



Juridical construction of proving state losses in SOE corruption crimes after the distinction of corporate losses and state losses

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ABSTRACT

This article analyzes the legal implications of the separation between corporate losses and state losses in the governance of State-Owned Enterprises (SOEs) following the enactment of Law Number 1 of 2025 on SOEs. Historically, losses incurred by SOEs have been automatically construed as state financial losses, leading to the extensive application of criminal law to business decisions and generating legal uncertainty for SOE management. This study aims to examine the genealogy of the concept of state loss, the transformation of the legal paradigm introduced by the 2025 SOE Law, and the juridical consequences of distinguishing corporate losses from state losses within the framework of public accountability. This research employs a normative juridical approach, supported by statutory, conceptual, and case analysis, particularly Constitutional Court decisions related to state finance and SOEs. The findings show that the 2025 SOE Law marks a significant shift toward a corporate law paradigm by affirming the principle of separate legal entity and limiting the automatic qualification of SOE losses as state losses. However, the study also finds that this separation cannot be applied in a purely formal manner. Corporate losses may still constitute state losses when arising from abuse of authority, unlawful acts, or actions that cause substantial harm to state finances or the national economy. The article concludes that a functional and impact-based approach is essential to balance corporate autonomy with public accountability. Clear juridical criteria and regulatory harmonization are necessary to prevent both the criminalization of legitimate business risks and the erosion of accountability in SOE governance.

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1. Introduction

The governance of State-Owned Enterprises (SOEs) in Indonesia has long been positioned at the intersection of public finance law and corporate law. This dual legal character has generated persistent ambiguity, particularly in determining whether losses incurred by SOEs should be classified as corporate losses or state losses. For decades, law enforcement practice tended to automatically equate SOE losses with state financial losses, thereby extending the reach of corruption law into the realm of business decision-making. This approach has raised serious concerns regarding legal certainty and the potential criminalization of legitimate business risks undertaken by SOE management (Aslam 2022; Zainal et Al., 2021; Widodo & Nugroho, 2023).

A fundamental shift in this legal construction occurred with the enactment of Law Number 1 of 2025 on State-Owned Enterprises. The law explicitly affirms the separation between state assets and SOE corporate assets by stipulating that state capital participation in SOEs is converted into corporate equity managed under corporate governance principles. As a consequence, profits and losses arising from SOE activities are no longer automatically categorized as state gains or state losses (Aslam 2022). This reform reflects a deliberate transition from a public finance-oriented paradigm toward a corporate law paradigm emphasizing separate legal entity, managerial autonomy, and business risk allocation.

Prior to the enactment of the 2025 SOE Law, the prevailing legal framework maintained a broad conception of state finance (Butt & Lindsey, 2021; Hikmahanto, 2023). Law Number 17 of 2003 on State Finance and the jurisprudence of the Constitutional Court consistently emphasized that separated state assets invested in SOEs retained their character as state finances (Yuliandri & Prabowo, 2023; Nibraska, 2022). This position was articulated in Constitutional Court Decisions Number 48/PUU-XI/2013 and Number 62/PUU-XI/2013, which recognized the corporate management of SOEs while simultaneously affirming the public origin of their capital. In practice, however, these decisions were often interpreted in a manner that sustained the automatic qualification of SOE losses as state losses.

This construction produced significant juridical consequences. Losses resulting from market volatility, failed investments, or strategic miscalculations were frequently assessed through the lens of public finance accountability rather than corporate risk management. As a result, directors and managers of SOEs operated under constant exposure to criminal liability, even when business decisions were taken in good faith and in accordance with principles of good corporate governance (Hartono et al., 2021). Scholarly analyses have noted that such conditions foster excessive risk aversion, discourage innovation, and weaken the competitiveness of SOEs in increasingly liberalized markets (Jefferson & Wang, 2023; Widodo & Nugroho, 2023).

