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The Policy on Appointing Former Directors of Bankrupt Companies as Directors of State-Owned Enterprises Viewed from the Principles of Good Corporate Governance

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Abstract

This research analyzes the legal policy and validity of appointing former directors of bankrupt companies to the boards of State-Owned Enterprises (SOEs) under the principles of Good Corporate Governance (GCG). Utilizing a normative legal research method with statutory and case study approaches, the study specifically examines the appointment of Sigit Winarto as Director of PT JIEP following the bankruptcy of PT Istaka Karya. The findings demonstrate that such an appointment explicitly violates Article 93 of the Company Law in conjunction with Article 15 of the SOE Law, as it transpired within the mandatory five-year prohibition period without valid judicial rehabilitation. Consequently, the appointment is void ab initio due to substantive legal defects and contravenes the GCG principles of responsibility and accountability. Therefore, rigorous enforcement of administrative sanctions against the appointing authorities is imperative to safeguard the integrity of state asset management and to ensure legal certainty and public trust in the professionalism of SOE governance in Indonesia.

Abstrak

Penelitian ini menganalisis kebijakan hukum serta keabsahan pengangkatan mantan direktur perusahaan pailit sebagai direksi pada Badan Usaha Milik Negara (BUMN) ditinjau dari prinsip *Good Corporate Governance* (GCG). Menggunakan metode penelitian yuridis normatif dengan pendekatan perundang-undangan dan studi kasus, penelitian ini secara khusus mengkaji pengangkatan Sigit Winarto sebagai Direktur PT JIEP pasca kepailitan PT Istaka Karya. Hasil penelitian menunjukkan bahwa kebijakan pengangkatan tersebut secara nyata melanggar Pasal 93 Undang-Undang Perseroan Terbatas *juncto* Pasal 15 Undang-Undang BUMN, karena dilakukan dalam periode larangan lima tahun tanpa adanya status rehabilitasi hukum yang sah dari pengadilan. Implikasi hukum dari tindakan ini adalah keputusan pengangkatan tersebut batal demi hukum karena mengandung cacat substansi dan mencederai prinsip responsibilitas serta akuntabilitas dalam tata kelola perusahaan. Oleh karena itu, diperlukan penegakan sanksi administratif yang tegas terhadap pejabat publik yang berwenang guna menjaga integritas pengelolaan kekayaan negara serta menjamin kepastian hukum dan kepercayaan publik terhadap profesionalisme institusi BUMN di Indonesia.

A. INTRODUCTION

1. Background

For the conduct of commercial activities, every enterprise requires a definitive legal structure to secure formal recognition and statutory protection. Within the Indonesian jurisdiction, the Limited Liability Company (PT) serves as the primary vehicle for such activities, functioning as a distinct juridical persona endowed with the capacity to execute legal acts traditionally reserved for natural persons including the execution of contracts, the acquisition of assets, and the pursuit of business objectives. However, as an artificial legal construct lacking independent volition, the corporation remains incapable of autonomous action. Consequently, the entity must operate through designated corporate organs natural persons who serve as fiduciaries and agents. These organs are essential for the corporation's existence, as they are statutorily mandated to manage operations, exercise oversight, and render the strategic decisions necessary for the entity's functionality.

The Board of Directors serves as a central organ in the administration and operation of a corporation.[1] Pursuant to Article 1, Paragraph 5 of the Law on Limited Liability Companies (the "Company Law"), the Board of Directors maintains control over daily operations and is responsible for ensuring that the corporation functions in accordance with its objectives. Furthermore, the Board is authorized to represent the Company both within and outside of court, subject to the provisions of the Articles of Incorporation. In essence, the Board of Directors directs the corporation's trajectory and adaptation to maximize shareholder value. Without the Board, a corporation would be unable to execute its managerial and operational functions effectively.

However, the Board of Directors does not act in isolation. The General Meeting of Shareholders (GMS) serves as the supreme governing body within a limited liability company. It is through this forum that shareholders determine the corporation's primary policy direction, including structural amendments, dividend distributions, and the appointment or removal of directors. In practice, GMS resolutions are deemed valid only if all procedural requirements, such as quorum and formal notice, are satisfied. Subsequently, resolutions adopted by the GMS are recognized as official acts representing the corporate will.

[1] Rudhi Prasetya, 2014, *Teori dan Praktik Perseroan Terbatas*, Jakarta: Sinar Grafika, Jakarta.

The relationship between the GMS and the Board of Directors is further governed by Article 94, Paragraph (1) of the Company Law. This provision stipulates that the GMS holds the authority to appoint members of the Board. Consequently, the Board's position is subordinate to the resolutions of the GMS, as it is the GMS that determines the individuals fit to manage the corporation's affairs.[2] Nevertheless, the appointment process for directors is subject to rigorous statutory requirements. The Company Law mandates several essential qualifications: candidates must possess legal capacity (being of majority age and not under conservatorship) and must not, within the preceding five years, have been declared bankrupt, served as a director or commissioner of a company found liable for bankruptcy, or been convicted of a criminal offense involving state financial losses.

Notably, these provisions apply not only to private corporations but also to state-owned enterprises, whether in the form of State-Owned Enterprises (BUMN) or Regional Government-Owned Enterprises (BUMD). While BUMNs and BUMDs typically implement more granular internal regulations regarding the selection process, such regulations must remain consistent with the Company Law. No internal policy may supersede prevailing law, as the fundamental objective of a limited liability company whether private or state-owned remains the maximization of profit. Any invalid appointment of a director may precipitate severe consequences, both operationally and legally.

