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SOE Dichotomy: Reconciling Public Obligations and Corporate Governance in Indonesia, Malaysia, Singapore

Dikotomi BUMN: Rekonsiliasi Kewajiban Publik dan Tata Kelola di Indonesia, Malaysia, Singapura

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Abstract

The resurgence of state capitalism through state-owned enterprises and sovereign wealth funds has provoked profound doctrinal tension between public accountability and corporate governance. In Indonesia, the dogmatic classification of separated state wealth fundamentally undermines the business judgment rule, exposing corporate directors to criminal liability for commercial losses. Similarly, government-linked corporations in Malaysia suffer from entrenched political appointments that inflate agency costs. Utilizing a comparative doctrinal methodology, this article evaluates the institutional restructuring under Indonesian laws number one and sixteen of 2025 regarding the Danantara investment agency. It argues that without definitive legislative harmonization providing a safe harbor clause, the structural ambiguity will perpetuate managerial paralysis. To reconcile this public-private legal dichotomy, this article proposes transplanting the Temasek model from Singapore. By instituting strict competitive neutrality and dual constitutional control mechanisms, nations can effectively insulate commercial discretion from political intervention while preserving the fiduciary integrity of public asset management frameworks worldwide.

Abstrak

Kebangkitan kapitalisme negara melalui badan usaha milik negara dan lembaga pengelola investasi telah memicu ketegangan doktrinal antara akuntabilitas publik serta tata kelola perusahaan. Di Indonesia, klasifikasi dogmatis kekayaan negara yang dipisahkan secara mendasar melemahkan doktrin keputusan bisnis, sehingga mengekspos direksi korporasi pada ancaman pidana akibat kerugian komersial. Sementara itu, korporasi terafiliasi pemerintah di Malaysia dirugikan oleh praktik penunjukan politik mengakar yang melambungkan biaya agensi. Menggunakan metodologi doktrinal komparatif, artikel ini mengevaluasi restrukturisasi kelembagaan berdasarkan undang-undang nomor satu dan enam belas tahun 2025 mengenai badan investasi Danantara. Artikel ini berargumen bahwa tanpa harmonisasi legislatif definitif yang menyediakan klausul perlindungan aman, ambiguitas struktural tersebut akan melanggengkan kelumpuhan manajerial. Untuk merekonsiliasi dikotomi hukum publik-privat ini, penelitian ini mengusulkan transplantasi model Temasek dari Singapura. Dengan melembagakan netralitas kompetitif yang ketat dan mekanisme kontrol konstitusional ganda, berbagai negara dapat secara efektif mengisolasi diskresi komersial dari intervensi politik seraya menjaga integritas fidusier pengelolaan aset publik global.

A. INTRODUCTION

1. Background

In contemporary global corporate law discourse, the resurgence of state capitalism driven by the massive expansion of state owned enterprises (SOEs) and sovereign wealth funds (SWFs) has catalyzed intense doctrinal debate. Orthodox corporate legal doctrines, historically anchored in a rigid dichotomy between private commercial ordering and the public-administrative realm, now face fundamental challenges in accommodating the hybrid nature of these state controlled entities. On the one hand, these entities are compelled to emulate the agility of private corporations to optimize efficiency in competitive global markets; on the other hand, they remain inextricably tethered to webs of public accountability and domestic political agendas.

The doctrinal failure to articulate a clear demarcation between standard corporate risk-taking and public accountability frequently precipitates either managerial paralysis or destructive political interference. This theoretical anomaly crystallizes most acutely in emerging economies, notably Indonesia, which leverages SOEs as a crucial dual-purpose instrument: functioning simultaneously as engines for commercial enterprise and as mechanisms for fulfilling public service obligations (PSOs).[1]

This hybrid character inherently engenders a complex normative tension a clash of norms within domestic corporate law. As private legal entities, SOEs are structurally designed to prioritize efficiency, innovation, and profit maximization. However, the infusion of state capital triggers the application of public law instruments, thereby imposing stringent administrative and criminal accountability regimes. This tension manifests as profound legal uncertainty regarding the juridical status of segregated state assets, wherein ordinary commercial losses resulting from directorial business decisions are frequently construed by law enforcement authorities as state financial losses, thereby triggering criminal liability for corruption. This paradigm not only chills directorial discretion in strategic risk-taking but also fundamentally undermines the implementation of robust corporate governance frameworks.[2]

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[1] Riant Nugroho, "Policy Model for Managing State Owned Enterprise," *Jurnal Academia Praja* 3, no. 2 (August 1, 2020): 204–33, https://doi.org/10.36859/jap.v3i2.162.
[2] 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.