The 2025 SOE Law seeks to address this long-standing ambiguity by drawing a clearer normative distinction between corporate losses and state losses. Articles 4A and 4B of the law explicitly state that SOE profits and losses are not automatically treated as state financial outcomes. This distinction has profound implications for the enforcement of corruption law, particularly because the element of state loss constitutes a core component of corruption offenses under Articles 2 and 3 of the Anti-Corruption Law. In line with Constitutional Court jurisprudence requiring that state losses be real and measurable, the new framework necessitates a reassessment of evidentiary standards in SOE-related corruption cases.

From a comparative perspective, the shift toward asset separation and corporate autonomy in SOE governance aligns with international best practices (OECD, 2023; Jefferson et al., 2024; Putri & Nugroho, 2024). Global guidelines emphasize that while SOEs must remain accountable for public interest objectives, operational losses should generally be treated as corporate risks unless they arise from unlawful conduct or abuse of authority. Recent comparative studies similarly highlight the importance of balancing corporate autonomy with public accountability to prevent both over-criminalization of business decisions and the erosion of anti-corruption enforcement.

Based on this background, this article aims to analyze the juridical construction of proving state losses in corruption crimes involving SOEs after the enactment of Law Number 1 of 2025. The study focuses on examining the genealogy of the concept of state loss, the transformation of the legal paradigm governing SOEs, and the juridical implications of distinguishing corporate losses from state losses in corruption law enforcement. By adopting a functional and impact-based approach, this research seeks to formulate clearer juridical criteria capable of reconciling corporate governance principles with the demands of public accountability.

2. Method

This research employs a normative (doctrinal) legal research method, which focuses on the study of legal norms, principles, and doctrines governing the distinction between corporate losses and state losses in corruption cases involving State-Owned Enterprises (SOEs) (Efendi & Rijadi, 2022; Jonaedi et al., 2022; Syahrin et al., 2024). Normative legal research is appropriate for this study because the core issues examined relate to the interpretation of legislation, judicial decisions, and legal doctrines rather than empirical measurement of social behavior.

The research adopts a statutory approach to analyze the regulatory framework governing SOEs and corruption offenses in Indonesia. This approach examines Law Number 1 of 2025 on State-Owned Enterprises, the Anti-Corruption Law, and Law Number 17 of 2003 on State Finance to identify normative shifts in the legal construction of state losses. Particular attention is given to provisions regulating asset separation, state capital participation, and the legal consequences of corporate losses within SOEs.

In addition, a case and jurisprudential approach is applied through the analysis of relevant Constitutional Court decisions, especially Decisions Number 48/PUU-XI/2013 and 62/PUU-XI/2013. These decisions are examined to understand the evolution of judicial reasoning concerning the concept of state loss and its application to SOEs prior to and after the enactment of the 2025 SOE Law. Jurisprudential analysis is essential to assess how judicial interpretations have shaped, and may continue to shape, the enforcement of corruption law in SOE-related cases.

To strengthen the analytical framework, the study also employs a conceptual approach by examining key legal doctrines relevant to corporate accountability, including the separate legal entity principle and the business judgment rule. These doctrines are used as analytical tools to assess whether corporate losses should be attributed to managerial misconduct or treated as legitimate business risks. The conceptual approach enables a critical evaluation of the compatibility between corporate law principles and the objectives of corruption law enforcement.

The data used in this research consist of primary legal materials and secondary legal materials. Primary legal materials include statutes, Constitutional Court decisions, and official government documents related to SOE governance. Secondary legal materials comprise scholarly articles published in reputable national and international journals, legal textbooks, and authoritative commentaries relevant to corruption law and SOE governance.

All legal materials are analyzed using a qualitative juridical analysis (Moleong, 2021). The analysis is conducted by systematically interpreting legal norms, comparing regulatory regimes before and after the enactment of Law Number 1 of 2025, and assessing their implications for the evidentiary requirements of proving state losses in corruption cases involving SOEs. The analytical process is oriented toward developing a coherent juridical construction capable of ensuring legal certainty while maintaining effective accountability in corruption law enforcement.

