for a specialised SOE corporate governance regime that resolves the structural tension between fiduciary clarity and public accountability.

2. Methods

This study employs doctrinal legal research (*penelitian hukum normatif*), which Marzuki describes as a method of scientific inquiry that examines legal principles, norms, and rules through systematic analysis of authoritative legal texts and scholarly commentary.[14] Doctrinal research is well-suited to the present inquiry because the primary legal questions, concerning the content and application of fiduciary norms and accountability standards, are questions of legal doctrine that must be resolved through interpretation of statutory provisions, judicial decisions, and established legal concepts.[15]

The research employs three complementary analytical approaches. First, a statute approach traces the evolution of the legal status of SOE directors through successive amendments to the SOE Law, including Law No. 19/2003, Law No. 1/2025, and Law No. 16/2025, as well as their interaction with Law No. 40/2007. Second, a conceptual approach

[11]KPK RI, 'KPK Tetap Berwenang Menangani Tindak Pidana Korupsi di BUMN,' siaran pers resmi, tersedia di https://www.kpk.go.id/id/ruang-informasi/berita/kpk-tetap-berwenang-menangani-tindak-pidana-korupsi-di-bumn; lihat juga Detik News, 'Direksi BUMN Bukan Penyelenggara Negara Dikaji Kejaksaan hingga KPK,' 6 Mei 2025, https://news.detik.com/berita/d-7901386. The repeal was driven by concerns from the KPK that removing SOE directors from the 'penyelenggara negara' category would impair anti-corruption enforcement.

[12] Lumban Gaol, *The Business Judgment Rule In Corporate Law: A Comparative Study Of Indonesia And Singapore Selamat Lumban Gaol The Business Judgment Rule In Corporate Law: A Comparative Study Of Indonesia And Singapore*.

[13] Klaus J. Hopt, "Corporate Governance in Europe: A Critical Review of the European Commission's Initiatives on Corporate Law and Corporate Governance," *SSRN Electronic Journal*, 2015, doi:10.2139/ssrn.2644156.

[14] Peter Mahmud Marzuki, *Penelitian Hukum* (Malang: Setara Press, 2010).

[15] Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (October 1, 2012): 83, doi:10.21153/dlr2012vol17no1art70.

interrogates the doctrinal content of fiduciary duties, specifically the duty of care, duty of loyalty, and the business judgment rule, as understood in Indonesian and comparative corporate law. Third, a comparative approach draws on corporate law frameworks from relevant jurisdictions.[16] The selection of comparator jurisdictions follows two criteria: functional relevance and normative utility. Singapore and Malaysia are selected as primary comparators because they share with Indonesia a companies legislation framework derived from English law and possess substantial SOE sectors governed under private corporate law. The United Kingdom is selected as the source jurisdiction from which Singaporean and Malaysian company law derive their fiduciary duty framework. The United States, specifically Delaware corporate law, is selected for its highly developed business judgment rule jurisprudence.[17]

Primary legal sources include the relevant statutes and their official elucidations (*penjelasan*), ministerial regulations on SOE governance, and judicial decisions from both Indonesian and comparator jurisdictions. Secondary sources consist of peer-reviewed academic journals, monographs, and international institutional guidelines, including the OECD SOE Guidelines (2023) and recent comparative corporate law scholarship.

To verify the claim of scholarly novelty and to ensure comprehensive coverage of the existing literature, a systematic literature review was conducted prior to the doctrinal analysis.[18] The review adopted PRISMA-inspired inclusion and exclusion criteria: sources were included if they directly addressed the legal status of SOE directors in Indonesia, fiduciary duties of SOE boards, or the comparative governance of government-linked companies in ASEAN jurisdictions. Sources were excluded if they addressed SOE governance only in macroeconomic or non-legal terms. The review confirmed three findings relevant to this article's originality claims. First, existing Indonesian scholarship on BUMN governance—including the work of Lumban Gaol, Gunarto and Soponyono, and Lumban Gaol's comparative study- addresses the business judgment rule and individual criminal liability of SOE directors but does not analyse the specific doctrinal consequences of Law No. 1/2025. Second, comparative scholarship on ASEAN SOE governance (Lim; Puchniak and Varottil) does not extend to the Indonesian reclassification episode. Third, no prior study employs the 'accountability vacuum' framework to characterise governance transitions in Indonesian state capitalism. These findings confirm the originality of the present contribution.

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[16] Mark Van Hoecke, "Methodology of Comparative Legal Research," *Recht En Methode in Onderzoek En Onderwijs*, December 2015, doi:10.5553/REM/.000010.

[17] Soerjono Soekanto., *Penelitian Hukum Normatif* (Jakarta: Rajawali Pers, 2014).

[18] Systematic database searches were conducted across HeinOnline, SSRN, Google Scholar, and the Indonesian legal database (JDIH) using the terms 'BUMN director,' 'fiduciary duty,' 'penyelenggara negara,' 'SOE corporate governance Indonesia,' and 'UU 1/2025.' Searches were conducted in Indonesian and English. Results were filtered for peer-reviewed publications from 2015 to 2025. A total of 214 sources were identified; 41 met the inclusion criteria of direct relevance to the research questions. This systematic mapping confirms that no prior study addresses the doctrinal consequences of UU 1/2025's reclassification see also Muh Ali Masnun, Dicky Eko Prasetio, and Thamasi Konara, "Financial Reconstruction of State-Owned Enterprises in Indonesia as Special State Finances: Public or Private Law?," Jurnal Hukum Bisnis Bonum Commune, January 28, 2026, 44–62, doi:10.30996/jhbbc.v9i1.132464.

3. Results and Discussion

3.1. Reclassification and Its Impact on Fiduciary Duties

1. The Fiduciary Framework Under Law No. 40/2007

Under Law No. 40/2007, the Board of Directors (*Direksi*) is vested with full authority and responsibility for managing the company in accordance with its articles of association and applicable law.[19] This managerial authority is accompanied by correlative fiduciary responsibility, expressed through two principal obligations: the duty of care (*kewajiban kehati-hatian*) and the duty of loyalty (*kewajiban kesetiaan*). These obligations, while not labeled as 'fiduciary duties' in explicit statutory language, are recognised by leading corporate law scholars as the functional equivalent of such duties under civil law company statutes.[20] In comparative corporate law, fiduciary duties serve as the primary legal mechanism for aligning the incentives of directors with the interests of the company and its shareholders.[21] The duty of care requires directors to act with the diligence, competence, and prudence that a reasonable person in a similar position would exercise, while the duty of loyalty prohibits directors from using their position to advance personal interests at the expense of the company.[22] Both duties are operationalised through a liability framework that holds directors personally responsible for losses caused by their negligence or bad faith.[23]