Within international academic discourse, the corporate governance dilemmas inherent in state-controlled enterprises have been extensively examined through various theoretical lenses, which can be broadly taxonomized into three principal strands of literature. The first cluster centers on agency conflicts and regulatory frictions.

Within this cluster, de Vries and Damayanti observe that the structural architecture of strategic-sector SOEs engenders a complex dual agency problem, one that distorts managerial incentives due to the imperative of simultaneously balancing commercial objectives with public service mandates.[3] This perspective is corroborated by Kim and Sumner, who underscore the failure of operational integration within SOEs stemming from the state bureaucracy's overlapping regulatory and oversight functions.[4]

The second cluster examines the intersection of corporate insolvency and regulatory disharmony. Natalia and Hutag, alongside Fidiana et al., illustrate an acute statutory conflict between state public finance frameworks and Indonesian bankruptcy law, which engenders profound legal uncertainty for creditors regarding the enforcement of claims against the assets of insolvent SOEs.[5,6]

The third cluster investigates the boundaries of legal protection afforded to corporate fiduciaries under the Business Judgment Rule (BJR). Syaflizar and Darmawangsa contend that the current statutory codification of the BJR within domestic corporate law is construed too broadly, failing to adequately delineate the threshold for ordinary negligence.[7,8] This proposition is subsequently counterbalanced by Sinaga et al., who assert that the BJR must be proportionally calibrated to insulate good-faith directorial decision-making while concurrently mitigating corporate harm arising from

[3] Syafana Hanifah de Vries and Ratih Damayanti, "Implikasi Dualitas Kedudukan BUMN Terhadap Kemandirian Korporasi Dan Fungsi Pelayanan Publik," *Kertha Semaya : Journal Ilmu Hukum* 13, no. 10 (November 7, 2025): 2226–40, https://doi.org/10.24843/KS.2025.v13.i10.p05.
[4] Kyunghoon Kim and Andy Sumner, "Bringing State-Owned Entities Back into the Industrial Policy Debate: The Case of Indonesia," *Structural Change and Economic Dynamics* 59 (December 2021): 496–509, https://doi.org/10.1016/j.strueco.2021.10.002.
[5] Siska Windu Natalia and Henry Darmawan Hutag, "Menyoal Tanggung Jawab Negara Dalam Kepailitan BUMN-Persero," *Jurnal Supremasi* 14, no. 2 (September 20, 2024): 16–34, https://doi.org/10.35457/supremasi.v14i2.2849.
[6] Fidiana Fidiana, Prawita Yani, and Diah Hari Suryaningrum, "Corporate Going-Concern Report in Early Pandemic Situation: Evidence from Indonesia," *Heliyon* 9, no. 4 (April 2023): e15138, https://doi.org/10.1016/j.heliyon.2023.e15138.
[7] Larassati Putri Syaflizar, "Business Judgment Rule: Sebuah Prinsip Tanggung Jawab Direksi Atas Kerugian Dalam Pengelolaan Bumn (Persero)," *Jurnal Privat Law* 11, no. 1 (July 19, 2023): 140–52, https://doi.org/10.20961/privat.v11i1.45950.
[8] Williem Darmawangsa, "Interpretasi Yang Salah Mengenai Business Judgment Rule Pada Substansi Dan Struktur Hukum Di Indonesia," *UNES Law Review* 5, no. 3 (2023): 1356–68, https://review-unes.com/index.php/law/article/view/451.

conflicts of interest.[9]

On a regional scale, comparative corporate governance analyses of Government Linked Corporations (GLCs) operating under Malaysia's Khazanah Nasional Berhad, as conducted by Ahmed et al. and Aljuboori et al., reveal that commercial governance failures are predominantly driven by the proliferation of politically motivated board appointments. This practice of political patronage systematically subordinates professional merit and fiduciary competency to political affiliation.[10,11]

Notwithstanding the robust nature of the aforementioned discourse, prior scholarship suffers from a fundamental methodological and substantive deficiency: it examines the frameworks of public finance, corporate insolvency, and the Business Judgment Rule in a strictly piecemeal fashion, thereby predicating its analysis on an obsolete institutional model of SOEs. Consequently, a critical legal blind spot has emerged that urgently warrants scholarly attention in the wake of recent structural shifts in Indonesia's politico legal landscape namely, the enactment of Law Number 1 of 2025 (Law 1/2025) and Law Number 16 of 2025 (Law 16/2025).[12,13]

This newly enacted statutory framework fundamentally overhauls the corporate governance architecture of SOEs by transforming the Ministry of State-Owned Enterprises into the SOE Regulatory Agency (BP BUMN) to serve as the centralized regulatory authority, while concurrently establishing the Daya Anagata Nusantara Investment Management Agency (BPI Danantara) to function as the state's sovereign wealth super holding entity.