3. Analysis and Results

3.1. Genealogy of the Concept of State Loss in the Context of State-Owned Enterprises

The concept of state loss (*kerugian negara*) in Indonesian law has historically been rooted in a public finance paradigm, where the state was positioned as the central holder of economic power and risk. In the early development of state administration, State-Owned Enterprises (SOEs) were not conceived as autonomous corporate entities, but rather as extensions of governmental functions tasked with supporting national economic objectives (Butt & Lindsey, 2021; McLeod, 2021). Within this framework, any financial loss incurred by SOEs was naturally perceived as a direct loss to the state, without a clear distinction between corporate risk and state financial responsibility.

This conception was reinforced during periods of strong centralized governance, particularly under the New Order regime, where SOEs operated under significant political control and administrative intervention. The absence of meaningful corporate autonomy during this era blurred the boundary between public authority and business management, resulting in the treatment of SOE finances as an integral part of state finances. Consequently, the notion of state loss developed not as an economic concept grounded in corporate accounting, but as a juridical construct closely tied to the protection of public assets and state authority.

Following the reform era, legislative developments began to introduce the idea of asset separation between the state and SOEs. Laws governing SOEs and state finance formally acknowledged that state capital participation in SOEs was converted into corporate capital. However, this normative shift was not consistently reflected in law enforcement practices. The enactment of Law Number 17 of 2003 on State Finance, which defined state finance broadly, contributed to the persistence of a public-law-oriented interpretation. As a result, losses suffered by SOEs continued to be presumed as state losses, particularly in the context of corruption investigations.

Judicial interpretation further shaped the genealogy of the concept of state loss. In several landmark decisions, the Constitutional Court recognized the complexity of state asset management within SOEs. Decisions Number 48/PUU-XI/2013 and 62/PUU-XI/2013 emphasized that although state assets invested in SOEs originate from state finances, their management follows corporate mechanisms. Importantly, the Court introduced a functional approach to state loss, requiring that losses be real, definite, and measurable rather than merely normative or presumed.

Despite this jurisprudential development, the practical application of the concept of state loss remained inconsistent. Law enforcement agencies often relied on formalistic reasoning, equating any decrease in SOE assets with state loss, without adequately examining whether such losses resulted from unlawful conduct or from legitimate business risks. This approach generated significant legal uncertainty and contributed to the expansion of corruption law into the domain of corporate governance (Nibraska, 2022; Saragih & Widyaningrum, 2023).

From a doctrinal perspective, scholars have criticized this expansive interpretation for neglecting fundamental principles of corporate law, particularly the separate legal entity doctrine (Disemadi, 2022; Disemadi & Prananingtyas, 2021). By disregarding the autonomous legal personality of SOEs, the traditional construction of state loss failed to differentiate between managerial misconduct and bona fide business judgment. This doctrinal tension illustrates that the genealogy of the concept of state loss in SOEs is not merely a technical legal issue, but a reflection of deeper struggles between public law dominance and the gradual recognition of corporate autonomy within the Indonesian legal system.

In this context, understanding the historical evolution of the concept of state loss is essential for assessing contemporary reforms. The genealogy demonstrates that the classification of SOE losses as state losses has been shaped less by coherent corporate theory and more by historical governance structures and enforcement practices. This historical legacy forms the backdrop

against which Law Number 1 of 2025 seeks to reconstruct the juridical meaning of state loss in SOE-related corruption cases.

3.2. Transformation of the Legal Paradigm in Law Number 1 of 2025 on State-Owned Enterprises

Law Number 1 of 2025 on State-Owned Enterprises represents a fundamental transformation in the legal paradigm governing SOEs in Indonesia. Unlike previous regulatory frameworks that positioned SOEs within a hybrid regime of public administration and corporate activity, the 2025 law adopts a more explicit corporate law orientation. This shift is primarily reflected in the reaffirmation of SOEs as independent legal entities whose assets, rights, and obligations are distinct from those of the state as shareholder.