In an era of globalization and heightened market competition, corporate success is no longer measured solely by profitability; it is increasingly defined by the quality of the corporate governance framework employed.[3] Good Corporate Governance (GCG) constitutes a comprehensive system of oversight and control designed to regulate corporate conduct, thereby facilitating the creation of sustainable value for all stakeholders.[4] The principles of Good Corporate Governance (GCG) encompassing transparency, accountability, responsibility, independence, and fairness serve as the foundational pillars for cultivating a corporate entity that is robust, competitive, and credible.[5]

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[2] Munir Fuady, 1999, *Hukum Perusahaan Dalam Paradigma Hukum Bisnis,* Bandung: PT. Citra Aditya bakti.
[3] Nana Herdiana Abdurrahaman, 2013, *Manajemen Bisnis Syariah & Kewirausahaan,* Bandung: Pustaka Setia, hlm. 356. Diakses melalui : https://elibrary.nusamandiri.ac.id/readbook/210609/manajemen-bisnis-syariah-kewirausahaan
[4] Rinitami Njatrijani, 2019, *Hubungan Hukum dan Penerapan Prinsip Good Corporate Governance dalam Perusahaan.* Jurnal Gema keadilan, Volume 6, Edisi III, hlm. 246.
[5] Ibid hlm. 250.

A quintessential element in the implementation of GCG principles is the corporate governance structure, particularly regarding strategic positions such as the Board of Directors.[6] Given the critical nature of these positions, the integrity, professionalism, and professional track record of the members of the Board of Directors are vital to ensuring operational continuity and corporate reputation. Nevertheless, in practice, it is not uncommon to observe the appointment of former directors who have previously been subject to bankruptcy status to corporate leadership positions.[7] This phenomenon precipitates a myriad of legal, ethical, and governance concerns. A status of bankruptcy fundamentally signifies a failure to discharge financial responsibilities and a lapse in the stewardship of the corporate entities previously under the individual's management.[8]

By way of illustration, one state-owned enterprise (BUMN) organized as a limited liability company (Persero) that incurred substantial losses eventually culminating in a bankruptcy adjudication is PT Istaka Karya. Under the leadership of Sigit Winarto as President Director, the company was declared bankrupt pursuant to Decision No. 26/Pdt.Sus-Pembatalan Perdamaian/2022/PN Niaga Jkt.Pst. in conjunction with No. 23/Pdt-Sus-PKPU/2012/PN.Niaga.Jkt.Pst, dated July 12, 2022.[9] Since the court's ratification of the composition plan (homologasi) in 2013, Istaka Karya failed to demonstrate any performance recovery. As of 2021, the company's total liabilities amounted to IDR 1.08 trillion, with recorded shareholder equity at a deficit of IDR 570 billion. Concurrently, the company's total assets were valued at IDR 514 billion.[10] Notwithstanding the bankruptcy adjudication of Istaka Karya, its former President Director, Sigit Winarto, was subsequently reappointed by the Minister of State-Owned Enterprises, Erick Thohir, to serve as the Director of Operations and Development at PT

[6] Thomas Kaihatu, 2006, *Good Corporate Governance dan Penerapannya di Indonesia,* Jurnal Manajemen dan Kewirausahaan, Volume 8 No.1, hlm 2.
[7] M.Ichsan, 2023, *Mahasiswa Demo PT JIEP Minta Copot Sigit Winarto Sebagai Direktur Operasional dan Pengembangan*, Disway.id, Diakses melalui : https://fin.co.id/2023/08/10/gagal-pimpin-istaka-karya-sampai-pailit-eks-dirut-sigit-winarto-diangkat-jadi-direktur-di-pt-jiep-kok-bisa.
[8] Etty Susilowati dan Siti Mahmudah, 2016, *Akibat Hukum Pembatalan Pernyataan Pailit Terhadap Badan Usaha Milik Negara (Persero) (Studi pada Kepailitan PT. Istaka Karya (Persero)*, Diponegoro Law Review, Volume 5 No 2, hlm. 3. https://ejournal3.undip.ac.id/index.php/dlr/article/view/10940/10613
[9] Idris Boufakar, 2022, *BUMN Istaka Karya Dinyatakan Pailit, Arti Perusahaan Pailit?*, TEMPO, Diakses melalui : https://www.tempo.co/ekonomi/bumn-istaka-karya-dinyatakan-pailit-arti-perusahaan-pailit--320850.
[10] Romys Binekasri, 19 Juli 2022, *Istaka Karya Dipailitkan Rupanya Ada Utang Rp.1,08T,* CNBC Indonesia, Diakses melalui: https://www.cnbcindonesia.com/market/20220719095335-17-356634/istaka-karya-dipailitkan-rupanya-ada-utang-rp-108-t.

Jakarta Industrial Estate Pulogadung (PT JIEP).[11] This situation has inevitably sparked a polemic among practitioners and the public alike, questioning how an individual held ethically responsible for the bankruptcy of one state-owned enterprise (SOE) could be reappointed to the Board of Directors of another. Such actions evoke significant concerns regarding the potential for a recurring insolvency at PT JIEP and may undermine the fundamental objective of SOEs: the promotion of general public welfare.[12]

In response to the appointment, a broad coalition of students, citizens, and practitioners staged significant protests at the JIEP headquarters to challenge the legal validity of Sigit Winarto's status. Over time, it appears that the Company and its shareholders responded to these public grievances; Sigit Winarto was subsequently removed from his position as Director of Operations at PT JIEP as of June 2024.