This institutional transformation precipitates a fundamental disruption of established corporate legal paradigms, engendering profound ambiguity regarding the entity's juridical classification. To date, it remains entirely unresolved whether BPI Danantara will operate exclusively as a sovereign wealth fund governed strictly by private

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[9] Viator Harlen Sinaga et al., "Responsibilities of the Board of Directors in Limited Liability Companies," *Justice Voice* 3, no. 1 (April 21, 2025): 17–28, https://doi.org/10.37893/jv.v3i1.1134.
[10] Znar Ahmed, Muhammad Rosni Amir Hussin, and Kashan Pirzada, "The Impact of Intellectual Capital and Ownership Structure on Firm Performance," *Journal of Risk and Financial Management* 15, no. 12 (November 25, 2022): 553, https://doi.org/10.3390/jrfm15120553.
[11] Zainab M. Aljuboori et al., "Intellectual Capital and Firm Performance Correlation: The Mediation Role of Innovation Capability in Malaysian Manufacturing SMEs Perspective," *Sustainability* 14, no. 1 (December 24, 2021): 154, https://doi.org/10.3390/su14010154.
[12] "Undang-Undang (UU) Nomor 1 Tahun 2025 Tentang Perubahan Ketiga Atas Undang-Undang Nomor 19 Tahun 2003 Tentang Badan Usaha Milik Negara" (2025).
[13] "Undang-Undang (UU) Nomor 16 Tahun 2025 Tentang Perubahan Keempat Atas Undang-Undang Nomor 19 Tahun 2003 Tentang Badan Usaha Milik Negara" (2025).

commercial law akin to Singapore's Temasek Holdings or whether it will remain encumbered by public service obligations and subject to the specter of public-criminal liability regimes. This nebulous doctrinal demarcation threatens to exacerbate the pervasive criminalization of business judgment in Indonesia. Consequently, rigorous scholarly inquiry evaluating this novel institutional architecture through the lens of modern corporate law theory is both critical and urgently warranted.

Addressing the aforementioned scholarly lacuna and the urgent imperative for statutory reform, this Article seeks to evaluate the structural compatibility of BP BUMN and BPI Danantara with modern corporate law doctrine. By employing a comparative analysis of the GLC framework administered by Malaysia's Khazanah Nasional Berhad and the highly successful constitutional architecture of Singapore's Temasek Holdings, this Article endeavors to delineate novel doctrinal boundaries capable of reconciling commercial agility with the robust accountability of public assets.

This Article advances the central thesis that the successful operationalization of the Business Judgment Rule (BJR) and the attainment of robust corporate governance standards within Indonesian SOEs will remain fundamentally unattainable so long as the legal construct of "segregated state assets" continues to be dogmatically classified as state public finance, thereby remaining subject to punitive administrative oversight regimes. Absent a bright-line doctrinal demarcation between ordinary commercial losses and state financial losses, SOE fiduciaries will continue to suffer an acute paralysis of directorial discretion in their strategic decision making.

As a doctrinal remedy, this Article advocates for a structural reconceptualization of the legal nexus between the state as the principal equity holder and the SOE as an autonomous commercial entity. This reconstruction is predicated on the adoption of the principle of competitive neutrality, coupled with the circumscription of political interference through the implementation of a "second key" constitutional safeguard, mirroring the framework successfully operationalized in Singapore. Ultimately, this Article contributes a novel theoretical paradigm that establishes a robust equilibrium: safeguarding the strict accountability of public asset deployment while ensuring that commercial agility remains fully insulated by foundational corporate law doctrines.

2. Research Questions

To untangle the complexities of this normative tension, this Article is anchored by two animating legal inquiries.

First, to what extent does the dogmatic categorization of "segregated state assets" undermine the efficacy of the Business Judgment Rule (BJR) in shielding directorial business decisions from the specter of criminal liability in Indonesia and Malaysia?

Second, does the constitutional safeguard framework specifically the "second-key" system alongside the principle of competitive neutrality operationalized by Singapore's Temasek Holdings, provide a viable doctrinal blueprint to resolve the structural ambiguities inherent in BPI Danantara (following the enactment of Law No. 16 of 2025) and Khazanah Nasional?

Ultimately, through this comparative evaluation, this Article aims to construct a novel governance architecture that seamlessly reconciles corporate agility with stringent public accountability.