The OECD has consistently advocated for SOE boards to operate under the same fiduciary framework as their private sector counterparts, arguing that parity of legal standards is essential for ensuring that SOE directors are held accountable for their management decisions through civil rather than administrative or public-law mechanisms.[24] This recommendation, however, is not without its critics. Scholars working within the political economy tradition of state capitalism—most notably Pargendler—have cautioned that a purely private-law fiduciary framework risks obscuring the distinctive political-agency dimension of SOE governance: unlike ordinary private shareholders, the state itself acts as an agent of the public, subject to electoral and bureaucratic incentives that private fiduciary doctrine was never designed to discipline. On this view, uncritical importation of OECD-style parity recommendations may understate the continuing relevance of public-law accountability tools—such as administrative oversight and anti-corruption enforcement—precisely in jurisdictions, like Indonesia, where an independent ownership entity and specialised judicial capacity remain underdeveloped. This article takes the position that the OECD's parity principle is directionally correct as a long-term institutional goal, but that its unqualified application in Indonesia—absent the institutional preconditions examined in

[19]UUPT 2007, Article 92(1) and Article 97.
[20] Ernest W.K. Lim, "Concentrated Ownership, State-Owned Enterprises and Corporate Governance," *Oxford Journal of Legal Studies* (Oxford University Press, 2021), doi:10.1093/ojls/gqaa050.
[21] P. L.. Davies et al., *Gower : Principles of Modern Company Law* (Thomson Reuters (Professional) UK Ltd, trading as Sweet & Maxwell, 2021).
[22]In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996); Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985).
[23] Selamat Lumban Gaol, Gunarto, and Eko Soponyono, "Legal Reconstruction of Business Judgment Rule as Reason for Deleting Personal Criminal Liability of Limited Company Directors in Making Loss Business Policies Based on Justice Value."
[24] *Corporate Governance of State-Owned Enterprises : A Survey of OECD Countries* (OECD, 2005); *OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024*.

Section 3.2—risks producing precisely the accountability vacuum this article identifies below.[25]

Although Indonesia follows the civil law tradition and maintains a distinct administrative law regime for public-sector accountability, the OECD Guidelines are not premised on any particular legal family; they articulate functional governance standards addressed to both common law and civil law jurisdictions, including several civil law OECD and partner economies with codified administrative law systems comparable to Indonesia's. Their relevance to the Indonesian context therefore rests not on doctrinal transplantation from common law, but on a shared functional objective—already embedded in Law No. 40/2007 codified duty of care and duty of loyalty provisions—of subjecting corporate directors to a single, coherent accountability standard rather than overlapping and potentially conflicting public- and private-law regimes. In Indonesia, the application of Law No. 40/2007 fiduciary framework to SOE directors was consistently complicated by their concurrent status as state officials. Indonesian courts and legal scholars had long debated whether the *penyelenggara negara* classification imposed obligations and liabilities that superseded, modified, or existed in parallel with the corporate fiduciary duties under Law No. 40/2007.[26] This doctrinal ambiguity was not merely theoretical: it had concrete consequences for how SOE director liability was pursued in practice.

A critical but underexamined dimension of this ambiguity is the pattern of Indonesian judicial decisions involving SOE directors. Analysis of available jurisprudence reveals that Indonesian courts have overwhelmingly processed SOE director misconduct through the criminal anti-corruption channel rather than through civil corporate liability under Law No. 40/2007.[27] This prosecutorial dominance has effectively precluded the development of a nuanced civil corporate liability jurisprudence for SOE directors—a gap that the reclassification under Law No. 1/2025 would have required courts to fill, and which the reversal by Law No. 16/2025 has deferred rather than eliminated. The theoretical foundations of fiduciary law trace to equity jurisprudence developed by English Chancery courts in the seventeenth and eighteenth centuries, most notably articulated by Lord King LC in Keech v Sandford (1726), which established that a person in a position of trust must not profit at the

[25] Pargendler, "State Ownership and Corporate Governance"; Curtis J Milhaupt and Mariana Pargendler, *Article 3 Reform*, *Cornell International Law Journal*, vol. 50, 2017.

[26] Lumban Gaol, The Business Judgment Rule In Corporate Law: A Comparative Study Of Indonesia And Singapore Selamat Lumban Gaol The Business Judgment Rule In Corporate Law: A Comparative Study Of Indonesia And Singapore. Indonesian courts have historically struggled to demarcate administrative from corporate liability in SOE disputes, often defaulting to criminal law channels through the KPK rather than resolving the underlying corporate governance questions.

[27] See Putusan Mahkamah Agung No. 1454 K/Pid.Sus/2020, concerning BUMN directors charged under corruption statutes for decisions later argued to constitute legitimate business judgment. The court did not engage with UUPT 2007's business judgment analog, instead applying the strict liability standard of the Anti-Corruption Law. See also Putusan Pengadilan Negeri Jakarta Selatan No. 38/Pid.Sus-TPK/2021/PN.Jkt.Sel (PT Asuransi Jiwasraya). For academic commentary. See alsoAhmad Mahyani, "Tanggung Jawab Pidana Direksi Bumn Yang Merugi," Jurnal Hukum Bisnis Bonum Commune 2, no. 1 (January 5, 2019): 1, doi:10.30996/jhbbc.v2i1.2309.

expense of the beneficiary. [28]Austin W. Scott's influential treatise formalised this equitable principle into the concept of the fiduciary relationship as one characterised by the entrustment of power by a principal to an agent for the benefit of the principal, imposing upon the agent obligations of loyalty and care that are enforceable at law. [29]Tamar Frankel later synthesised this tradition into a functional theory of fiduciary law, arguing that fiduciary obligations arise whenever one party (the fiduciary) undertakes to act on behalf of another (the beneficiary) in a discretionary capacity, thereby acquiring power over the beneficiary's interests that the law must constrain through mandatory standards of conduct.[30] This philosophical grounding is directly relevant to the Indonesian corporate context: the Law No. 40/2007 fiduciary framework for directors is not merely a statutory construct but reflects a deeper normative logic according to which those who exercise discretionary power over others' interests are subject to correlative duties of loyalty and care.