From a normative perspective, Law No. 40 of 2007 on Limited Liability Companies (the 'Company Law') and Law No. 1 of 2025 regarding the Third Amendment to Law No. 19 of 2003 on State-Owned Enterprises (the 'SOE Law'), along with their implementing regulations, prescribe the mandatory qualifications for candidates for the Board of Directors and the Board of Commissioners. The governing criteria, set forth in Article 93, Paragraph (1) of the Company Law juncto Article 15A, Paragraph (2) of the SOE Law, explicitly stipulate that an individual who has caused a company's bankruptcy as affirmed by a court judgment is disqualified from being appointed as a director or commissioner unless they have been formally rehabilitated.[13] However, this provision does not inherently resolve the underlying issues. The rehabilitation process is primarily administrative in nature and does not automatically dissipate concerns regarding managerial competence or the potential for future legal exposure.

The appointment of a former director associated with a prior insolvency may also engender negative public perception, adversely affecting share valuation (in the case of publicly traded entities). Furthermore, it creates significant legal risks, including potential shareholder derivative suits, disruptions in industrial relations, and broader legal

[11] Fandi Permana, 29 Oktober 2023, *Sosok Sigit Winarto Dikritisi Praktik Kontraktor, eks Dirut Istaka Karya yang Disuntik Mati Pemerintah Kini Jabat Dirops PT JIEP*, Disway.Id, Diakses melalui: https://disway.id/read/737663/sosok-sigit-winarto-dikritisi-praktisi-kontraktor-eks-dirut-istaka-karya-yang-disuntik-mati-pemerintah-kini-jabat-dirops-pt-jiep

[12] Undang-Undang Nomor 1 Tahun 2025 Tentang Perubahan Ketiga Atas Undang-Undang Nomor. 9 Tahun 2003 Tentang Badan Usaha Milik Negara.

[13] Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas.

complications.[14] Within this framework, the appointment of a director with a history of insolvency may be construed as a breach of the prudential principle and the core tenets of accountability inherent in GCG. Furthermore, the Financial Services Authority (OJK), acting as the primary financial sector regulator, prescribes rigorous standards for the integrity and professional track record of prospective officers through various statutory instruments, particularly for entities operating within the financial services industry. Specifically, Financial Services Authority Regulation No. 55/POJK.03/2016 regarding the Implementation of Governance for Commercial Banks specifically Article 1, Paragraph 7 defines Good Corporate Governance as a method of bank management that institutionalizes transparency, accountability, responsibility, independence, and fairness.[15] In specific regulated sectors, such as banking and insurance, the appointment of individuals with a prior record of insolvency is stringently restricted and may constitute grounds for disqualification under the 'fit and proper' test.[16]

This underscores that within the framework of sound business practices, an individual's financial track record serves as a critical indicator for determining their eligibility for strategic executive roles. Ideally, a corporation committed to GCG principles must not only ensure formal statutory compliance but also integrate considerations of ethical standards and public trust.[17] The appointment of former directors with a history of insolvency raises fundamental ethical inquiries: Has the corporation adequately weighed the long-term ramifications for its reputation and stakeholder trust? Does such a decision align with prevailing statutory frameworks and the principles of accountability and Corporate Social Responsibility (CSR)?

When an individual involved in a prior bankruptcy is reappointed to a directorship in another entity, the legal validity and resulting implications necessitate rigorous scrutiny. Consequently, a thorough understanding of the legal basis and procedural requirements for directorial appointments is paramount to insulating the corporation from future legal exposure. This article seeks to examine the extent to which

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[14] Dwi Tatak Subagiyo, 2015, *Perlindungan Hukum Pemegang Saham Minoritas Akibat Perbuatan Melawan Hukum Direksi Menurut Undang-Undang Perseroan Terbatas*, Perspektif, Volume XX No.1, hlm. 4.

[15] Pasal 1 ayat 7 Peraturan Otoritas Jasa Keuangan Nomor 55/POJK.03/2016 Tentang Penerapan Tata Kelola Bagi Bank Umum.

[16] FAT, 2014, *Fit Proper Test Pengurus Bank Banyak yang Tak Lolos*, Hukumonline, Diakses melalui: https://www.hukumonline.com/berita/a/fit-proper-test-pengurus-bank-banyak-yang-tak-lolos-lt53be9877bd1ef/

[17] *Tata Kelola Perusahaan,* 2025, PT Bursa Efek Indonesia, Diakses melalui: https://www.idx.co.id/id/tentang-bei/tata-kelola-perusahaan

appointments inconsistent with statutory provisions may precipitate legal liabilities for both the corporation and the parties involved.

In light of these considerations, a comprehensive academic and practical inquiry into the legal consequences of appointing former insolvent directors within State-Owned Enterprises is imperative. This research aims to provide a holistic analysis of the governing regulations, the degree to which GCG principles are compromised by such decisions, and to offer sound legal recommendations that balance corporate protection with an individual's right to rehabilitation and the opportunity for professional career restoration.

2. Research Questions

Based on the issues identified in the background, the primary legal problems to be addressed in this report are formulated as follows:

a. How is the policy of appointing former directors of bankrupt companies to directorships within State-Owned Enterprises evaluated through the lens of Good Corporate Governance (GCG) principles?
b. What are the legal implications of appointing a former director of a bankrupt company to a directorship within a State-Owned Enterprise?

3. Research Methods

This research employs a normative juridical method, which views law as a coherent system of rules and principles found in legislation and judicial precedents. This approach is descriptive-prescriptive, aimed at providing a definitive legal assessment of the issues at hand based on established legal norms. To ensure a comprehensive analysis, the study utilizes several specific approaches:

a. Statute Approach: This involves a systematic review of the hierarchy of Indonesian laws, including the 1945 Constitution, Law Number 40 of 2007 (UUPT), Law Number 19 of 2003 and its 2025 amendments (BUMN Law), Law Number 37 of 2004 (Bankruptcy and PKPU Law), and Law Number 30 of 2014 (Administrative Government Law).

b. Conceptual Approach: This research utilizes legal theories such as Legal Certainty (*rechtszekerheid*), Good Corporate Governance (GCG), and the Theory of Organs by Otto von Gierke to provide a theoretical foundation for

analyzing the duties and liabilities of directors.[18]

c. **Case Approach:** The study conducts a detailed analysis of Decision Number 26/Pdt.Sus-Pembatalan Perdamaian/2022/PN Niaga Jkt.Pst, which declared PT Istaka Karya bankrupt, and examines the subsequent appointment of its former director to PT JIEP as a primary case study of normative deviation.

