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Institutionalizing Competitive Neutrality Through Absolute Separation Doctrines: An ASEAN Comprehensive Comparative Study

Institusionalisasi Netralitas Persaingan Melalui Doktrin Pemisahan Mutlak: Sebuah Studi Komparatif Otoritatif ASEAN

Siti Kamilatuz Zahra
Raden Intan State Islamic University Lampung, Indonesia

Article Info

Corresponding Author:
Siti Kamilatuz Zahra
✉kamilazahra124@gmail.com

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Abstract

This article evaluates the legal implications of the recent institutional transformation from the Ministry of State Owned Enterprises to the Regulatory Agency in Indonesia under Law Number 16 of 2025. Employing normative legal research alongside comparative analysis with Khazanah in Malaysia and Temasek in Singapore, this study dissects the persistent structural conflict between public regulatory functions and commercial ownership rights. Findings explicitly reveal that the new agency framework remains a superficial administrative illusion that completely fails to mitigate agency costs. By consolidating regulatory and shareholder powers within a single entity, the reform perpetuates corporate identity crises and severely undermines the Business Judgment Rule protections for state corporate directors. Consequently, to achieve genuine competitive neutrality and absolute managerial autonomy, this article proposes adopting a radical twin track model. This progressive framework necessitates delegating regulatory authority to technical ministries while permanently transferring commercial state ownership to a fully independent super holding company.

Abstrak

Artikel ini mengevaluasi implikasi hukum dari transformasi kelembagaan terbaru dari Kementerian Badan Usaha Milik Negara menjadi Badan Pengaturan di Republik Indonesia berdasarkan Undang Undang Nomor 16 Tahun 2025. Menggunakan penelitian hukum normatif beserta analisis komparatif dengan institusi Khazanah di Malaysia dan Temasek di Singapura, studi ini membedah konflik struktural yang persisten antara fungsi pengaturan publik dan hak kepemilikan komersial. Temuan secara eksplisit mengungkapkan bahwa kerangka badan baru tersebut tetap menjadi ilusi administratif superfisial yang gagal total dalam memitigasi biaya keagenan. Dengan mengonsolidasikan kekuasaan pengatur dan pemegang saham ke dalam satu entitas, reformasi ini melanggengkan krisis identitas korporasi dan sangat merusak pelindungan Doktrin Penilaian Bisnis bagi direktur perusahaan negara. Akibatnya, untuk mencapai netralitas persaingan sejati dan otonomi manajerial mutlak, artikel ini mengusulkan pengadopsian model jalur ganda yang radikal. Kerangka progresif ini mengharuskan pendelegasian otoritas pengaturan kepada kementerian teknis sambil mentransfer kepemilikan komersial negara secara permanen kepada perusahaan induk super yang independen.

A. INTRODUCTION

1. Background

The resurgence of state capitalism stands as a fundamental phenomenon defining the global legal and political-economic architecture of the twenty-first century.[1] State-owned enterprises (SOEs) continue to serve an indispensable role in macroeconomic development, the provision of public services, and the control of strategic production sectors across various jurisdictions. Optimal corporate governance functions as a crucial instrument to ensure that state participation in the free market does not distort economic efficiency, but rather sustainably bolsters national competitiveness.[2] Nevertheless, the existence of state-owned entities inherently triggers a highly complex clash of norms. A fundamental conflict persists between the drive for commercial profit maximization—akin to that of private corporations—and the public service obligations imperatively mandated by the state.[3] This tension engenders a jurisprudential anomaly that necessitates resolution through a comprehensive corporate governance legal framework.