3. Research Methods

This Article utilizes a doctrinal legal research methodology, integrating statutory, conceptual, and comparative analytical frameworks. Moving beyond a purely descriptive account of the regulatory landscape, this study operationalizes a functional comparative approach to critically interrogate the divergent legal architectures governing SOE administration across Indonesia, Malaysia (Khazanah Nasional), and Singapore (Temasek Holdings). These specific jurisdictions were selected because they embody paradigmatic models of transitional state capitalism within Southeast Asia.[14]

Primary legal sources comprise the constitutions and sectoral legislation across the three jurisdictions, including Law No. 40 of 2007, Law No. 17 of 2003, Law No. 1 of 2025, and Law No. 16 of 2025 (Indonesia); the Companies Act 2016 (Malaysia); and the Companies Act (Singapore), accessed via their respective official statutory repositories. Secondary legal materials are anchored by contemporary judicial opinions (such as Constitutional Court Decision No. 48/PUU-XI/2013), alongside peer-reviewed scholarship specifically curated to examine the doctrines of fiduciary duties and competitive neutrality. These legal authorities are evaluated through systematic and teleological methods of statutory interpretation to reconcile the normative tension

[14] Sanne Taekema and Wibren van der Burg, "Methods of Doctrinal Research," in *Contextualising Legal Research* (Edward Elgar Publishing, 2024), 44–78, https://doi.org/10.4337/9781035307395.00010.

between public and private law regimes, ultimately yielding a prescriptive remedy in the form of a proportionally calibrated governance architecture for state investments.

B. DISCUSSION

1. The Public Private Law Divide: Impediments to Operationalizing the Business Judgment Rule in Indonesia and Malaysia

The conceptual friction between public and private law in Indonesia is fundamentally rooted in the jurisprudential ambivalence surrounding the statutory phrase "segregated state assets" within limited liability State-Owned Enterprises (*Persero*). Pursuant to Law Number 40 of 2007 on Limited Liability Companies (the Company Law), a *Persero* is incorporated as an autonomous private legal entity endowed with distinct legal personality, thereby effecting an absolute asset partition from its sovereign founder. The logical corollary of this corporate personhood is the application of the limited liability doctrine and the mandate to govern the enterprise in strict adherence to the tenets of Good Corporate Governance (GCG).[15]

Nevertheless, this corporate autonomy is effectively vitiated by the encroachment of the public law regime governing state finances. Article 2(g) of Law Number 17 of 2003 on State Finances statutorily subsumes the segregated assets of SOEs within the ambit of state public finance. This doctrinal conflation is further entrenched by the Law on the Eradication of Criminal Acts of Corruption (the Anti-Corruption Law), which construes any corporate financial loss sustained by an SOE as a potential depletion of state assets, thereby rendering it subject to criminal prosecution.[16]

This normative dissonance has been firmly cemented by the jurisprudence of the Constitutional Court, most notably through Decisions No. 48/PUU-XI/2013, No. 62/PUU-XI/2013, and No. 26/PUU-XIX/2021.[17,18] The Constitutional Court has consistently subscribed to the "source theory," positing that so long as an SOE's initial capital is derived from the State Budget, such assets intrinsically retain their classification as state public finance. From a corporate law perspective, the application of this source theory effectively eviscerates the corporate veil of SOEs. Consequently, the Supreme Audit Board (BPK) retains plenary constitutional authority to audit the financial management and

[15] "Undang-Undang (UU) Nomor 40 Tahun 2007 Tentang Perseroan Terbatas" (2007).
[16] "Pasal 2 Huruf g Undang-Undang Nomor 17 Tahun 2003 Tentang Keuangan Negara" (2003).
[17] "Putusan MK No 48 Dan 62/PUU-XI/2013, Tentang Pemisahan Kekayaan Negara Di BUMN" (2013).
[18] "Putusan MK Nomor 26/PUU-XIX/2021 Tahun 2021 Muhammad Helmi Kamal vs BPK, Pengujian UU Nomor 15 Tahun 2006" (2021).

accountability of these enterprises, pursuant to Article 6(1) of the BPK Law and Article 10(1) of the Law on the Auditing of the Management and Accountability of State Finances. This administrative oversight by a public organ engenders a profound jurisdictional overlap with the commercial supervisory functions that ought to reside exclusively within the purview of the Board of Commissioners and the General Meeting of Shareholders (GMS).