The reception of fiduciary principles in civil law systems, including Indonesia, followed a distinct historical trajectory. Whereas English equity courts developed fiduciary obligations through case-by-case adjudication, civil law jurisdictions incorporated analogous duties through statutory codification.[31] The Dutch colonial legacy is particularly pertinent for Indonesian company law: the Wetboek van Koophandel (WvK) that governed commercial entities during the colonial period contained directorial liability provisions that functioned as precursors to the fiduciary framework subsequently enacted in Law No. 40/2007.[32] Kraakman, Armour, and their co-authors have demonstrated through systematic comparative analysis that despite formal differences in doctrinal vocabulary, civil and common law jurisdictions have converged on functionally equivalent fiduciary standards for directors, reflecting a common underlying normative commitment to constraining agency costs in corporate governance.[33]In the Indonesian context, this convergence is evidenced by the fact that Law No. 40/2007 duty of care and duty of loyalty provisions, while expressed in statutory rather than equitable language, impose substantively comparable obligations to those applicable under English, Singaporean, and Malaysian company law.

The normative case for robust fiduciary duties in the corporate context is further grounded in the economic theory of agency costs. Berle and Means' foundational analysis of the modern corporation identified the separation of ownership and control as the defining structural feature of the publicly held company, generating an inherent conflict of interest between managers (agents) and shareholders (principals).[34] Jensen and Meckling

[28]Keech v Sandford (1726) Sel Cas Ch 61; see also D.W.M. Waters, The Constructive Trust (London: Athlone Press, 1964), 16–20.
[29] Austin W. Scott, "The Fiduciary Principle," *California Law Review* 37, no. 4 (December 1949): 539, doi:10.2307/3477686.
[30] Tamar. Frankel, *Fiduciary Law* (Oxford University Press, 2011).
[31] Jeffrey N. Gordon and Wolf-Georg Ringe, eds., *The Oxford Handbook of Corporate Law and Governance*, vol. 1 (Oxford University Press, 2015), doi:10.1093/oxfordhb/9780198743682.001.0001.
[32] Iman Sjahputra Tunggal, Hukum Perseroan Terbatas ; Sudargo Gautama, Hukum Perdata Internasional Indonesia (Bandung: Alumni, 1987).
[33] Reinier. Kraakman, *The Anatomy of Corporate Law : A Comparative and Functional Approach* (Oxford University Press, 2017).
[34] Adolf A. Berle and Gardiner C. Means, The Modern Corporation and Private Property (New York: McMillan, 1932).

subsequently formalised this insight into agency cost theory, demonstrating that managers' incentives systematically diverge from shareholders' interests in the absence of effective monitoring and bonding mechanisms.[35] Fiduciary duties constitute one of the primary legal mechanisms for constraining these agency costs: the duty of care requires directors to be adequately informed before making decisions, while the duty of loyalty prohibits self-dealing and the diversion of corporate opportunities.[36] In the SOE context, the agency cost problem is structurally more complex than in ordinary private companies, because the state's interests as shareholder are themselves subject to political agency problems: government ministers who exercise shareholder rights over SOEs may prioritise political objectives over maximising the value of the state's shareholding, creating what Pargendler has called a 'double agency problem' in state capitalism.[37]

A further dimension of fiduciary theory relevant to the Indonesian SOE context concerns the question of to whom directors' duties are owed. Mainstream corporate law, as reflected in Law No. 40/2007, holds that directors owe their primary duties to the company as a separate legal entity, with shareholders as the primary beneficiaries of the company's residual value. [38]Stakeholder theorists, most prominently R. Edward Freeman, have challenged this shareholder primacy model, arguing that directors should be accountable to a broader constituency including employees, creditors, and the public.[39] In the SOE context, this debate takes on particular salience because Indonesian SOEs are frequently assigned public service obligations (*kewajiban pelayanan publik*) that require them to pursue social objectives alongside commercial ones.[40]The critical insight of the present analysis, however, is that the presence of public service obligations does not require the classification of SOE directors as state officials subject to administrative accountability norms; rather, it requires that the company's articles of association and applicable regulations clearly specify the scope of public service obligations so that directors can incorporate these into their fiduciary calculus within a corporate law framework. This is precisely the approach adopted in Singapore and the United Kingdom, where SOE-equivalent entities are assigned public service obligations through their constitutive documents rather than through the personal classification of their directors.

2. The Effect of Non-State Official Status on Duty of Care and Duty of Loyalty

[35] Michael C. Jensen and William H. Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," *Journal of Financial Economics* 3, no. 4 (October 1976): 305–60, doi:10.1016/0304-405X(76)90026-X.
[36] Kraakman, *The Anatomy of Corporate Law : A Comparative and Functional Approach*.
[37] Pargendler, "State Ownership and Corporate Governance."
[38] Davies et al., *Gower : Principles of Modern Company Law*.
[39] R. Edward Freeman, Strategic Management: A Stakeholder Approach (Boston: Pittman, 1984).
[40] See Peraturan Pemerintah No. 45 Tahun 2005 tentang Pendirian, Pengurusan, Pengawasan, dan Pembubaran BUMN, Article 66, which provides the mechanism for assigning public service obligations to SOE see alsom Matthew Aurellio Yobel, "Tindakan Hukum Yang Dapat Dilakukan Oleh Pemegang Saham Minoritas Dalam Melindungi Hak Sebagai Pemegang Saham," Jurnal Hukum Bisnis Bonum Commune, February 23, 2022, 1–9, doi:10.30996/jhbbc.v5i1.5659; Esther Evelyn Simamora, Jessica Ester, and Dheana Wiananda Kristy, "Analisis Status Badan Hukum Badan Usaha Milik Desa Dengan Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Dan Peraturan Pelaksananya," Jurnal Hukum Bisnis Bonum Commune, July 6, 2022, 161–69, doi:10.30996/jhbbc.v5i2.5706.

The reclassification of SOE directors as non-state officials by Article 9G of Law No. 1/2025 had a clear doctrinal effect: it removed the public-law overlay from their governance obligations and anchored their fiduciary duties exclusively within the corporate law framework of Law No. 40/2007. Under this framework, the legal basis for the standard of conduct applicable to SOE directors is Law No. 40/2007 itself, particularly Articles 92 and 97 governing the duties of the Board of Directors. The Berle–Means account of the separation of ownership and control does not supply this legal basis; rather, it supplies the theoretical explanation for why such duties are necessary in the first place—namely, to constrain the agency costs that arise once dispersed or passive shareholders cede day-to-day control to professional managers. Read together, Law No. 40/2007 provides the positive legal standard, while the Berle–Means model explains the underlying governance rationale for it: directors, as agents of the corporate entity, owe duties of care and loyalty to the company as a whole.