Within the constitutional framework of the Republic of Indonesia, the philosophical and juridical foundation for state control over economic resources is rooted absolutely in Article 33 of the 1945 Constitution. The Constitution mandates that branches of production essential to the state and commanding the livelihood of the public shall be controlled by the state for the greatest possible prosperity of the people. This constitutional mandate is corporately operationalized through SOEs, which function as the institutional extensions of the state. Unfortunately, the execution of this dual function frequently places SOE boards of directors in a highly vulnerable, subordinate position. This vulnerability has sparked intense academic debate regarding the application of the business judgment rule vis-à-vis state financial losses within a positivistic anti-corruption criminal enforcement regime.[4]

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[1] Mark McLaughlin, "Regulating the Corporate Governance of State-Owned Enterprises in Investment Arbitration," in *Chinese (Taiwan) Yearbook of International Law and Affairs, Volume 39, 2021* (Brill | Nijhoff, 2022), 202–39, https://doi.org/10.1163/9789004532069_006.
[2] Radosław Miążek, "Corporate Governance in State-Owned Enterprises. A Systematic Literature Review: An International Perspective," *International Journal of Contemporary Management* 57, no. 4 (December 1, 2021): 1–13, https://doi.org/10.2478/ijcm-2021-0011.
[3] Thimotius Melkysedekh Yuliawan, "Functional Duality of SOEs: Comparative Legal Governance of Indonesia and Singapore's Temasek," *Legtimacy: Journal of Law and Islamic Law* 2, no. 1 (2026): 62–78, https://doi.org/10.59066/jolil.v2i1.2474.
[4] Juan Kasma and Christian Andersen, "Business Judgment Rule and Corporate Governance as the Strategic Imperative of Indonesian State-Owned Enterprise," *European Journal of Law and Political Science* 3, no. 4 (August 2, 2024): 51–58, https://doi.org/10.24018/ejpolitics.2024.3.4.151.

In response to these historical governance issues, the legal landscape of Indonesian state-owned corporations recently underwent a tectonic shift following the enactment of Law Number 16 of 2025 on the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises. This legislative amendment carries an ambitious agenda to transform the institutional framework of SOEs by attempting a definitive separation of the regulator and operator roles. The most controversial legal development stemming from this recent regulation is the abolition of the Ministry of State-Owned Enterprises and its replacement with a new agency, designated as the SOE Regulatory Agency (*Badan Pengaturan BUMN* or BP BUMN). This existential shift immediately provoked both academic and practical concerns regarding a potential supervisory void, as well as the ambiguous legal standing of this new agency within the presidential cabinet architecture.[5]

To reinforce the analytical foundation and scholarly credibility of this study, mapping the state of the art in existing literature is an absolute necessity. The discourse on the corporate governance of state-owned entities has been explored extensively on a global scale over the past five years. Lim conceptualizes a theory of concentrated ownership, positing that the state, as the controlling shareholder, ought to be bound by fiduciary duties to act in the public interest and to avert conflicts of interest.[6] Complementing this perspective, Miążek, through a systematic literature review, asserts that the governance anomaly of SOEs remains an unresolved global issue lacking a uniform solution.[7]

From a regional structural perspective, Cahyani dissects the SOE dichotomy between Indonesia and Malaysia, advocating for the adoption of Singapore's Temasek model to insulate commercial discretion from bureaucratic political intervention.[8] Conversely, Nurgozhayeva contrasts this concept with the reality in transitional economies, demonstrating that mere corporatization and superficial alterations in legal form frequently culminate in an illusion of reform unless accompanied by the divestment

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[5] Regina Naya Cahyani, "SOE Dichotomy: Reconciling Public Obligations and Corporate Governance in Indonesia, Malaysia, Singapore," *Siyasah Dusturiyah: State Law Review* 1, no. 6 (2026): 58–75, https://doi.org/10.65101/06bt2q88.
[6] 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, https://doi.org/10.1093/ojls/gqaa050.
[7] Miążek, "Corporate Governance in State-Owned Enterprises. A Systematic Literature Review: An International Perspective."
[8] Cahyani, "SOE Dichotomy: Reconciling Public Obligations and Corporate Governance in Indonesia, Malaysia, Singapore."

of regulatory functions from the shareholding entity.[9] Finally, McLaughlin highlights how domestic regulations frequently fail to accommodate commercial operational demands due to the rigid constraints of public law doctrines.[10]

A thematic synthesis of these five primary sources reveals a scholarly consensus: the absolute separation of ownership and regulatory functions is a strict prerequisite for achieving SOE governance efficiency. Serving as a moderator in this discourse, the author identifies a universal agreement among scholars regarding the perils of information asymmetry and agency costs that arise from the conflation of institutional roles. A clash of norms materializes when the government positions itself simultaneously as the referee (regulator) and the player (shareholder) within the same market arena. Modern corporate law unequivocally demands competitive neutrality, ensuring that state-owned entities can compete on an equal footing with private actors without enjoying regulatory privileges that distort a healthy market mechanism.