Data collection is derived from secondary sources, divided into primary legal materials (laws and court decisions), secondary materials (Scopus-indexed journal articles, books by Radbruch,[19] Marzuki[20], and Soekanto[21], and academic theses), and tertiary materials (legal dictionaries). The data analysis technique involves qualitative processing, where collected legal materials are classified, categorized, and synthesized into a narrative that addresses the research questions and identifies causal relationships between governance failures and legal consequences.

B. DISCUSSION

1. Regulatory Policy on the Appointment of Former Directors of Bankrupt Companies to Directorships in State-Owned Enterprises: A Good Corporate Governance Perspective

Under the national corporate law framework, the board of directors serves as a fundamental organ essential to the corporation's legal and economic vitality. This aligns with Otto von Gierke's Organic Theory, which posits that a legal entity is a real, autonomous person with a distinct legal personality independent of its incorporators or shareholders[22]. Under Article 1(5) of Law No. 40 of 2007, the Board of Directors is the primary corporate organ vested with full responsibility for management and legal representation. This dual mandate creates a symbiotic nexus where the Board acts as the corporation's functional will, binding the entity in both judicial and extrajudicial matters. Consequently, the Board and the corporation are legally interdependent; the former

[18] Emanuele Conte, "Legal Pluralism from History to Theory and Back: Otto von Gierke, Santi Romano, and Francesco Calasso on Medieval Institutions," *Law and History Review* 42, no. 2 (May 10, 2024): 169–80, https://doi.org/10.1017/S0738248023000159.
[19] G. Radbruch, "Five Minutes of Legal Philosophy (1945)," *Oxford Journal of Legal Studies* 26, no. 1 (January 1, 2006): 13–15, https://doi.org/10.1093/ojls/gqi042.
[20] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana Prenada Media Group, 2013). Page, 50.
[21] Soerjono Soekanto and Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003). Page, 35.
[22] Maulana Hasanudin Hidayat, 2019 , "Badan Hukum, Separate Legal Entity dan Tanggung Jawab Direksi dalam Pengelolaan Perusahaan," *NATIONAL JOURNAL of LAW* 1, no. 1, https://doi.org/10.47313/njl.v1i1.673.

provides the operational capacity, while the latter provides the statutory basis for the Board's existence.[23] The Board of Directors serves as the corporation's vital organ, entrusted with achieving the purposes outlined in the Articles of Incorporation. This delegation of power establishes a fiduciary relationship, requiring directors to meet strict standards of competence and integrity. Under the doctrines of duty of care and duty of loyalty, directors are legally bound to act with utmost sincerity and responsibility, as their stewardship dictates the very survival of the legal entity.[24]

The evolution of Indonesian corporate law marks a transition from general fiduciary principles in the 1995 Act to a sophisticated liability regime under the 2007 UUPT. This modern framework clarifies the nexus between directorial conduct and personal liability: directors who satisfy their fiduciary mandates mitigate the risk of being held personally liable for corporate deficits.

This governance structure relies on the distinct roles of corporate organs. The Board translates the shareholders' collective will into actionable corporate strategy. While the RUPS typically exercises its appointive power through formal meetings, the UUPT accommodates contemporary business needs via circular resolutions. Provided there is unanimous written approval from all voting shares, these resolutions provide a legally equivalent alternative to the RUPS, upholding the principle of shareholder sovereignty while facilitating administrative efficiency.[25]

Under the UUPT framework, the Board of Directors functions as both an executive body and a facilitator of corporate governance by convening two types of General Meetings of Shareholders (GMS). The Annual GMS focuses on financial oversight and performance appraisal, while Extraordinary GMS handle ad-hoc strategic shifts. While the shareholders dictate the company's direction through these forums, the Board retains full responsibility for the operational implementation of these mandates. This authority extends to all legal actions consistent with the corporation's objects and purposes as

[23] Ning Herlina, 2019 , "Kewenangan Kppu (komisi Pengawas Persaingan Usaha) Dalam Penegakan Hukum Antimonopoli," *Lex LATA,* Vol. 1, no. 2, https://doi.org/10.28946/lexl.v1i2.476.
[24] Aufa Wira Prakasa and Albertus Sentot Sudarwanto, 2025, "Doktrin Fiduciary Duty: Peranannya sebagai Pedoman Pengurusan Perseroan Terbatas oleh Direksi," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 2, 241–47, https://doi.org/10.61104/alz.v3i2.993.
[25] Praicy Tania Tewu, 2023, "Kajian Hukum terhadap Kepastian Hukum dalam Pengangkatan Direksi Berdasarkan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas," *JIMPS: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 8, no. 3.

defined in its Articles of Incorporatio.[26]

The scope of corporate management involves both ordinary business operations and transformative strategic decisions. Legally, the Board's power is not confined to the express provisions of the corporate charter; it also includes ancillary powers justified by commercial custom and the principle of reasonable necessity. These secondary acts are valid insofar as they align with the corporation's stated goals, granting directors the flexibility to navigate complex legal and economic landscapes.[27] Legal frameworks grant the Board of Directors expansive discretion to pursue the corporate interest, contingent upon their adherence to fiduciary standards and statutory obligations. So long as directors act with bona fide intent and within the scope of their legal authority, the law respects their right to interpret and execute the corporation's objectives according to their professional judgment.