This pervasive legal uncertainty exerts a highly destructive impact on the operational efficacy of the Business Judgment Rule (BJR). As a normative doctrine, the BJR is designed to function as a jurisprudential shield, insulating corporate fiduciaries from personal liability for corporate losses, provided that the contested business decision was executed in good faith, with due care, devoid of conflicts of interest, and on a fully informed basis. Nevertheless, Indonesian law enforcement agencies frequently deploy an inflexibly penal approach. When an SOE's investment transaction or strategic business judgment suffers commercial failure owing to ordinary market volatility, authorities routinely succumb to hindsight bias. Such commercial downturns are retrospectively categorized as actual depletions of state finances, thereby satisfying the material criminal elements of corruption pursuant to Article 2(1) or Article 3 of the Anti-Corruption Law.[19]

Recent legislative reforms, effectuated through the enactment of Law No. 1 of 2025 and Law No. 16 of 2025, endeavor to resolve this jurisprudential impasse via comprehensive institutional restructuring. Under this new framework, the Ministry of State-Owned Enterprises has been functionally reconstituted as the SOE Regulatory Agency (BP BUMN), while the sovereign ownership and commercial investment management functions have been transferred to the Daya Anagata Nusantara Investment Management Authority (BPI Danantara).

Notwithstanding the architectural design of BPI Danantara as a commercially driven Sovereign Wealth Fund (SWF), this underlying public-private normative tension has yet to fully abate. Unless the State Finance Law, the Anti-Corruption Law, and the State Audit Law undergo deliberate legislative amendment to unequivocally exempt Danantara's managed portfolio from the statutory definition of state public finance, the application of the BJR for the fiduciaries of Danantara and its subsidiary entities will remain an illusory

[19] Tatu Aditya, "Reforming Criminal Impacts in The Law of State Finance: Legal Certainty for State-Owned Enterprise," *Indonesian Law Journal* 15, no. 2 (December 30, 2022): 26–41, https://doi.org/10.33331/ilj.v15i2.97.

safeguard. Corporate directors will continue to operate under the looming specter of criminal liability for ordinary, good-faith business judgments a profound chilling effect that inevitably stifles the commercial innovation and investment agility requisite for robust global competitiveness.[20]

In Malaysia, the regulatory architecture governing Government-Linked Corporations (GLCs) exhibits a divergent jurisprudential trajectory; nevertheless, it continues to harbor its own substantial governance deficiencies. In stark contrast to the Indonesian model, Malaysian jurisprudence and statutory regimes consistently recognize GLCs as strictly private corporate entities, incorporated and governed squarely under the Companies Act 2016.

Consequently, the corporate assets administered by Khazanah Nasional Berhad are unequivocally partitioned from the sovereign treasury, namely the Federal Consolidated Fund. Commercial failures or investment losses sustained by Khazanah or its subsidiary GLCs are thus adjudicated exclusively through the channels of civil corporate litigation. In this forum, directorial conduct is scrutinized based on strict adherence to commercial fiduciary duties before civil tribunals, entirely insulated from the specter of penal corruption prosecutions.[21]

However, the fundamental vulnerability within the Malaysian governance framework stems from the absence of a structural firewall between sovereign political control and commercial corporate management. The Malaysian government frequently leverages its shareholder prerogatives to execute politically affiliated appointments across GLC directorships and supervisory roles. The installation of political figures who routinely lack the requisite industry acumen precipitates a substantial escalation in agency costs and profoundly distorts the efficiency of the corporation's intellectual capital.

This political intervention engenders profound conflicts of interest, wherein sound commercial judgments are routinely subordinated to the patronage agendas of the ruling elite a phenomenon most acutely manifested in the structural governance collapse

[20] Anak Agung Gede Duwira Hadi Santosa et al., "Separated State Assets in BPI Danantara and Its Relevance with Business Judgment Rules," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 3 (December 23, 2025): 559–79, https://doi.org/10.29303/ius.v13i3.1805.
[21] Nurul Syamimi Zulkifli, Zaleha Abdul Shukor, and Mara Ridhuan Che Abdul Rahman, "Intellectual Capital Efficiency and Firm Performance in Malaysia: The Effect of Government Ownership," *Asian Journal of Accounting and Governance* 8, no. Special Issue (December 1, 2017): 93–105, https://doi.org/10.17576/AJAG-2017-08SI-09.

characterizing the 1Malaysia Development Berhad (1MDB) scandal. These systemic internal deficiencies, in turn, compel the sovereign to periodically execute state-sponsored bailouts utilizing public treasuries (exemplified by the financial restructuring of Malaysia Airlines via Danaharta and Danamodal). Such cyclical interventions inherently subvert market discipline, foster moral hazard, and constitute a flagrant breach of the foundational tenets of Good Corporate Governance (GCG).[22]