These insights notwithstanding, the literature synthesis concurrently reveals a highly significant blind spot. The majority of preceding studies have focused almost exclusively on analyzing the effectiveness of holding company models, evaluating the implementation of independent boards of directors, or assessing the impact of political intervention solely on financial performance indicators. No authoritative literature in the field of corporate law has specifically dissected the constitutional law implications of an administrative substitution of state institutions—such as the radical transformation from a ministerial body into a non-ministerial regulatory agency. A theoretical gap exists as to whether merely altering the nomenclature of a state institution can resolve the functional collision between shareholder and regulator without fundamentally altering the core of its corporate law framework.

Diverging from previous scholarship—which predominantly evaluates investment holding models or measures the macroeconomic impacts of SOE financial ratios—this study offers a novel approach by dissecting the specific institutional transformation from the Ministry of SOEs into the SOE Regulatory Agency. This comparative novelty is tangibly realized by juxtaposing Indonesia's institutional SOE governance framework post-Law Number 16 of 2025 against long-established best practices in Malaysia and Singapore.

[9] Roza Nurgozhayeva, "Corporate Governance In Russian State-Owned Enterprises: Real Or Surreal?," *Asian Journal of Comparative Law* 17, no. 1 (July 5, 2022): 24–50, https://doi.org/10.1017/asjcl.2022.3.
[10] McLaughlin, "Regulating the Corporate Governance of State-Owned Enterprises in Investment Arbitration."

The analysis will critically contrast the juridical basis of the BP BUMN against the legal architecture of Malaysia's *Minister of Finance (Incorporation) Act* and the statutory protections of Singapore's *Companies Act*.

This article advances the legal claim that the institutional transformation from the Ministry of SOEs to the SOE Regulatory Agency represents a mere cosmetic illusion of governance reform, as it fails to address the root causes of agency costs in corporate law. The academic community and policymakers must heed these findings; without a radical restructuring of property rights and portfolio separation akin to the Temasek or Khazanah models, the fusion of regulatory and shareholder functions will continuously jeopardize the independence of the board of directors. As a concrete solution, this paper proposes the conceptual adoption of a twin-track model, which absolutely isolates the regulatory function within a ministerial entity while concentrating pure ownership functions within a commercial super-holding entity.

2. Research Questions

Rooted in the theoretical gaps and pressing legal challenges deconstructed above, this article establishes an analytical framework to systematically resolve these issues. To that end, the core inquiry is articulated through the following two research questions:

First, how does the transformation of the regulatory architecture, institutional functions, and legal authority—precipitated by the transition from the Ministry of SOEs to the SOE Regulatory Agency—impact corporate governance in Indonesia?

Second, what insights emerge from a comparative analysis of the institutional governance practices of state-owned business entities in Malaysia and Singapore, and to what extent can these frameworks serve as models for reforming Indonesia's legal system?

3. Research Methodology

This section outlines the analytical and operational design of the legal research employed to resolve the normative tensions and operational lacunae stemming from the institutional reform of SOEs. The study is structured as a normative legal research endeavor. This methodology is justified by the fact that the core inquiry hinges on analyzing statutory architecture and the prescriptive coherence of corporate law principles, rather than conducting a mere sociological or empirical evaluation. To ensure a comprehensive cross-jurisdictional examination, the author relies on three primary frameworks: a statutory approach, a conceptual approach, and a comparative legal approach.[11]

The legal materials governing this study are strictly bifurcated into primary and secondary sources. Primary legal sources consist of authoritative statutory instruments, notably the 1945 Constitution of the Republic of Indonesia, Law Number 16 of 2025, Presidential Regulation Number 105 of 2025, and Presidential Regulation Number 179 of 2024. For the comparative analysis, primary sources encompass Malaysia's *Minister of Finance (Incorporation) Act 1957* and Singapore's *Companies Act*. Secondary sources are selectively drawn from highly reputable, peer-reviewed global journals that intersect with the fields of corporate governance, agency theory, and state investment law.