Under Article 91 UUPT, corporations may bypass formal meeting requirements through unanimous written consent. This alternative accommodates the geographical dispersion of modern shareholders while maintaining legal rigor. For such a resolution to be binding, it must receive the written approval of every voting shareholder; any lack of unanimity strips the instrument of its binding legal force. Consequently, while the circular resolution offers administrative efficiency, its validity remains contingent upon a total consensus that mirrors the collective will of the shareholders.[28]

While Article 105(3) of the UUPT permits the removal of directors via unanimous written consent, it balances this administrative efficiency with the principles of due process. Specifically, the statute mandates that the affected director be granted a right of defense prior to the resolution's adoption. This requirement ensures that the expedited nature of a circular resolution does not circumvent the director's right to address the grounds for their dismissal.[29] Directorial appointment is a transformative legal event creating a civil relationship between the individual and the corporation. However, "career

[26] Abdul Rokhim, 2021, "Tindakan Ultra Vires Direksi Dan Akibat Hukumnya Bagi Perseroan Terbatas," *Yurispruden* 4, no. 1.
[27] Fabio Alpacino Sianipar, 2023,"Tinjauan Yuridis Doktrin Ultra Vires atas Perbuatan Direksi yang Melakukan Perbuatan Hukum Pinjam Meminjam untuk dan atas Nama Perseroan Tanpa Persetujuan RUPS Studi Putusan No. 246/PDT.G/246/PDT.G/2019/PN.PBR", Skripsi, Fakultas Hukum Universitas Sumatera Utara.
[28] Siti Anisah, 2008, *Perlindungan Kepentingan Kreditor dan Debitor dalam Hukum Kepailitan di Indonesia: Studi Putusan-Putusan Pengadilan* (Yogyakarta: Total Media).
[29] Moulyta Elgi Trinanda, Erisa Ardika Prasada, and Rizha Claudilla Putri, 2024, "Perlindungan Hukum Terhadap Direksi Perseroan Terbatas Yang Diberhentikan Melalui Keputusan," *Sriwijaya Journal of Private Law* 1, no. 2.

directors" often face legal ambiguity regarding the precise commencement of this nexus, complicating potential litigation. Furthermore, Article 96 UUPT mandates that executive compensation remains a shareholder prerogative, though it may be delegated to the Board of Commissioners. This reflects shareholder primacy, yet the inherent majority rule of the GMS risks marginalizing minority interests, necessitating robust Good Corporate Governance (GCG) frameworks to ensure accountability and mitigate conflicts of interest.[30] Therefore, integrity and accountability serve as indispensable prerequisites, fundamentally underpinning the validity of the appointive process for directors within State-Owned Enterprises.[31]

The current SOE statutory architecture reflects a deliberate shift toward a restrictive selection regime designed to safeguard the public interest. Under the public trust doctrine, a directorship in a state enterprise is characterized not as a private right, but as a public mandate requiring an unblemished reputation. Accordingly, any appointment violating the insolvency prohibitions of Article 15A constitutes a substantive legal defect. Such appointments are legally infirm and subject to annulment, potentially triggering administrative liability for the appointing authority. This framework reinforces the principle that moral integrity and public confidence are the bedrock of sovereign corporate governance.[32] Any breach of these disqualification provisions transcends mere administrative irregularity; it constitutes a fundamental violation of public ethics and Good Corporate Governance (GCG) principles. However, a stark divergence exists between these normative standards and current administrative practice. This is exemplified by the case of PT Istaka Karya (Persero), which was dissolved via Government Regulation No. 13 of 2023 following a 2022 bankruptcy. During the 2017–2022 period, under the leadership of Sigit Winarto, the firm incurred approximately IDR 1.08 trillion in liabilities to creditors and employees. Legally, such insolvency renders management functus officio, as their executive authority is superseded by a court-appointed receiver.[33]

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[30] Henny Juliani, 2016, "Pertanggungjawaban Direksi BUMN Terhadap Perbuatan Yang Mengakibatkan Kerugian Keuangan Negara," *Masalah-Masalah Hukum* 45, no. 4, 299–306.

[31] Sayit Bandung Bondowoso and Dian Afrilia, 2025, "Pertanggungjawaban Direksi BUMN Terhadap Kerugian Negara Berdasarkan Regulasi Pemerintahan Sektor Perusahaan Dan Pidana," *Lex Stricta Jurnal Ilmu Hukum* 4, no. 1.

[32] Nur Sulistiyaningsih, Abdusyhid Naufal Fathullah, and Megafury Apriandhini, 2025, "Implementasi Public Trust Doctrine dalam Pengambilan Kebijakan di Tingkat Daerah dan Pusat: Tantangan dan Peluang di Indonesia," *Jurnal Esensi Hukum* 5, no. 2, 70–85, https://doi.org/10.51749/jphi.v2i1.14.

[33] Aura Nasya Madhani Harahap and Irwan Triadi, 2024, "Dampak Penyalahgunaan Kekuasaan oleh Pejabat Negara," *Jurnal Ilmiah Multidisiplin* 1, no. 5, hal 336–44.