With respect to the duty of care, Article 97(3) of Law No. 40/2007provides that each member of the Board of Directors bears full personal liability for losses suffered by the company if such losses are caused by the director's fault or negligence.[41] Eisenberg has noted that the duty of care standard in corporate law is typically a gross negligence standard when applied to business decisions, requiring directors to act on an informed basis but affording significant latitude for honest business judgment.[42] Eisenberg's account is drawn from the common law business judgment tradition and is invoked here as a comparative analytical benchmark rather than as a standard formally received into Indonesian law. Law No. 40/2007 does not itself codify a 'gross negligence' threshold; Indonesian courts instead assess the business judgment rule defence on a case-by-case basis by reference to good faith, prudence, and the absence of a conflicting interest. The comparison nonetheless illuminates the degree of latitude that Indonesian courts might plausibly extend to SOE directors' commercial decisions once relieved of the heightened administrative negligence standards applicable to state officials. By removing the public official classification, Law No. 1/2025 effectively clarified that this corporate law standard—rather than any heightened administrative accountability standard applicable to state officials—governs the conduct of SOE directors.[43]

The duty of loyalty implications are equally significant. Under Law No. 40/2007, directors are prohibited from engaging in transactions involving conflicts of interest without proper board and shareholder approval.[44] The private-law classification facilitates sharper application of these conflict-of-interest rules by definitively removing SOE directors from the ambit of public procurement and administrative conflict-of-interest regulations. This clarification is particularly important in the context of related-party transactions between SOEs and the state or its affiliates—transactions that would, under a public-law framework, trigger administrative review rather than corporate law scrutiny under Law No. 40/2007.

Comparative experience from China, where SOE managers operate under a complex overlay of party discipline, state regulatory authority, and corporate law obligations,

[41]UUPT 2007, Article 97(3).
[42] Officerst Melvin and A Eisenberg, *The Duty Of Care Of Corporate Directors And*, 1990.
[43] Hopt, "Corporate Governance in Europe: A Critical Review of the European Commission's Initiatives on Corporate Law and Corporate Governance."
[44]UUPT 2007, Articles 99 and 102; Tunggal, Hukum Perseroan Terbatas, 198.

illustrates the governance dysfunctions that can arise from such normative plurality.[45] By contrast, the Singapore and Malaysian models demonstrate that a clear private-law classification, combined with robust institutional infrastructure, enables effective corporate accountability without sacrificing public oversight of state assets.

3.2. Board Accountability Mechanisms and the Governance Gap

1. Legislative Oscillation and the Accountability Vacuum

The governance of SOEs in Indonesia has historically operated within a hybrid accountability architecture combining corporate law mechanisms under Law No. 40/2007—such as the general meeting of shareholders (*Rapat Umum Pemegang Saham*, RUPS), derivative suits, and board oversight—with public-law accountability norms associated with the penyelenggara negara framework. This hybridity was a product of the contested legal status of SOE directors, which Article 9G sought to resolve. The brief operation of Article 9G from 24 February 2025 to 5 October 2025—followed by its deletion by Law No. 16/2025—created what this article characterises as an 'accountability vacuum': a period in which the reclassification had removed the public-law accountability framework but the corporate law accountability mechanisms had not been sufficiently calibrated or enforced to fill the resulting normative space. Pargendler has argued that governance transitions in state capitalism are particularly vulnerable to such vacuums, because the institutions responsible for enforcement typically lack the capacity or incentive to rapidly adapt to newly privatised accountability standards.

The Indonesian experience confirms this analytical prediction. The Ministry of State-Owned Enterprises (Kementerian BUMN), which exercises the state's shareholder rights in SOEs, continued to exercise supervisory authority over SOE boards during the Article 9G period despite the formal reclassification. This administrative continuity—though practically stabilising—revealed a structural incoherence: if SOE directors are not state officials, the legal basis for the Ministry's exercise of quasi-regulatory authority must be grounded exclusively in corporate law, rather than in any public-law governance mandate.

Comparative experience from Singapore and Malaysia suggests that this incoherence can be managed through clear legislative demarcation between shareholder authority and public accountability norms. In Singapore, Temasek Holdings operates as a government-linked company under the Companies Act, with its directors subject to ordinary fiduciary duties, while the government exercises oversight through shareholder engagement rather than administrative authority. In Malaysia, a comparable formal separation between the state's corporate governance role and its regulatory role is maintained through Khazanah Nasional. In both jurisdictions, civil derivative suits against GLC directors have been adjudicated on company law grounds, demonstrating that the corporate accountability channel can function effectively in state-dominated ownership structures.

The Indonesian experience of legislative oscillation in SOE governance finds a partial, though imperfect, historical parallel in the United Kingdom's mid-to-late twentieth-century movement between nationalisation and privatisation. Following the Attlee government's nationalisation programme (1945–1951), British SOEs operated under public corporation statutes—such as the Coal Industry Nationalisation Act 1946—that displaced the ordinary

[45] Benjamin L.. Liebman and Curtis J.. Milhaupt, *Regulating the Visible Hand? : The Institutional Implications of Chinese State Capitalism* (Oxford University Press, 2016).

private-law fiduciary framework: directors were ministerial appointees, accountable to Parliament rather than to shareholders in the conventional corporate sense. The Thatcher government's privatisation programme, beginning with British Telecom in 1984, subsequently transferred these enterprises into the ordinary Companies Act framework, requiring a deliberate and carefully sequenced recalibration of director obligations; the UK Government Investments (UKGI) unit, established in 2016, now performs the dedicated ownership function that this transition required. The comparison, however, is only partial. The British transition was a transformation of ownership itself—state-owned public corporations became privately held companies, with the state retaining, at most, a residual shareholding. Indonesia's Law No. 1/2025 and Law No. 16/2025, by contrast, left state ownership of SOEs entirely untouched; what oscillated was solely the legal classification of directors as state officials or private corporate organs. The UK experience is therefore instructive on a narrower point—that governance clarity requires institutional infrastructure to accompany any change in legal classification—rather than as a direct precedent for classification change within continued state ownership.

The French experience offers a distinct comparative perspective on the management of governance transitions in state capitalism. France has historically maintained two parallel governance models for state-owned enterprises: the *établissement public à caractère industriel et commercial* (EPIC) model, under which SOEs are public bodies governed by administrative law with no share capital, and the société anonyme (SA) model, under which SOEs are incorporated as public limited companies under commercial law. The distinction has direct implications for director accountability: EPIC directors are public officials subject to administrative liability and the jurisdiction of the Cour des Comptes, while SA directors are subject to ordinary fiduciary obligations under the Code de commerce. The French state's management of this two-track system through the Agence des Participations de l'État (APE), established in 2004 as a dedicated ownership entity within the Ministry of Finance, provides a model for how the Indonesian Ministry of SOEs could be restructured to manage the corporate governance of BUMN entities without conflating ownership with regulatory functions.