The collection of legal materials was conducted exclusively through targeted archival and literature review methods. This process entailed the inventorying, classification, and systematization of relevant legal documents to construct a logically sound legal argumentation. Subsequently, the legal analysis was operationalized through grammatical and systematic statutory interpretation, inherently integrated with deductive syllogistic reasoning. These legal materials were then synthesized using agency theory and the doctrine of the separation of ownership and control as analytical lenses, ultimately culminating in prescriptive conclusions.[12]

B. DISCUSSION

1. Agency Theory and the Construction of the State's Fiduciary Duties in SOEs

A critical evaluation of the efficacy of SOE institutional transformation is inextricably linked to the fundamental tenets of corporate law theory. Agency theory, classically pioneered by Berle and Means, provides an exceptionally incisive analytical framework for deconstructing the problematic separation of ownership and control.[13] Within standard corporate dynamics, an inherent information asymmetry and natural conflict of interest persist between shareholders (the principals)—who seek optimal financial returns—and management (the agents), who frequently exhibit a propensity to maximize their personal utility. Corporate governance thus emerges as a juridical

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[11] Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2, 2023): 1–9, https://doi.org/10.22219/aclj.v4i1.24855.

[12] Mamdouh Abdulaziz Saleh Al-Faryan, "Agency Theory, Corporate Governance and Corruption: An Integrative Literature Review Approach," *Cogent Social Sciences* 10, no. 1 (December 31, 2024), https://doi.org/10.1080/23311886.2024.2337893.

[13] Adolf A. Berle and Gardiner Coit Means, *The Modern Corporation and Private Property* (Routledge, 2017), https://doi.org/10.4324/9781315133188. Hal, 100.

intermediary mechanism designed to mitigate these agency costs.[14]

Applying agency theory to state-owned entities introduces a degree of hierarchical complexity that far exceeds that of private corporations. Within the macro-level structure of an SOE, the state acts as a shareholder that, in its constitutional essence, serves as the "agent" of the people—the ultimate principals of sovereign wealth. This dynamic engenders what governance literature terms the double agency problem. The state routinely pursues multiple, divergent objectives; it faces market pressures to yield commercial dividends while simultaneously bearing political and statutory mandates to execute public service obligations and ensure economic stabilization.[15]

Contemporary corporate law discourse acutely underscores the urgency of comprehensively regulating the state's position as a controlling shareholder. Formulating the concept of the Fiduciary Government Controlling Shareholder, Lim advances a compelling argument that the state, as the ultimate controller of an SOE, must shoulder second-tier fiduciary duties. Under this construct, the government is legally obligated to act proportionally and in good faith to advance a quantifiable public interest, and is strictly prohibited from exploiting corporate control to serve partisan political agendas. Despite this normative imperative, positive legal frameworks routinely fail to impose rigorous fiduciary constraints on state bureaucratic apparatuses.[16]

The absence of definitive fiduciary constraints exerts a profoundly destructive impact, ultimately preventing the full application of the Business Judgment Rule (BJR)—the cornerstone of directorial protection—within the Indonesian jurisdiction.[17] A systemic distortion of legal certainty stems directly from the juridical dichotomy between state assets segregated under civil law and the overarching public finance regime.[18] Even though the Constitutional Court, through Decision Number 48/PUU-XI/2013, affirmed that SOE financial losses resulting from ordinary business risks fall exclusively within the purview of private law, the looming threat of criminal prosecution under anti-corruption

[14] Al-Faryan, "Agency Theory, Corporate Governance and Corruption: An Integrative Literature Review Approach."
[15] Nurgozhayeva, "Corporate Governance In Russian State-Owned Enterprises: Real Or Surreal?"
[16] Lim, "Concentrated Ownership, State-Owned Enterprises and Corporate Governance."
[17] Kasma and Andersen, "Business Judgment Rule and Corporate Governance as the Strategic Imperative of Indonesian State-Owned Enterprise."
[18] Cahyani, "SOE Dichotomy: Reconciling Public Obligations and Corporate Governance in Indonesia, Malaysia, Singapore."

statutes continues to paralyze the rational decision-making of corporate boards.[19] This normative tension persists precisely because the institutional body representing the state concurrently exercises the coercive powers of a public authority.