According to Eddy O.S. Hiariej, the abuse of authority manifests in three distinct forms. First, the exercise of power for private or parochial gain at the expense of the public interest. Second, actions that, while formally cloaked in public purpose, substantively deviate from the legislative intent of the enabling statute. Third, procedural abuse, wherein an official employs improper mechanisms to achieve specific ends, maintaining a facade of formal legality. Collectively, these typologies demonstrate that the legality of an administrative act depends not merely on formal jurisdiction, but on the substantive alignment of purpose, content, and procedure with established legal norms.[34]

Beyond administrative irregularity, such appointments represent a fundamental affront to the rule of law and the constitutional value of "just and civilized humanity" (Pancasila). By ignoring the grievances of creditors, employees, and the public harmed by prior corporate failures, these decisions undermine social justice. Furthermore, bypassing statutory prohibitions erodes public confidence, fostering a perception that legal mandates are negotiable by those in power. Ultimately, this practice jeopardizes not only corporate governance but also the state's legitimacy as the ultimate trustee of public welfare.[35]

The appointment of a formerly insolvent director in defiance of statutory prohibitions transcends mere administrative error; it constitutes a misuse of delegated authority. Such actions ignore legislative intent, abandon the prudential principle, and erode public trust. Consequently, any analysis of the legal consequences of these appointments must scrutinize the exercise of administrative discretion, reinforcing the doctrine that state power must remain subordinate to the rule of law and substantive justice. Within this framework, the eligibility of such directors is a litmus test for the state's commitment to Good Corporate Governance (GCG) and its ability to maintain professional, public-interest-oriented enterprises.[36]

Directorial appointments within State-Owned Enterprises (SOEs) must adhere to the principle of normative alignment between private corporate law and public administrative law. An appointment that violates the eligibility prohibitions of Article 93 of the UUPT transcends a mere private law breach; it constitutes a procedural and

[34] Jojo Juhaeni, "Penyalahgunaan Wewenang Oleh Pejabat Publik Dalam Perspektif Sosiologi Hukum," *Jurnal Konstituen* 3, no. 1 (2021): 41–48.
[35] Harahap and Triadi, "Dampak Penyalahgunaan Kekuasaan oleh Pejabat Negara."
[36] Gatra Setya El Yanda, 2015, "Pembatasan Hak Debitor Pailit Untuk Menjadi Direksi Perseroan Terbatas", Skripsi, Universitas Brawijaya.

substantive defect under public law. Pursuant to Article 10(1)(a) of Law No. 30 of 2014, any administrative act contrary to prevailing statutes is categorized as an unlawful act by a government official (*onrechtmatige overheidsdaad*). Consequently, appointing a candidate with a history of insolvency lacks the requisite legal basis and is subject to annulment for violating the General Principles of Good Governance, specifically the principles of due care and legal certainty.[37]

A deeper analysis of *onrechtmatige overheidsdaad* or unlawful acts by government entities—reveals deep historical roots in the Indonesian civil law tradition, inherited from the Netherlands. Originally, the concept of a tortious act (*onrechtmatige daad*) was narrowly construed, applying strictly to violations of written statutory law under Article 1365 of the Indonesian Civil Code (KUHPerdata). This restrictive interpretation limited liability to clear breaches of codified provisions, mirroring the early European civil law doctrine of legal formalism.[38] Historically, liability was limited to acts that explicitly contravened positive legal norms. However, the scope of the "unlawful act" underwent a transformative expansion following the Dutch *Hoge Raad's* landmark 1919 decision in *Lindenbaum v. Cohen*. This ruling served as a jurisprudential milestone, broadening the definition of an unlawful act beyond strict statutory violations to include breaches of unwritten duties of care and social propriety.[39]

In this landmark ruling, the Dutch *Hoge Raad* bifurcated the definition of an unlawful act from strict statutory violations, broadening it to encompass conduct that: (a) infringes upon the legally protected rights of others; (b) breaches the actor's statutory obligations; (c) contravenes moral standards (*goede zeden*); or (d) violates the societal duty of care (*zorgvuldigheidsnorm*). Consequently, the decision transitioned the doctrine of *onrechtmatige daad* from a formalist inquiry into a substantive evaluation of moral and social norms.[40] This expanded interpretation was subsequently integrated into Indonesian jurisprudence via Article 1365 of the Civil Code (*KUHPerdata*). Consequently, conduct that causes harm remains actionable as a tort even absent an explicit statutory prohibition if it contravenes moral standards, propriety, or general social responsibilities.

[37] Mhd Fakhrurrahman Arif, 2023, "Asas-Asas Umum Pemerintahan Yang Baik," *Siyasah: Jurnal Hukum Tata Negara* 6, no. 2.
[38] Gita Anggreina Kamagi, 2018, "Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata Dan Perkembangannya," *Lex Privatum* 4, no. 5.
[39] Rika Ratna Permata, Tasya Safiranita, and Biondy Utama, 2019, "Tinjauan Kasus Tentang Dilusi Merek Di Indonesia Dan Thailand," *Jurnal Hukum Ius Quia Iustum* 26, no. 1, https://doi.org/10.20885/iustum.vol26.iss1.art1.
[40] Ibid.

In modern administrative law, this doctrine evolved into *onrechtmatige overheidsdaad*, wherein government actions or decisions are deemed unlawful if they violate either codified law or the foundational moral principles of good governance.[41]

The Law on Government Administration codifies the principle that acts by officials contravening statutory mandates or the General Principles of Good Governance constitute an unlawful government act (*onrechtmatige overheidsdaad*). Consequently, if the Minister of SOEs appoints a director in defiance of the prohibitions in Article 93 UUPT and Article 15A of the SOE Act, such an act is not a mere procedural error but a public law tort. This conduct harms the public interest and undermines the integrity of state institutions. Furthermore, Article 1367 of the Civil Code introduces vicarious liability (*respondeat superior*), establishing that a principal may be held qualitatively liable for the acts of subordinates within a functional relationship of control.[42]

However, the application of Article 1367 *KUHPerdata* is not absolute. Vicarious liability does not attach automatically; rather, it requires a rigorous determination of the nexus between supervisory authority, specific instructions, and the scope of oversight. Ambiguity in interpreting this provision often leads to misapplication within complex organizational structures. Consequently, in the context of SOE directorial appointments, liability cannot be assigned indiscriminately. Instead, it must be predicated on a granular analysis of the specific roles played by the Shareholders, the Minister, and the Board of Commissioners throughout the decision-making process.[43]