South Korea's reform of SOE governance following the 1997 Asian financial crisis provides perhaps the most directly instructive comparative experience for Indonesia. Before the crisis, Korean SOE directors operated under a governance framework dominated by political appointment and bureaucratic oversight, with corporate law fiduciary obligations largely eclipsed by administrative control exercised through the Economic Planning Board and relevant sectoral ministries. The IMF-led restructuring programme imposed as a condition of the 1997 bailout required Korea to reform SOE governance toward a corporate model, including the strengthening of boards of directors, the appointment of independent outside directors, and the application of Companies Act fiduciary standards to SOE directors. The Korean government enacted the Act on the Management of Public Institutions (2007) as the legislative framework for this reformed governance architecture, establishing the Public Institution Governance Committee as a dedicated oversight body. The Korean experience demonstrates both the feasibility and the institutional requirements of a successful transition from public-law to corporate-law classification of SOE directors: it required not merely a statutory reclassification but a sustained programme of institutional reform extending over a

decade. Indonesia's oscillation between Law No. 1/2025 and Law No. 16/2025 within eight months suggests that the institutional preconditions for such a transition have not yet been adequately developed.

The comparative evidence reviewed above can be integrated through Spamann's theory of legal transplants, which argues that the effectiveness of transplanted legal rules depends critically on the institutional complementarities present in the receiving jurisdiction. Spamann demonstrates that corporate governance rules transplanted from developed capital market jurisdictions frequently fail to produce equivalent outcomes in developing jurisdictions because the institutional infrastructure that gives those rules their operative effect—including independent courts, active shareholder monitoring, and developed capital markets—is absent in the receiving jurisdiction. This framework directly illuminates the Indonesian oscillation: the non-state official classification of SOE directors under Law No. 1/2025 effectively attempted to transplant a private-law governance model from comparator jurisdictions without the simultaneous development of the institutional complementarities necessary to make that model operative. The UK experience demonstrates that this transplant requires independent ownership entities; the Korean experience demonstrates that it requires sustained judicial capacity development; and the French experience demonstrates that it requires a clear statutory demarcation between ownership and regulatory functions. Indonesia's reversal by Law No. 16/2025 can thus be understood not merely as a political reaction to anti-corruption concerns but as an institutional recognition—however implicit—that the preconditions for a sustainable private-law governance model had not yet been assembled.

A critical structural problem exposed by the Article 9G episode is the near-total absence of civil corporate liability jurisprudence for SOE directors in Indonesia. Review of published Indonesian judicial decisions reveals a consistent pattern: where SOE directors have faced legal proceedings arising from governance failures, the proceedings have overwhelmingly taken the form of criminal corruption cases before the Corruption Court (*Pengadilan Tipikor*) rather than civil corporate liability actions before the Commercial Court (*Pengadilan Niaga*). This pattern has two mutually reinforcing causes. First, the *penyelenggara negara* classification historically channelled governance disputes into the administrative and criminal law domain, bypassing the corporate law channel under Law No. 40/2007. Second, institutional actors with standing to bring civil corporate liability claims—principally the state as dominant shareholder, acting through the Ministry of SOEs—have structural incentives to prefer the criminal channel, which shifts accountability to prosecutors rather than requiring the Ministry to exercise shareholder oversight against its own nominees.

The consequence for the present analysis is significant: if Law No. 1/2025's reclassification had been sustained, Indonesian courts would have been required to develop a civil corporate liability jurisprudence for SOE directors with virtually no domestic precedent to draw upon. The courts would have needed to interpret Article 97(3) Law No. 40/2007 personal liability standard, apply the business judgment analog under Article 97(5), and adjudicate derivative suits under Article 97(6)—all in the context of SOEs whose governance structures differ substantially from ordinary private companies. The reversal by Law No.

16/2025 has deferred this institutional development, but it cannot eliminate the underlying need.

2. The Business Judgment Rule and Derivative Accountability

A further dimension of the accountability question concerns the application of the business judgment rule (BJR) to SOE directors. The BJR is a judicial doctrine that insulates directors from personal liability for informed, good faith business decisions, even where those decisions subsequently result in corporate losses.[46] Its operation is premised on the assumption that directors exercise independent business judgment, unconstrained by external interests or political considerations.[47] Article 97(5) of Law No. 40/2007 incorporates a functional analog to the BJR, providing that directors shall not be held liable for corporate losses if they can prove that the losses were not caused by their own fault or negligence, that they acted in good faith and with prudence for the benefit of the company, and that they did not have a conflict of interest in the relevant decision.[48] The reclassification of SOE directors as non-state officials theoretically strengthens the availability of this defence by removing the suggestion that their decisions must simultaneously satisfy public-interest criteria beyond those cognisable under Law No. 40/2007.

However, the practical application of Law No. 40/2007 BJR analog in the SOE context remains underdeveloped in Indonesian jurisprudence.[49] The quick reversal by Law No. 16/2025 has deferred rather than eliminated the need for courts to develop this jurisprudence. In the meantime, the absence of a clear BJR standard creates an ongoing chilling effect on legitimate SOE business decisions, as directors must factor in the risk of criminal prosecution under the anti-corruption framework for decisions that would be fully protected by corporate law in comparator jurisdictions. Derivative suits (*gugatan derivatif*) present a related accountability mechanism that has been similarly underutilised. Under Law No. 40/2007, shareholders collectively holding at least ten percent of the company's shares may bring a derivative action on behalf of the company against directors who have caused loss through fault or negligence.[50] In theory, the Indonesian state could exercise this right through the Ministry of SOEs. In practice, the Ministry's dual role as shareholder and policy supervisor creates structural conflicts of interest that inhibit effective derivative action.[51]

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[46]Franklin A. Gevurtz, 'The Business Judgment Rule: Meaningless Verbiage or Misguided Notion?' Southern California Law Review 67 (1994): 287; Aronson v. Lewis, 473 A.2d 805 (Del. 1984).

[47]Eisenberg, 'Duty of Care,' 957–961; Bernard S. Black, Brian R. Cheffins, and Michael Klausner, 'Liability Risk for Outside Directors: A Cross-Border Analysis,' European Financial Management 11, no. 2 (2005): 153–171, https://doi.org/10.1111/j.1354-7798.2005.00280.x.

[48]UUPT 2007, Article 97(5).

[49]Lumban Gaol, 'Business Judgment Rule in Corporate Law,' 508–513. The absence of developed civil jurisprudence on the BJR in Indonesian SOE cases is structurally related to the dominance of the criminal law channel: once a transaction is investigated under the anti-corruption framework, the corporate law question of business judgment is effectively foreclosed.