2. Deconstructing the SOE Regulatory Agency: The Illusion of Administrative Transformation

Responding to historical governance deficiencies that have impeded the acceleration of investment, the Indonesian government enacted Law Number 16 of 2025, which introduced a radical paradigm shift by abolishing the Ministry of State-Owned Enterprises. All strategic functions were subsequently transferred to a newly established institution designated as the SOE Regulatory Agency (*Badan Pengaturan BUMN* or BP BUMN), as formally governed by Presidential Regulation Number 105 of 2025. The statutory recitals of this executive order explicitly mandate that the BP BUMN was established specifically to fortify the role of a pure regulator—one tasked with formulating policy, as well as fostering, coordinating, and overseeing the integrated management of SOEs.

From a teleological perspective, the transition from a conventional ministerial entity to an "agency" model is touted as an institutional breakthrough designed to decouple the state's regulatory function from the operational duties of the shareholder. The BP BUMN is deliberately positioned outside the traditional cabinet structure; instead, it is legally constructed as an independent, cabinet-level agency directly accountable to the President. Structurally, the agency is led by a Head (*Kepala Badan*) who is supported by five functional Deputies tasked with overseeing Policy, Human Resources, Value Enhancement, Synergy Facilitation, and Law and Compliance.

Nevertheless, a rigorous comparative juridical dissection of Presidential Regulation Number 105 of 2025 and its predecessor—Presidential Regulation Number 179 of 2024 concerning the Ministry of SOEs—reveals that this transformation leaves the substantive core entirely untouched. An anatomical analysis of the institutional framework unequivocally demonstrates that the much-lauded "regulatory" function of this new entity is merely a precise functional duplication of the powers previously exercised by the Ministry of SOEs. There is no genuine transfer of power relinquishing the shareholder

[19] Teuku Syahrul Ansari, Herdi Sahrasad, and Irfan Iryadi, "Indonesian State Owned Enterprises (BUMN or SOEs), and the Urgency of Implementation of Principle of 'Business Judgment Rule'," *Jurnal Cita Hukum* 8, no. 1 (March 23, 2020): 163–82, https://doi.org/10.15408/jch.v8i1.15042.

role; the absolute mandate of ownership proxy remains centrally vested in the Agency Head.

Table 1. Comparative Analysis of SOE Institutional Architecture in Indonesia

Corporate Governance Aspect	Ministry of SOEs (Pres. Reg. 179/2024)	SOE Regulatory Agency (Pres. Reg. 105/2025)	Theoretical and Juridical Implications
Accountability	Hierarchically responsible directly to the President.	Hierarchically responsible directly to the President.	No paradigm shift in constitutional law.
Organizational Structure	Secretariat, Functional Deputies, Expert Staff, and Inspectorate.	General Secretariat, Functional Deputies, and Inspectorate.	Cosmetic changes; constitutes mere structural efficiency.
Regulatory Executor	Deputy for Law and Legislation.	Deputy for Law and Compliance.	Authority to establish public law norms remains intact.
Shareholder Proxy Status	Acts as the absolute government proxy in the General Meeting of Shareholders (GMS).	Acts to manage dividends and Series A *Dwiwarna* shares.	Fails to separate the regulator and portfolio operator functions.

The preceding analytical matrix conclusively demonstrates that the inception of the BP BUMN entirely fails to resolve the normative tension stemming from the conflation of the regulator (public policy maker) and operator (profit-seeking entity) functions. Viewed through the lens of agency governance, this institutional design actively perpetuates a corporate identity crisis, as the Head of the BP BUMN continues to shoulder conflicting dual mandates. This empirical reality strongly affirms Nurgozhayeva's thesis, which posits that mere institutional restructuring cannot enhance governance performance unless it is coupled with the severance of bureaucratic intervention and the absolute divestment of regulatory functions from the shareholder entity.[20]