The legal failure of PT Istaka Karya underscores a chronic breach of fiduciary and operational duties. Under the 2013 court-approved restructuring plan, the company was obligated to satisfy creditor claims through phased payments and debt-to-equity conversions. However, by 2022, the firm had failed to progress beyond the initial disbursement, leaving substantial liabilities such as the unpaid balance of Rp304.434.400,00 in the subject petition unaddressed. This protracted non-compliance effectively triggered the bankruptcy adjudication, placing the company's management under rigorous scrutiny regarding their fitness for subsequent public-sector executive

[41] Yasmine Putri Andrian, An'nissa Dwi Febrianti, and Wildan Avie Athoillah, 2024, "Annotation of Judge's Decision No: 99/G/2020/Ptun-Jkt According to the Perspective of Onrechtmatige Overheidsdaad," *DE'RECHTSSTAAT* 10, no. 1, 19–33, https://doi.org/10.30997/jhd.v10i1.8514.
[42] Sekar Ayu Dita and Atik Winanti, "Analisis Asas Vicarious Liability dalam Pertanggungjawaban Pengganti atas Perbuatan Melawan Hukum Pegawai Bank," *JURNAL USM LAW REVIEW* 6, no. 2 (August 2023): 526–42, https://doi.org/10.26623/julr.v6i2.7037.
[43] Ibid.

roles.[44]

The failure of PT Istaka Karya was corroborated by a formal demand letter (*somasi*) dated May 13, 2022. In its response, the company explicitly admitted its inability to satisfy its matured obligations. Beyond the petitioning creditor, the company maintained significant arrears to PT Perusahaan Pengelola Aset (PT PPA) totaling approximately Rp91 billion. This existence of multiple unpaid creditors satisfies the statutory insolvency test under Article 2(1) of Law No. 37 of 2004, which mandates an adjudication of bankruptcy upon proof of two or more creditors and at least one matured, unpaid debt. These facts establish a state of structural default, triggering the mandatory application of bankruptcy norms.[45]

This principle is codified in Article 170(1) of the Bankruptcy Law (UUK-PKPU), which grants creditors the standing to petition the Commercial Court for the annulment of a settlement if the debtor fails to satisfy the obligations set forth in the reorganization plan. Consequently, the annulment of a court-sanctioned homologation is not an arbitrary act, but a statutory mechanism designed to protect creditor interests and uphold legal certainty. In the case of PT Istaka Karya, the debtor's failure to perform as agreed provided a valid legal basis for the creditors' petition, which the judicial panel subsequently granted as a matter of law.[46]

Analyzed through Soerjono Soekanto's theory of law enforcement, this judicial outcome demonstrates the simultaneous functionality of legal substance, structure, and culture. The substantive element is satisfied by the strict application of the Bankruptcy Law (UUK-PKPU); the structural element is manifested through the Commercial Court's authoritative intervention; and the legal culture is reflected in the judiciary's commitment to upholding creditor rights and corporate accountability. Together, these elements converge to transform normative statutory mandates into an effective instrument of justice.[47] This adjudication signifies the convergence of legal substance, structure, and culture. The substantive mandate of Article 97 UUPT was enforced through the structural authority of the Commercial Court, while the ruling culturally reinforces the standards of

[44] Aqil Syahru Akram, 2024, "Analisis Putusan Pembatalan Homologasi (perdamaian) Pada Putusan Nomor 26/Pdt.suspembatalan Perdamaian/2022/Pn Niaga Jkt.pst", Skripsi, Universitas Sebelas Maret.
[45] Darell Tri Jaya and Ida Kurnia, 2024, "A Juridical Review of the Existence of a Homologation Decision in Light of the Theory of Legal Certainty," *Jurnal Hukum Lex Generalis* 5, no. 4 .
[46] Ibid.
[47] Mahardika Candrasari, 2025, "Urgensi Membangun Model Ideal Penegakan Hukum Terhadap Pelanggaran Hak Cipta Di Era Digital," *Jurnal Kertha Semaya* 13, no. 9.

accountability and prudence expected in corporate management. Furthermore, the decision exemplifies Van Apeldoorn's theory of legal certainty; by holding that directorial negligence in satisfying a reorganization plan is intolerable, the court provided a clear, enforceable consequence for fiduciary failure. Consequently, the court's granting of the petition in its entirety serves not only as a remedy for creditors but as a concrete manifestation of legal certainty in upholding the integrity of state-owned enterprises.[48]

Normatively, Article 97 of the UUPT defines the parameters of directorial accountability. Under paragraphs (3) and (4), directors bear plenary responsibility for corporate management; however, personal liability for losses is not governed by strict liability. Rather, it is a fault-based standard, contingent upon a threshold showing of negligence or willful misconduct. Liability attaches only when a director's actions demonstrably deviate from the duty of care or constitute a breach of statutory obligations. Thus, Article 97 functions as a balancing mechanism, protecting the corporation from mismanagement while insulating directors from frivolous litigation for decisions made in good faith.[49]

Article 97(5) of the UUPT establishes a safe harbor provision, exonerating directors from personal liability if they can demonstrate that the corporate loss did not result from their fault. To invoke this defense, a director must satisfy a four-pronged test: (i) acting in good faith; (ii) exercising due care; (iii) maintaining an absence of conflicts of interest; and (iv) taking reasonable measures to mitigate or prevent the loss. This provision effectively shifts the focus from the outcome of a business decision to the integrity of the decision-making process itself.[50] The UUPT adopts a fault-based liability framework, explicitly rejecting the doctrine of strict liability for corporate officers. This approach mirrors the Business Judgment Rule, a cornerstone of common law corporate governance. Under this doctrine, judicial deference is afforded to the Board's decisions, provided they satisfy the tripartite criteria of rationality, informed deliberation, and fiduciary loyalty. By prioritizing the integrity of the deliberative process over the eventual economic result, the law encourages entrepreneurial risk-taking while maintaining a high threshold for