One of the most significant changes introduced by the 2025 SOE Law is the explicit clarification regarding state capital participation. The law stipulates that once state assets are invested as capital in SOEs, they are transformed into corporate assets subject to corporate governance mechanisms. Consequently, profits and losses arising from SOE business activities are treated as corporate outcomes rather than automatic extensions of state financial performance. This provision marks a clear departure from earlier interpretations that maintained the public character of SOE assets even after separation (Hamdani & Al Faruqi, 2023; Telaumbanua, 2023).

This paradigm shift has direct implications for the construction of state loss in corruption cases (Sulistiyono & Prasetyo, 2022). Under the previous framework, the broad conception of state finance facilitated a presumption that any financial loss within SOEs constituted state loss. Law Number 1 of 2025 disrupts this presumption by introducing a normative boundary between corporate losses and state losses, thereby requiring law enforcement authorities to demonstrate a substantive connection between SOE losses and actual harm to state finances. This approach aligns with the Constitutional Court's requirement that state losses must be real, definite, and measurable, rather than hypothetical or merely formal.

The transformation is further reinforced through the strengthening of corporate governance principles, including the recognition of managerial autonomy and the protection of directors acting in good faith. The law implicitly endorses the application of the business judgment rule, limiting criminal liability for business decisions made prudently, without conflicts of interest, and within the scope of corporate authority (Rizky et al., 2021; Putri, 2022). By doing so, the 2025 SOE Law narrows the space for ex post criminalization of business risk and reorients accountability mechanisms toward civil and administrative remedies, except in cases involving fraud, abuse of authority, or corruption.

From a comparative governance perspective, the legal transformation embodied in Law Number 1 of 2025 reflects international trends in SOE regulation. International guidelines emphasize that while the state retains its role as shareholder and guardian of public interest, SOEs must be allowed to operate under market-based principles to remain competitive and efficient. Losses resulting from legitimate business activities are therefore treated as corporate risks, unless they stem from unlawful conduct or misuse of public authority.

However, this paradigm shift also raises new challenges. The clearer separation between corporate losses and state losses necessitates more sophisticated evidentiary standards in corruption prosecutions. Law enforcement agencies can no longer rely solely on the formal status of state ownership but must establish causality between managerial actions, unlawful conduct, and actual damage to state finances. This requirement demands a more nuanced legal analysis that integrates principles of corporate law, public finance, and criminal law.

In this sense, Law Number 1 of 2025 does not eliminate the possibility of corruption liability within SOEs, but rather redefines its juridical foundation. The transformation of the legal paradigm signals a move away from symbolic protection of state assets toward a functional and impact-based approach to accountability. This reconstruction is crucial to ensuring that anti-

corruption enforcement remains effective without undermining the corporate autonomy necessary for SOEs to fulfill their economic and strategic roles.

3.3. Critical Analysis of the Distinction between Corporate Losses and State Losses

The distinction between corporate losses and state losses introduced by Law Number 1 of 2025 constitutes a significant normative advancement in the governance of State-Owned Enterprises (SOEs). By formally separating corporate risk from state financial responsibility, the law seeks to restore legal certainty and protect legitimate business decision-making. From a corporate law perspective, this distinction reinforces the principle that losses arising from bona fide business activities should not automatically trigger criminal liability, particularly when decisions are made in good faith and within the scope of managerial authority.

However, the application of this distinction cannot be understood in a purely formalistic manner. Treating all SOE losses as corporate losses solely based on asset separation risks creating a legal shield that may be exploited to conceal unlawful conduct. Corporate losses may still qualify as state losses when they result from abuse of authority, fraud, or actions that directly undermine state interests (Siregar & Lubis, 2022; Saragih et al., 2022). Therefore, the separation introduced by the 2025 SOE Law must be accompanied by a substantive assessment of the underlying conduct and its impact on state finances.