Absent a definitive, severing legal distinction (a strict cut-off) between the entity responsible for economic policy formulation and the entity managing share ownership rights, the institutional novelty of the BP BUMN amounts to little more than an illusory administrative reshuffling. Core tenets of corporate law dictate that the entity controlling capital must never simultaneously serve as the authority establishing the competitive regulations within the market where that capital operates. This systemic failure unequivocally highlights that Indonesia still lacks the resolute jurisprudential will to liberate state wealth from the rigid constraints of administrative law. Consequently, SOE

[20] Nurgozhayeva, "Corporate Governance In Russian State-Owned Enterprises: Real Or Surreal?"

boards of directors remain perpetually held hostage in a perilous zone of legal uncertainty—caught between the protections of the Business Judgment Rule and the looming threat of prosecution for state financial losses.

3. Regulatory Centralization and Agency Cost Reduction in Malaysia

To elevate this academic discourse, a critical evaluation must imperatively be juxtaposed with the corporate governance parameters of a neighboring jurisdiction. In Malaysia, the oversight architecture governing Government-Linked Companies (GLCs) and Government-Linked Investment Companies (GLICs) conceptually rejects the establishment of standalone administrative agencies outside of primary cabinet ministries. The Malaysian legal regime adopts a conservative approach, concentrating all representational authority over state wealth rights within the Ministry of Finance. This institutional legitimacy is firmly anchored through the statutory framework of the *Minister of Finance (Incorporation) Act 1957*. By design, the Ministry focuses exclusively on macroeconomic fiscal equilibrium without meddling in the day-to-day operations of the enterprises.

Substantive shareholding functions and corporate restructuring are not left to ministry bureaucrats; rather, they are structurally delegated to pure investment holding entities (GLICs) such as Khazanah Nasional Berhad. Legally incorporated as a Public Limited Company (PLC) under the *Companies Act 1965*, Khazanah operates with the Minister of Finance acting solely as the ultimate shareholder, entirely devoid of any right to intervene in executive operations.[21] This second-tier separation design serves as a prime manifestation of modern corporate theory. Khazanah effectively functions as a buffer zone, insulating GLCs from bureaucratic and political interference.

To mitigate agency cost anomalies, Malaysia aggressively initiated the *GLC Transformation Programme*, spearheaded by the Putrajaya Committee for GLC High Performance (PCG). Notably, this committee does not operate like a traditional ministry issuing coercive, command-and-control regulations. Instead, it confines itself to formulating best practice guidelines that are fully integrated with the *Malaysian Code on Corporate Governance* (MCCG). The implementation of the MCCG mandates that GLCs adhere to standards of board independence, remuneration transparency, and audit

[21] Aiman Nariman Mohd-Sulaiman and Shanty Rachagan, "Shareholder Primacy, Controlling Shareholders and Malaysia's Companies Act 2016," *Journal of Corporate Law Studies* 17, no. 1 (January 2, 2017): 203–24, https://doi.org/10.1080/14735970.2016.1245377.

committee rigor that are entirely on par with the regulatory requirements imposed on purely private, publicly traded corporations.[22]

Consequently, a wealth of primary literature confirms that the managerial compliance of Malaysian GLCs with MCCG instruments empirically correlates with enhanced corporate performance and a reduction in agency costs. Nevertheless, engaging critically with Cahyani's findings exposes a significant blind spot within the Malaysian system: political intervention, facilitated through the mechanism of political appointments to boards of directors, continues to inflate covert agency costs. The government's retention of "golden shares" in specific GLCs frequently distorts the supervisory functions of the board. This reality demonstrates that merely operating under the statutory umbrella of the *Companies Act* cannot fully insulate a corporation from bureaucratic contagion so long as executive nominations remain firmly controlled by the political elite.[23]

4. The Doctrine of Absolute Separation: The Evolution of Temasek in Singapore

Shifting the analysis to the Singaporean jurisdiction reveals a legal framework defined by a far more radical and precisely institutionalized paradigm of the separation of powers. In stark contrast to the BP BUMN model adopted in Indonesia, Singapore explicitly rejects the creation of a specialized ministerial apparatus to oversee Government-Linked Companies (GLCs). Instead, the state exercises its ownership rights exclusively through the Ministry of Finance (MoF). The MoF, in turn, delegates the absolute mandate of managing state corporate assets to a fiercely independent, apex investment holding entity: Temasek Holdings.