[50]UUPT 2007, Article 97(6); procedural requirements in Peraturan Menteri BUMN No. PER-01/MBU/2011, Articles 18–20. See also, Wachid Aditya Ansory dan Krisnadi Nasution "Reformulasi Hukum tentang Hak Gugat bagi Pemegang Saham di Bawah 1/10" Jurnal Hukum Bisnis Bonum Commune Vol. 5, No. 1, Februari 2022. 109–122 DOI: https://doi.org/10.30996/jhbbc.v5i1.6041

[51]Pargendler, 'State Ownership and Corporate Governance,' 2942; OECD, SOE Guidelines (2023), 22–26. The structural conflict is evident in the Ministry of SOEs' dual role: it simultaneously nominates directors (as shareholder) and supervises their performance (as sectoral regulator).

The OECD has recommended that governments establish dedicated ownership entities for SOE shareholding, insulated from day-to-day political influence, to enable more credible exercise of shareholder rights—including derivative accountability mechanisms.[52] Hopt has similarly argued that the effectiveness of board accountability mechanisms in mixed-ownership enterprises depends critically on the quality of the institutional framework within which they operate.[53] Bebchuk and Fried's agency cost framework further illuminates the governance gap in Indonesian SOEs: without robust accountability mechanisms—whether rooted in public or private law—the risk of managerial rent extraction at the expense of the company's long-term value is significantly elevated.[54] Hart and Moore's contractual theory of the firm suggests that the appropriate allocation of residual control rights in SOEs depends on clearly defined property rights and accountability norms, which oscillating legal classifications systematically undermine.[55] Pargendler's comparative analysis of state capitalism similarly concludes that legal clarity about the nature of SOE director obligations is a precondition for effective governance reform.[56]

The business judgment rule has a rich historical and theoretical genealogy that is essential for understanding both its proper scope and the conditions under which it can be effectively transplanted into non-American legal systems. The BJR in its modern American form originated in nineteenth-century equity jurisprudence, with the foundational principle articulated in Percy v. Millaudon (1829) and subsequently developed through a series of influential Delaware decisions. The rule rests on three distinct but interrelated justifications. [57]First, an epistemic justification: courts are ill-equipped to second-guess business decisions made under conditions of uncertainty, and the threat of judicial review of business judgment would chill entrepreneurial risk-taking. Second, an institutional justification: directors possess specialised knowledge and contextual expertise that judges lack, making deference to informed directorial judgment appropriate as a matter of comparative institutional competence. Third, an ex ante incentive justification: if directors faced personal liability for unsuccessful but reasonable business decisions, risk-averse directors would systematically forgo value-creating opportunities, imposing a welfare cost on shareholders and, in the SOE context, on the public.[58]

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[52]OECD, SOE Guidelines (2023), 55–60; OECD, Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries (Paris: OECD Publishing, 2005), 42–55.
[53]Hopt, 'Corporate Governance in Europe,' 185; Holger Spamann, 'Contemporary Legal Transplants,' BYU Law Review 2010, no. 6 (2010): 1813–1877.
[54]Lucian A. Bebchuk and Jesse M. Fried, Pay Without Performance (Cambridge, MA: Harvard University Press, 2004), 34–36.
[55]Oliver Hart and John Moore, 'Property Rights and the Nature of the Firm,' Journal of Political Economy 98, no. 6 (1990): 1119–1158. https://doi.org/10.1086/261729.
[56]Pargendler, 'State Ownership and Corporate Governance,' 2965; Milhaupt and Pargendler, 'Governing the Market-Augmenting State,' 555–558.
[57]Percy v. Millaudon, 8 Mart. (n.s.) 68 (La. 1829); see Franklin A. Gevurtz, 'The Business Judgment Rule: Meaningless Verbiage or Misguided Notion?' Southern California Law Review 67 (1994): 287–330, at 295–305.
[58]Gevurtz, 'Business Judgment Rule,' 310–320; Melvin A. Eisenberg, 'The Duty of Care of Corporate Directors and Officers,' University of Pittsburgh Law Review 51 (1990): 945–972, at 957.

The landmark Delaware decision in Smith v. Van Gorkom (1985) is particularly instructive for the Indonesian SOE context because it demonstrates that the BJR does not provide absolute immunity but rather a conditional presumption of propriety that can be rebutted by evidence that directors failed to act on an informed basis. [59]The Delaware Supreme Court held in Van Gorkom that the directors of Trans Union Corporation had breached their duty of care by approving a merger agreement without adequate information, notwithstanding that the merger price reflected a premium over the market price. This decision had a profound practical impact: it led to the enactment of Delaware's Section 102(b)(7), which permits corporations to exculpate directors from monetary liability for duty of care violations. The broader lesson for the Indonesian context is that an effective BJR requires courts capable of distinguishing genuine informed judgment from uninformed or conflicted decision-making—a distinction that Indonesian courts, operating primarily in the criminal anti-corruption framework, have had virtually no opportunity to develop.

The Delaware Chancery Court's decision in In re Caremark International Inc. Derivative Litigation (1996) introduced a further dimension of director liability that is particularly relevant for SOE governance: the duty of oversight, which holds that directors may be liable for failing to establish and maintain adequate information and reporting systems that would enable them to identify and respond to legal violations within the corporation. [60]Chancellor Allen's opinion in Caremark articulated the standard as requiring a 'sustained or systematic failure of the board to exercise oversight—such as an utter failure to attempt to assure a reasonable information and reporting system exists.' This oversight duty has direct implications for Indonesian SOE directors: in entities with complex risk profiles, significant public service obligations, and substantial public resources, the duty of oversight requires directors to establish governance systems capable of detecting and remedying mismanagement. The absence of civil corporate liability jurisprudence in Indonesia means that this oversight duty—which would constitute a meaningful accountability mechanism for SOE directors in the comparator jurisdictions—remains dormant and unenforced.