2. Singapore's Temasek Model: Doctrinal Implications of the "Second Key" Safeguard and Competitive Neutrality

Singapore presents an optimal architectural paradigm for reconciling the inherent friction between sovereign public interests and commercial governance standards through the institutional design of Temasek Holdings. Incorporated on June 25, 1974, as a private limited company pursuant to the Singapore Companies Act, Temasek is wholly owned by the Minister for Finance. However, the linchpin of Temasek's operational efficacy resides not merely in its private corporate personhood, but rather in the state's steadfast adherence to a strict non-interventionist doctrine (a "hands-off" approach). The Singaporean government unequivocally positions itself as a passive shareholder, driven singularly by the maximization of long-term commercial returns. Crucially, the sovereign scrupulously abstains from encroaching upon the discretionary day-to-day business judgments, strategic investment decisions, and commercial operations of both Temasek and its portfolio of Government-Linked Companies (GLCs).[23]

The strict demarcation between executive political imperatives and sovereign public wealth in Singapore is constitutionally entrenched through a bifurcated oversight mechanism, formally recognized within the Constitution of the Republic of Singapore as the "second-key" safeguard.[19] Pursuant to the Constitution, Temasek is formally classified as a "Fifth Schedule entity," thereby assuming an absolute constitutional responsibility to safeguard the nation's past reserves.[19]

To mitigate the risks of political encroachment or the misappropriation of sovereign assets by the incumbent cabinet, the Constitution grants a specialized veto power to the President of Singapore. Elected directly by the electorate, the President acts independently of the executive branch regarding the appointment, reappointment, or

[22] Zulkifli, Shukor, and Rahman.
[23] 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.

removal of Temasek's Board of Directors and Chief Executive Officer. Furthermore, any management decision by Temasek that entails the drawdown or diminution of the nation's past reserves is subject to the President's prior written approval.[24]

This bifurcated constitutional control system effectively insulates Temasek's professional management from partisan political pressures, while concurrently providing robust safeguards for sovereign public assets. This structural legal dynamic can be mathematically conceptualized through a governance compliance function, (G), which minimizes executive political intervention, (P), by strictly decoupling the President's constitutional oversight, (C), from the fiduciary managerial discretion of the board of directors, (M):

$$G = f(C, M) \quad \text{di mana} \quad \frac{\partial P}{\partial G} < 0$$

Through this model of structural decoupling, the Business Judgment Rule (BJR) doctrine is empowered to operate optimally within the Singaporean jurisprudential ecosystem. The boards of directors of Temasek and its subsidiary entities are accorded plenary discretion to execute high risk, high return investment strategies aimed at optimizing the sovereign financial portfolio. In the event that these investment decisions suffer losses attributable to ordinary market volatility, Singaporean law provides absolute civil immunity via the BJR. Concurrently, anti-corruption enforcement by the Corrupt Practices Investigation Bureau (CPIB) is calibrated with exact precision to target culpable penal conduct such as bribery, illegal kickbacks, or outright fraud. Crucially, the CPIB entirely abstains from prosecuting or criminalizing commercial business setbacks that stem from board decisions satisfying the procedural prerequisites of the duty of care.[25]

The corollary of strict adherence to these jurisprudential boundaries is the unwavering enforcement of competitive neutrality within Singapore. Pursuant to this doctrine, the sovereign refrains from conferring regulatory privileges, tax exemptions, or preferential financing mechanisms upon Temasek and its GLCs that compete directly with private-sector enterprise in the open market. Consequently, Temasek is mandated to

[24] Christopher Chen, "Solving the Puzzle of Corporate Governance of State-Owned Enterprises: The Path of the Temasek Model in Singapore and Lessons for China," *Northwestern Journal of International Law and Business* 36, no. 2 (2016): 303–70, https://ink.library.smu.edu.sg/sol_research/1693/.
[25] Curtis Milhaupt and Mariana Pargendler, "Governance Challenges of Listed State- Owned Enterprises Around the World: National Experiences and a Framework for Reform," *Cornell International Law Journal* 50, no. 3 (2017): 473–542, https://scholarship.law.cornell.edu/cilj/vol50/iss3/3/.

operate under strict hard budget constraints. The Singaporean government categorically eschews gratuitous state sponsored bailouts for inefficient GLCs; corporate failures are resolved exclusively through pure market mechanisms, encompassing formal bankruptcy proceedings or market driven commercial restructuring. This paradigm stands in stark contrast to the prevailing regulatory practices in Indonesia and Malaysia, where State Capital Injections (PMN) and sovereign fiscal guarantees are routinely deployed to salvage failing SOEs and GLCs. Such cyclical interventions invariably engender competitive market distortions and perpetuate systemic inefficiencies in the administration of sovereign public assets.