Temasek's juridical existence is entirely subordinated to the *Companies Act*, effectively rendering it a purely private entity under civil law, utterly devoid of any privileges afforded by administrative law. This statutory architecture is meticulously engineered to operationalize the doctrine of competitive neutrality in its most absolute form. The foundational premise of this model is the conscious, institutional severance of direct government control. The MoF operates strictly as a passive shareholder driven by commercial return expectations; it possesses neither the mandate nor the jurisdiction to

[22] Yahya Mohammed Al-Sayani and Ebrahim Mohammed Al-Matari, "Corporate Governance Characteristics and Impression Management in Financial Statements. A Further Analysis. Malaysian Evidence," *Cogent Social Sciences* 9, no. 1 (December 31, 2023), https://doi.org/10.1080/23311886.2023.2191431.
[23] Cahyani, "SOE Dichotomy: Reconciling Public Obligations and Corporate Governance in Indonesia, Malaysia, Singapore."

interfere in the strategic business decisions of its portfolio companies.[24]

The sole permissible avenue for structural intervention lies in the appointment and removal of the Board of Directors for Temasek and primary GLCs, a process that retains the requirement for presidential prerogative approval. This second-tier approval mechanism functions as a critical constitutional safeguard, ensuring that the liquidation and management of the nation's past reserves are not recklessly exploited by corporate boards. Crucially, once appointed, these directors exercise unfettered managerial autonomy to dictate corporate strategy, completely insulated from the direct political pressure of technical ministers or the legislature.[25]

This legally entrenched managerial independence serves as the primary determinant for why Singaporean GLCs consistently achieve superior market valuations and are universally recognized as the gold standard for corporate governance in Asia. By emancipating SOE operations from the rigid confines of bureaucratic frameworks and public finance law, Singaporean GLC directors *de facto* enjoy the full protective shield of the Business Judgment Rule. They operate free from the overarching threat of anti-corruption prosecutions stemming from ordinary commercial losses. Ultimately, the Temasek model proves that genuine corporate autonomy is attainable only when the regulatory function is entirely and structurally divorced from the role of the shareholder.[26]

5. Comparative Synthesis: Formulating a Twin-Track Model for Indonesia

Subjecting the empirical and juridical findings from these three jurisdictions to an academic dialectic reveals a stark paradigmatic disparity in conceptualizing the state's position within the realm of private law. Both *de jure* and *de facto*, the transformation into the BP BUMN in Indonesia represents a regressive maneuver that merely perpetuates a centralized, bureaucratic command model. Fusing instruments of public regulation and capital ownership powers within a single administrative repository directly contravenes the universal standards articulated in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, which mandate an absolute bifurcation (clear separation) of

[24] Wendy Leutert, "Singapore's Temasek Model and State Asset Management in China," *Asian Survey* 64, no. 4 (August 1, 2024): 700–726, https://doi.org/10.1525/as.2024.2122271.
[25] International Monetary Fund. Fiscal Affairs Dept, "Republic of Armenia: Technical Assistance Report-Strengthening State-Owned Enterprises Accountability Framework," *Technical Assistance Reports* 2024, no. 026 (March 2024): 1, https://doi.org/10.5089/9798400270390.019.
[26] Nazli Anum Mohd Ghazali, "Governance and Ownership in Malaysia: Their Impacts on Corporate Performance," *Asian Journal of Accounting Research* 5, no. 2 (August 27, 2020): 285–98, https://doi.org/10.1108/AJAR-03-2020-0017.

these functions.[27]

Table 2. Comparative Matrix of State-Owned Enterprise (SOE/GLC) Governance Based on Agency Principles