The application of business judgment protection in two-tier board systems, which are relevant for Indonesian SOEs that maintain both a Board of Directors (Direksi) and a Board of Commissioners (Dewan Komisaris), has been most extensively developed in German corporate law. The German Aktiengesetz (Stock Corporation Act) was amended in 2005 to include an explicit statutory business judgment rule in Section 93(1), which provides that a breach of the duty of care is not established if the director, acting based on adequate information, could reasonably believe that they were acting in the best interests of the company. [61]The German model is directly instructive for Indonesia because the Aktiengesetz's

[59]Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985); see Stephen M. Bainbridge, 'The Business Judgment Rule as Abstention Doctrine,' Vanderbilt Law Review 57, no. 1 (2004): 83–130.
[60]In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996); see also In re Walt Disney Co. Derivative Litigation, 907 A.2d 693 (Del. Ch. 2005).
[61]Aktiengesetz (AktG), Section 93(1), as amended by the Act on Corporate Integrity and Modernisation of the Right of Avoidance (UMAG), 22 September 2005; see Gudula Deipenbrock, 'The Business Judgment Rule and the Problem of Hindsight Bias – Observations from a German Company Law Perspective,' European Business Law Review 27, no. 2 (2016): 197–221, https://doi.org/10.54648/EULR2016009.

two-tier structure—with a management board (*Vorstand*) responsible for operational management and a supervisory board (*Aufsichtsrat*) responsible for oversight—is structurally analogous to the Indonesian Direksi/Dewan Komisaris model under Law No. 40/2007. German jurisprudence has developed a sophisticated body of case law on the allocation of the BJR between the two boards, the standard of informed decision-making required for BJR protection to apply, and the conditions under which supervisory board members are jointly liable for management failures. This jurisprudence provides a ready comparative resource for Indonesian courts if and when civil corporate liability proceedings against SOE directors are brought before the Commercial Court.[62]

C. Comparative Analysis: Institutional Lessons for Indonesia

A structured comparison of the Singapore, Malaysian, UK, and US models reveals both the institutional requirements for effective SOE corporate governance and the specific gaps in the Indonesian framework. The following table summarises the key comparative dimensions:

Table 1: Comparative SOE Corporate Governance Frameworks

Dimension	Singapore	Malaysia	UK	Indonesia
Director Classification	Private (Companies Act)	Private (Companies Act 2016)	Private (Companies Act 2006)	Contested (oscillating 2025)
Oversight Entity	Temasek Holdings (independent)	Khazanah Nasional (independent)	UKGI (dedicated unit)	Ministry of SOEs (dual role)
Civil BJR Jurisprudence	Developed (GLC cases)	Developing (Minority Watchdog cases)	Extensive (common law)	Absent (criminal channel dominates)
Derivative Suit Practice	Active (Companies Act s.216A)	Active (CA 2016 s.347)	Active (CA 2006 s.260)	Underdeveloped
Accountability Channel	Corporate law (primary)	Corporate law (primary)	Corporate law (primary)	Criminal law (dominant)

The comparative analysis reveals three structural lessons for Indonesia. First, effective SOE corporate governance requires an independent ownership entity insulated from day-to-day ministerial control. Both Singapore's Temasek and Malaysia's Khazanah demonstrate that this separation enables credible exercise of shareholder rights—including accountability proceedings—without political interference. The Indonesian Ministry of SOEs, by contrast, combines ownership and regulatory functions in ways that structurally inhibit effective accountability. Second, the primacy of the corporate law channel requires investment in judicial capacity. Singapore and Malaysia have both developed specialised corporate law jurisprudence for GLC directors through the courts, enabling the business judgment rule and

[62]Klaus J. Hopt and Patrick C. Leyens, 'Board Models in Europe: Recent Developments of Internal Corporate Governance Structures in Germany, the United Kingdom, France, and Italy,' European Company and Financial Law Review 1, no. 2 (2004): 135–168.

derivative suits to function as genuine accountability mechanisms. Indonesia's reliance on the criminal law channel has foreclosed this development. A successful transition to private-law classification of SOE directors would require deliberate investment in judicial capacity for corporate governance disputes. Third, the UK and US experiences demonstrate that clarity of legal classification—rather than any particular classification—is the critical variable for governance effectiveness. Directors in all four comparator jurisdictions operate under clearly defined legal frameworks, which enable both effective decision-making and credible accountability. Indonesia's oscillation between public and private classifications has produced precisely the uncertainty that all four comparator models have sought to avoid.

4. Conclusions

This article has examined the corporate law implications of reclassifying Indonesian SOE directors as non-state officials under Law No. 1/2025, and the subsequent reversal under Law No. 16/2025 within eight months. Comparative analysis across Singapore, Malaysia, the United Kingdom, and the United States shows that the reclassification correctly anchors SOE directors' governance obligations within Law No. 40/2007, strengthening the formal applicability of the duty of care, duty of loyalty, and the business judgment rule, in line with the OECD's recommended separation of ownership and regulatory functions. Yet the practical effectiveness of these corporate law mechanisms depends on institutional infrastructure—an independent ownership entity comparable to Temasek or Khazanah, developed judicial capacity for corporate governance disputes, and codified business judgment rule standards—that Indonesia has not yet built. The rapid legislative oscillation between Law No. 1/2025 and Law No. 16/2025 is therefore itself a symptom of this deeper structural gap rather than merely a drafting failure: reclassification alone, absent these institutional foundations, produces normative uncertainty without corresponding accountability gains.

Accordingly, this article recommends four reforms: (1) a permanent classification of SOE directors as corporate organs governed exclusively by Law No. 40/2007, with a corresponding amendment to Law No. 28 of 1999 excluding SOE directors from the penyelenggara negara definition for KPK oversight purposes; (2) establishment of a politically independent state ownership entity to exercise shareholder rights and initiate derivative accountability proceedings; (3) investment in specialised judicial capacity for SOE corporate governance disputes; and (4) a dedicated SOE corporate governance regulation codifying the business judgment rule standard, drawing on the comparative jurisprudence of Singapore, Malaysia, and Delaware examined in this article. Taken together, these reforms would give the private-law classification of SOE directors substantive, rather than merely declaratory, effect—resolving the accountability vacuum this article has identified without requiring a further oscillation in legal classification.

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7. References

Aronson v. Lewis, 473 A.2d 805 (Del. 1984).

Bebchuk, Lucian A., and Jesse M. Fried. Pay Without Performance: The Unfulfilled Promise of Executive Compensation. Cambridge, MA: Harvard University Press, 2004.

Bebchuk, Lucian A., and Michael S. Weisbach. 'The State of Corporate Governance Research.' Review of Financial Studies 23, no. 3 (2010): 939–961. https://doi.org/10.1093/rfs/hhp121.

Berle, Adolf A., and Gardiner C. Means. The Modern Corporation and Private Property. New York: Macmillan, 1932.

Black, Bernard S., Brian R. Cheffins, and Michael Klausner. 'Liability Risk for Outside Directors: A Cross-Border Analysis.' European Financial Management 11, no. 2 (2005): 153–171. https://doi.org/10.1111/j.1354-7798.2005.00280.x.

Chang, Yun-chien, and Weitseng Chen. 'Corporate Governance of SOEs in Taiwan and China: A Comparative Analysis.' Columbia Journal of Asian Law 32, no. 1 (2019): 1–45.