To provide a comprehensive comparative synthesis, the ensuing table delineates the structural divergences in the jurisprudential frameworks and their attendant corporate governance implications across the three observed jurisdictions:

Table 1. Comparative Legal Architecture of Sovereign Wealth Entities

Analytical Dimensions	Indonesia (Law No. 16/2025 Regime & BPI Danantara)	Malaysia (Khazanah Nasional Berhad)	Singapore (Temasek Holdings)
Juridical Status and Incorporation	Private corporate entity (State-Owned Limited Liability Company / *PT Persero*) governed by the Company Law and SOE Law, operating in tandem with Danantara as a *sui generis* sovereign investment agency.	Pure private limited liability company, formally incorporated with the Companies Commission of Malaysia (SSM) pursuant to the Companies Act 2016.	Private limited liability company (Pte. Ltd.) incorporated pursuant to the Singapore Companies Act.
Asset Classification and Ownership	Categorized as State Finances based on the "Source Theory" (*Teori Sumber*) doctrine, pursuant to a consistent line of Constitutional Court jurisprudence.	Strictly segregated from the sovereign treasury (Federal Consolidated Fund); corporate losses do not automatically constitute state financial losses.	Constitutionally designated as sovereign "past reserves," yet administered strictly as purely private commercial assets.
Applicability of the Business Judgment Rule (BJR) Doctrine	Largely formalistic; frequently overridden by prosecutorial authorities leveraging draconian anti-	Fully operative commercial standard; directorial exposure is	Unconditionally operative; robustly shielded from liability provided that business

	corruption statutes..	strictly limited to civil liability for breaches of fiduciary duties.	decisions satisfy procedural corporate governance standards.
Operational Oversight Model	Concurrent *ex post* administrative oversight exercised by the Board of Commissioners, the General Meeting of Shareholders, and relevant line ministries, coupled with statutory compliance audits conducted by the Supreme Audit Agency (BPK).	Concurrent oversight by the Securities Commission Malaysia and the board of directors, albeit inherently susceptible to direct political interference.	An arm's-length governance model wherein the Ministry of Finance operates as a passive, commercially-oriented shareholder.
Appointment Mechanisms for Corporate Governing Bodies	Appointments by the General Meeting of Shareholders upon nomination by the Government (Minister/SOE Agency), a process frequently intertwined with bureaucratic considerations and political patronage.	State-directed appointments executed pursuant to special share rights are acutely susceptible to partisan political patronage.	Under the 'Second-Key' mechanism, the appointment of the board of directors and the chief executive officer is subject to the veto power of the President of Singapore.
The Implementation of Competitive Neutrality	Weak; frequently characterized by state-sanctioned monopolies, the conferral of special privileges, protective guarantees, and state equity injections for bailouts.	Moderate; Government-Linked Companies (GLCs) dominate strategic sectors, frequently benefiting from preferential access to public procurement and fiscal backing.	High; strictly subject to free-market discipline, operating without preferential regulatory treatment or commercial bailout guarantees.

3. Regulatory Reconciliation: Constructing the Governance Frameworks of BPI Danantara and Khazanah Through Comparative Analysis

The reconciliation of public policy mandates and commercial governance standards within the newly structured State Owned Enterprises (SOEs) in Indonesia and Malaysia

necessitates progressive and integrative statutory reform. In Indonesia, the immediate tactical imperative is to effectuate legislative harmonization to cure the doctrinal overlap between private corporate law and public finance law. Failure to achieve this harmonization risks replicating historical pitfalls, wherein the Business Judgment Rule (BJR) is reduced to a mere procedural shield, rendered entirely impotent against the interpretive overreach of anti corruption investigators.

The legislature and the executive branch must expeditiously amend the State Finance Law and the Anti-Corruption Law by embedding an unequivocal safe harbor provision. This clause must stipulate that state assets segregated for SOE capitalization—including investment capital allocated to BPI Danantara undergo a de jure transformation into strictly private corporate assets governed exclusively by corporate law.

Consequently, financial losses arising from SOE commercial transactions cannot be legally construed as state financial losses under anti-corruption statutes. Rather, such losses must be resolved through civil mechanisms, namely General Meeting of Shareholders (GMS) proceedings, minority shareholder derivative actions, or bona fide corporate insolvency frameworks.

Furthermore, this legislative measure will resolve the regulatory conflict identified by Natalia and Hutag regarding the legal uncertainty surrounding the execution of bankrupt SOE assets, firmly establishing that such assets are entirely subject to private commercial bankruptcy law.[26]

Second, the governance restructuring of BPI Danantara must be engineered to adopt an independent oversight structure mirroring the modern Sovereign Wealth Fund (SWF) model. As demonstrated by historical failures in the structural integration of holding companies, BPI Danantara's positioning as a state investment vehicle is acutely vulnerable to bureaucratic entrapment and political conflicts of interest if strictly designed as a purely public entity.