This concern highlights the importance of adopting an impact-based approach to the assessment of state loss (Boles & Baer, 2022; Rahardjo & Wibowo, 2024). Rather than relying on ownership status or formal classification of assets, law enforcement authorities must examine whether corporate actions have caused real and measurable harm to state finances. Such an approach aligns with contemporary developments in economic crime enforcement, which emphasize causality, intent, and actual economic impact over symbolic or presumptive notions of loss.

The business judgment rule plays a crucial role in mediating the boundary between corporate autonomy and criminal accountability. Under this doctrine, directors are shielded from liability for decisions that result in losses, provided those decisions are informed, taken in good faith, and free from conflicts of interest. The incorporation of this principle into SOE governance helps prevent the retrospective criminalization of business risk while preserving space for accountability in cases involving corruption or gross misconduct.

Comparative experiences further demonstrate that excessive reliance on criminal law to address corporate losses can undermine the effectiveness of SOEs (Jefferson & Wang, 2023; OECD, 2023). Studies in comparative governance reveal that jurisdictions with clear distinctions between corporate and state losses tend to rely more heavily on civil, administrative, and corporate governance mechanisms, reserving criminal sanctions for cases involving clear violations of law. This balanced approach enhances both economic efficiency and legal certainty.

Nevertheless, the Indonesian context presents unique challenges. Given the strategic role of SOEs and the historical prevalence of corruption in public sector enterprises, there remains a strong normative demand for robust accountability. The distinction between corporate losses and state losses must therefore be operationalized through clear evidentiary standards and institutional coordination, particularly between auditors, prosecutors, and courts. Without such safeguards, the paradigm shift introduced by Law Number 1 of 2025 risks being perceived as weakening anti-corruption efforts rather than refining them.

In this regard, the critical task lies in developing juridical criteria capable of differentiating legitimate business losses from losses arising from unlawful conduct. These criteria should integrate corporate governance principles with the objectives of corruption law, ensuring that SOE managers are neither unjustly criminalized nor unjustly immunized. The distinction between corporate losses and state losses should thus function not as a categorical exemption,

but as a normative framework guiding a more precise and fair application of criminal law in SOE-related corruption cases.

4. Conclusion

This study demonstrates that the long-standing conflation between corporate losses and state losses in the governance of state-owned enterprises (SOEs) is rooted not merely in statutory ambiguity, but in a historical and paradigmatic overlap between public finance logic and corporate risk allocation. By tracing the genealogy of the concept of state loss, this research confirms that the automatic qualification of SOE losses as state losses has persisted despite the gradual adoption of the separate legal entity doctrine and corporate governance principles. This condition has contributed to legal uncertainty and the overextension of criminal liability into the realm of legitimate business decision-making.

The findings further indicate that Law Number 1 of 2025 on SOEs represents a decisive transformation of the legal paradigm governing SOEs by normatively affirming the separation between state assets and corporate assets. Under this framework, SOE losses are no longer presumed to constitute state losses but must be assessed through a functional and substantive approach that considers unlawful conduct, abuse of authority, and demonstrable harm to state finances or the national economy. This paradigm shift aligns legislative policy with constitutional jurisprudence and repositions criminal law as an *ultimum remedium* rather than a primary instrument for controlling corporate risk.

At the same time, the research reveals that the distinction between corporate losses and state losses cannot be applied in an absolute or formalistic manner. Without clear substantive criteria and regulatory harmonization, particularly with the State Finance Law and the Anti-Corruption Law, the separation risks creating accountability gaps and normative conflict. Therefore, the practical application of the 2025 SOE Law requires the development of coherent interpretive guidelines that emphasize the substance of conduct and its economic impact rather than the formal classification of assets.

Based on these findings, this study suggests that future law enforcement and judicial practice should adopt an impact-based approach in assessing state losses in SOE-related cases, supported by strengthened corporate governance mechanisms and clear standards for identifying abuse of authority. Such an approach would enhance legal certainty, protect legitimate business risk-taking, and ensure that public accountability is preserved in cases where corporate misconduct genuinely harms state economic interests. Ultimately, this framework contributes to a more balanced integration of corporate autonomy and public interest protection within Indonesia's economic and criminal law system.

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