Lim, Ernest W. K. 'Concentrated Ownership, State-Owned Enterprises and Corporate Governance.' Oxford Journal of Legal Studies 41, no. 3 (2021): 663–691. https://doi.org/10.1093/ojls/gqaa050.

Davies, Paul L., and Sarah Worthington. Gower's Principles of Modern Company Law. 10th ed. London: Sweet & Maxwell, 2016.

Deipenbrock, Gudula. 'The Business Judgment Rule and the Problem of Hindsight Bias – Observations from a German Company Law Perspective.' European Business Law Review 27, no. 2 (2016): 197–221. https://doi.org/10.54648/EULR2016009.

Eisenberg, Melvin A. 'The Duty of Care of Corporate Directors and Officers.' University of Pittsburgh Law Review 51 (1990): 945–972.

Gevurtz, Franklin A. 'The Business Judgment Rule: Meaningless Verbiage or Misguided Notion?' Southern California Law Review 67 (1994): 287–330.

Hart, Oliver, and John Moore. 'Property Rights and the Nature of the Firm.' Journal of Political Economy 98, no. 6 (1990): 1119–1158. https://doi.org/10.1086/261729.

Hart, Oliver. 'Corporate Governance: Some Theory and Implications.' The Economic Journal 105, no. 430 (1995): 678–689. https://doi.org/10.2307/2235027.

Lumban Gaol, Selamat. 'The Business Judgment Rule in Corporate Law: A Comparative Study of Indonesia and Singapore.' Jurnal Pembaharuan Hukum 12, no. 3 (Desember 2025): 497–516. https://doi.org/10.26532/jph.v12i3.

Hopt, Klaus J. 'Corporate Governance in Europe: A Critical Review of the European Commission's Initiatives on Corporate Law and Corporate Governance.' New York University Journal of Law & Business 12, no. 1 (2015): 139–213.

Hutchinson, Terry, and Nigel Duncan. 'Defining and Describing What We Do: Doctrinal Legal Research.' Deakin Law Review 17, no. 1 (2012): 83–119. https://doi.org/10.21153/dlr2012vol17no1art70.

In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996).

Lim, Ernest W. K. 'Climate Change, State-Owned Enterprises and the Law.' Journal of Corporate Law Studies 23, no. 1 (2023): 1–44. https://doi.org/10.1080/14735970.2022.2134455.

Kraakman, Reinier, et al. The Anatomy of Corporate Law: A Comparative and Functional Approach. 3rd ed. Oxford: Oxford University Press, 2017.

Lumban Gaol, Selamat, Gunarto, and Eko Soponyono. 'Legal Reconstruction of Business Judgment Rule as Reason for Deleting Personal Criminal Liability of Limited Company Directors in Making Loss Business Policies Based on Justice Value.' International Journal of Law 9, no. 1 (2023): 95–99. https://www.lawjournals.org.

Liebman, Benjamin L., and Curtis J. Milhaupt, eds. Regulating the Visible Hand?: The Institutional Implications of Chinese State Capitalism. Oxford: Oxford University Press, 2016.

Marzuki, Peter Mahmud. Penelitian Hukum. Rev. ed. Jakarta: Kencana Prenada Media, 2010.

Milhaupt, Curtis J., and Mariana Pargendler. 'Governing the Market-Augmenting State.' University of Toronto Law Journal 67, no. 4 (2017): 523–560.

Ng Eng Ghee v Mamata Kapildev Dave [2009] 3 SLR(R) 109 (Singapore Court of Appeal).

OECD. OECD Guidelines on Corporate Governance of State-Owned Enterprises. Paris: OECD Publishing, 2023.

Pargendler, Mariana. 'State Ownership and Corporate Governance.' Fordham Law Review 80, no. 6 (2012): 2917–2973.

Puchniak, Dan W. 'Multiple Faces of Shareholder Power in Asia: Complexity and Contradiction.' In The Corporate Contract in Changing Times, edited by Steven Davidoff Solomon and Randall Stuart Thomas. Chicago: University of Chicago Press, 2019.

Puchniak, Dan W., and Umakanth Varottil. 'Related Party Transactions in Commonwealth Asia: Complicating the Comparative Paradigm.' Business Lawyer 74, no. 2 (2019): 417–474.

Putusan Mahkamah Agung No. 1454 K/Pid.Sus/2020.

Putusan Pengadilan Negeri Jakarta Selatan No. 38/Pid.Sus-TPK/2021/PN.Jkt.Sel (PT Asuransi Jiwasraya).

Lumban Gaol, Selamat. 'Rekonstruksi Regulasi Business Judgement Rule Sebagai Alasan Penghapus Pertanggungjawaban Pidana Pribadi Direksi Perseroan Terbatas Dalam Pengambilan Kebijakan Bisnis Yang Menimbulkan Kerugian Bagi Perseroan Terbatas Berbasis Nilai Keadilan.' Disertasi, Universitas Islam Sultan Agung, 2022. http://repository.unissula.ac.id/31015/1/10302000281.pdf.

Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985).

Soekanto, Soerjono, and Sri Mamudji. Penelitian Hukum Normatif: Suatu Tinjauan Singkat. Jakarta: Rajawali Pers, 2014.

Spamann, Holger. 'Contemporary Legal Transplants: Corporate Law and Governance in the US and around the World.' BYU Law Review 2010, no. 6 (2010): 1813–1877.

Puchniak, Dan W. 'Multiple Faces of Shareholder Power in Asia: Complexity and Contradiction.' In The Corporate Contract in Changing Times, edited by Steven Davidoff Solomon and Randall Stuart Thomas. Chicago: University of Chicago Press, 2019.

Lumban Gaol, Selamat. 'Business Judgment Rule Sebagai Alasan Penghapus Pertanggungjawaban Pidana Pribadi Direksi Perseroan Terbatas Dalam Pengambilan Kebijakan Bisnis Yang Menimbulkan Kerugian Bagi Perseroan Terbatas Di Luar KUHP.' Jurnal Ilmiah Hukum Dirgantara 11, no. 2 (2021): 21–43.

Tunggal, Iman Sjahputra. Hukum Perseroan Terbatas. Jakarta: Harvarindo, 2021.

Van Hoecke, Mark. 'Methodology of Comparative Legal Research.' Law and Method (December 2015): 1–35. https://doi.org/10.5553/REM/.000010.

Lim, Ernest, and Umakanth Varottil. 'Climate Risk: Enforcement of Corporate and Securities Law in Common Law Asia.' Journal of Corporate Law Studies 22, no. 2 (2022): 391–430.

World Bank. Corporate Governance of State-Owned Enterprises: A Toolkit. Washington, DC: World Bank Group, 2014.