Consequently, BPI Danantara must transition from a *sui generis* public investment vehicle into a strictly commercial limited liability holding company, incorporated pursuant to a private notarial deed rather than mere executive regulation.

To mitigate the dual agency problem delineated by Hutahayan et al. wherein public policy mandates frequently encumber the commercial targets of SOEs in the energy and

[26] Natalia and Hutag, "Menyoal Tanggung Jawab Negara Dalam Kepailitan BUMN-Persero."

infrastructure sectors Indonesia must adopt Singapore's 'second-key' oversight mechanism.[27]

The authority to appoint and dismiss the boards of directors and commissioners of BPI Danantara and BP BUMN must not reside as the absolute prerogative of the President in his capacity as the political chief executive. This necessitates the establishment of an Independent Nomination Committee comprising corporate law scholars, capital market practitioners, and professional academics devoid of partisan political affiliations. To ensure the selection of figures possessing impeccable integrity and bona fide intellectual capacity, any candidate proposed by this committee must be subject to confirmation by an independent oversight body or require the veto concurrence of a neutral state institution.

In Malaysia, an urgent imperative for legal reform is the amendment of the Companies Act 2016 to systematically eradicate the practice of partisan political appointments within Government-Linked Companies (GLCs) under the purview of Khazanah Nasional. Malaysian corporate frameworks must incorporate an unequivocal prohibition against active politicians, parliamentarians, and government bureaucrats holding directorial or executive board positions in commercial GLCs. Such a mandate is critical to optimize corporate intellectual capital and minimize the agency costs that have historically encumbered the financial performance of these entities.[28]

By severing this chain of political patronage, Khazanah Nasional would be empowered to operate autonomously as a bona fide professional investment vehicle. In doing so, it can adhere to the highest standards of corporate governance to optimize the long-term economic prosperity of the Malaysian citizenry.

Ultimately, to execute Public Service Obligations (PSOs) without eroding corporate commercial value or breaching the principle of competitive neutrality, Indonesia and Malaysia must mandate strict, transparent cost separation (unbundling the costs of public services). Every government-mandated PSO directed at SOEs or GLCs such as energy and food subsidies, or greenfield infrastructure development must be codified within an explicit and accountable commercial contract. Such contracts must legally stipulate that

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[27] Benny Hutahayan et al., "Does the Use of Renewable Energy Influence Firm Performance? An Empirical Study on the Indonesian Energy Sector," *Business Strategy & Development* 8, no. 4 (December 27, 2025), https://doi.org/10.1002/bsd2.70237.

[28] Ahmed, Hussin, and Pirzada, "The Impact of Intellectual Capital and Ownership Structure on Firm Performance."

the entirety of the provisioning costs, augmented by a reasonable profit margin, shall be fully and transparently indemnified by the state budget.[29]

In the event that the government fails to provide full commercial compensation, SOE and GLC boards of directors must be vested with the statutory right to refuse such mandates without the threat of administrative sanctions or retaliatory dismissal. This mechanism not only shields directors from financial losses susceptible to criminal prosecution, but also compels the state to enforce strict hard-budget constraints, thereby preserving a level playing field with the private sector in the open market.

C. CONCLUSIONS

The dogmatic classification of segregated state assets has demonstrably distorted the protective efficacy of the Business Judgment Rule (BJR) in Indonesia by exposing commercial losses to the threat of criminal anti-corruption prosecution. Conversely, in Malaysia, governance deficiencies manifest in the pervasive reliance on partisan political appointments, severely undermining corporate autonomy. As a resolution to these institutional ambiguities, Singapore's Temasek Holdings governance model offers a highly viable juridical transplant through its strict adherence to competitive neutrality principles and the safeguarding of public assets via the 'second-key' constitutional control mechanism. Consequently, Indonesia must urgently reconstruct the Daya Anagata Nusantara Investment Management Agency (BPI Danantara) into a purely commercial corporation, fortified by a statutory safe harbor carve-out from the state finance regime, and coupled with the establishment of an independent nomination committee to mitigate executive political interference. Through this regulatory reconciliation, the state can halt the trend of criminalizing corporate business judgments while forging a proportional equilibrium between operational flexibility and public asset accountability.

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[29] Raden Gerald Setiawan Grisanto, Sudarso Kaderi Wiryono, and Yos Sunitiyoso, “Key Drivers for Successful Integration of Indonesian State-Owned Holding: A Soft Systems Methodology Approach,” *Cogent Business & Management* 12, no. 1 (December 12, 2025), https://doi.org/10.1080/23311975.2025.2483378.

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