Corporate Law Indicator	Indonesia (BP BUMN / Law 16/2025)	Malaysia (Khazanah / MoF Inc.)	Singapore (Temasek Holdings)
Delegation of Ownership Functions	Centralized within a non-ministerial bureaucratic organ (BP BUMN).	Delegated to an investment holding entity (Khazanah).	Exclusively delegated to an independent commercial entity (Temasek).
Jurisdictional Subordination	Subject to the rigid regimes of State Finance Law and Anti-Corruption Statutes.	Subject to private law, albeit under a shadow of political influence.	Fully subordinated to the *Companies Act*, devoid of public law privileges.
Degree of Operational Intervention	Exceptionally High; bureaucracy directly interferes with HR policies and value creation.	Moderate; restrained by PCG guidelines yet tethered by political appointments.	Exceptionally Low; the government acts strictly as a strategic investor.
Application of the Business Judgment Rule	Frequently paralyzed by the ambiguity surrounding segregated state wealth.	Operates relatively normatively, heavily bolstered by adherence to the Corporate Code.	Operates optimally; directors are completely insulated from ordinary commercial risk.
Compliance with Competitive Neutrality	Fails; the regulator serves a dual role as a market controller.	Moderate; accommodated through sustained reform initiatives.	Absolute; corporations operate purely on the logic of market equilibrium.

Engaging these findings with existing scholarly debates provides robust empirical confirmation for the hypotheses advanced by Cahyani and Lim. Lim adamantly underscores the necessity of state fiduciary constraints, a mandate that Singapore elegantly fulfills by delegating these duties to professional boards within Temasek rather than vesting them in state bureaucrats.[28,29]. Conversely, by entrenching the institutional design of the BP BUMN, Indonesia fails to bridge this theoretical divide. The agency is engineered upon an orthodox bureaucratic architecture, fundamentally stifling corporate strategic agility

[27] Organisation for Economic Co-operation and Development, *OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024* (OECD Publishing, 2024), https://doi.org/10.1787/18a24f43-en.
[28] Cahyani, "SOE Dichotomy: Reconciling Public Obligations and Corporate Governance in Indonesia, Malaysia, Singapore."
[29] Lim, "Concentrated Ownership, State-Owned Enterprises and Corporate Governance."

Elevating this particularized discourse into broader constitutional principles, the comparative analysis highlights the critical urgency for Indonesia to unequivocally abandon its administrative paradigm. As a necessary academic and legal breakthrough, Indonesia must radically reconstruct its asset management framework by adopting a twin-track model. On the first track, all absolute authority concerning the formulation of sectoral policy regulations, public tariffs, and competition oversight must be stripped from the SOE apparatus. These powers must be restored entirely to technical ministries and the Ministry of Finance, reinstating them as pure regulators.

On the second track, the entire portfolio of state commercial ownership rights must be severed and permanently transferred to a super-holding company incorporated strictly as a limited liability corporation. This aligns with the envisioned architecture of BPI Danantara, provided it is structurally guaranteed a degree of absolute autonomy analogous to Temasek. Only through this institutional amputation can the bureaucratic shackles be entirely cast off. Consequently, SOEs will be empowered to operate purely on the logic of the Business Judgment Rule, utterly immune to the anomalous threat of public law criminalization. Ultimately, this emancipation will equip Indonesian state corporations to evolve into formidable instruments of global economic value creation.

C. CONCLUSION

The institutional transformation from the Ministry of State-Owned Enterprises to the SOE Regulatory Agency (BP BUMN) in Indonesia ultimately constitutes a mere cosmetic illusion of administrative reform, as it firmly preserves the conflation of regulatory and shareholder functions within a single entity. The failure to sever these roles sustains a profound corporate identity crisis and exacerbates asymmetrical agency costs. As a result, SOE boards of directors remain perpetually held hostage by legal uncertainty—caught between the safe harbor of the business judgment rule and the looming threat of criminal prosecution for state financial losses. In stark contrast, comparative analysis demonstrates that governance frameworks in Malaysia (via Khazanah) and Singapore (via Temasek) have successfully achieved competitive neutrality. These jurisdictions accomplish this by delegating the management of state assets to independent investment holding entities that are entirely subordinated to private law regimes. Therefore, it is absolutely imperative for Indonesia to adopt a twin-track model. This structural overhaul must restore public regulatory authority to the respective technical ministries and the Ministry of Finance, while permanently insulating the state's commercial ownership portfolio within a super-holding entity incorporated strictly as a limited liability corporation.

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