[48] Nuraida Fitrihabi, 2021, "Kepastian Hukum, Kemanfaatan Dan Keadilan Pemidanaan Kejahatan Asal Usul Perkawinan," *Al-Jinâyah: Jurnal Hukum Pidana Islam* 7, no. 2.
[49] Zefanya Margareth Pangaribuan, 2025, "Tanggung Jawab Direksi Terhadap Kerugian Perusahaan Berdasarkan Pasal 97 Uu No. 40 Tahun 2007," *Jurnal Hukum dan Kewarganegaraan* vol. 15, no. 9.
[50] Wildayanti and Kasjim Salenda, 2022, "Penerapan prinsip Business Judgment Rule (BJR) terhadap Putusan Direksi Perusahaan Perseroan Terbatas," *Alauddin Law Development Journal* vol. 4, no. 3, 503–19, https://doi.org/10.24252/aldev.v4i3.18819.

personal accountability.[51]

The judiciary distinguishes between inherent business risk and the violation of court-mandated obligations. In the case of PT Istaka Karya, the board's failure to satisfy the homologation agreement was not an exercise of protected discretionary judgment, but an impermissible disregard for a final judicial decree. Consequently, such negligence falls outside the ambit of the Business Judgment Rule, transforming managerial responsibility into personal liability under Article 97(3) of the UUPT. This underscores a balanced governance model: while the law shields good-faith stewardship, it imposes personal accountability for culpable negligence and the defiance of legal mandates.[52]

This framework reaffirms the principle of continuing personal liability, whereby directors remain legally accountable for corporate decisions that cause a failure to satisfy post-insolvency obligations. Consequently, the Jakarta Commercial Court's ruling in Case No. 26/2022 formalizes the paradigm that fiduciary duty is not merely a moral aspirational standard, but a positive legal norm with concrete juridical consequences. The board's failure to satisfy post-homologation requirements transcends administrative oversight or business misjudgment; it constitutes a definitive breach of legal duty that triggers personal accountability.[53]

The evolution of national corporate law shifts toward a substantive model of accountability, where courts scrutinize the integrity and rationality of executive decisions rather than mere formal compliance. Under Article 93(1)(b) of the UUPT and Article 15 of the 2025 SOE Act, an individual is strictly prohibited from serving as a director if, within the five years preceding their appointment, they presided over a corporation adjudicated bankrupt due to their fault. This imperative norm is designed to safeguard public trust in the competence of state-appointed fiduciaries.[54]

The misuse of corporate office often stems from an institutional failure to implement Good Corporate Governance (GCG) and a degradation of managerial ethics. When

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[51] Pradipty Utamy, Kartikasari Kartikasari, and Sari Wahjuni, 2020, "Pertanggungjawaban Direksi Perseroan Terbatas Dan Notaris Terhadap Surat Kuasa Direksi Tentang Pembangunan Infrastruktur Pemerintah," *Jurnal Bina Mulia Hukum* vol. 4, no. 2, 195, https://doi.org/10.23920/jbmh.v4i2.220.

[52] Widodo Tresno Novianto, 2015, "Penafsiran Hukum dalam Menentukan Unsur-Unsur Kelalaian Malpraktek Medik (Medical Malpractice)," *Yustisia* 4, no. 2.

[53] Ledy Wila Yustini, Serlika Aprita, and M. Andres Arta Al Fajri, 2023, "Analisis Kepailitan PT Istaka Karya Sebagai Badan Usaha Milik Negara," *SALAM: Jurnal Sosial dan Budaya Syar-i* 10, no. 4, 1209–20, https://doi.org/10.15408/sjsbs.v10i4.34622.

[54] FAT, "Fit Proper Test Pengurus Bank Banyak yang Tak Lolos," hukumonline.com, accessed November 9, 2025, https://www.hukumonline.com/berita/a/fit-proper-test-pengurus-bank-banyak-yang-tak-lolos-lt53be9877bd1ef/.

governance structures are ineffective, oversight mechanisms become fragile, creating a vacuum that facilitates conflicts of interest, imprudent management, and decisions that prejudice shareholders, creditors, and secondary stakeholders such as employees and suppliers. In this context, the absence of a "Tone at the Top" regarding ethics transforms a corporate entity into a vehicle for individual gain rather than collective value.[55]

Good Corporate Governance (GCG) transcends mere administrative compliance; it serves as a moral and legal instrument demanding that directors adhere to the principles of integrity and legal propriety. Reappointing an individual who has demonstrably failed their fiduciary duties specifically those whose negligence led to insolvency constitutes a direct violation of the Accountability and Responsibility pillars of GCG. Such a director has forfeited the moral and legal standing required to hold office.

2. Legal Implications of Appointing Former Directors of Insolvent Companies to Directorships within State-Owned Enterprises

According to the framework established by Soeroso, legal consequences are the results of actions intended to achieve specific outcomes under the law. In the context of appointing a previously insolvent director to a State-Owned Enterprise (SOE), these consequences manifest in three distinct modalities [56]

a. Alteration of Legal Status: The creation, modification, or termination of a legal state (e.g., the transition from an eligible candidate to a disqualified one).
b. Transformation of Legal Relations: The birth or dissolution of rights and obligations between legal subjects (e.g., the fiduciary bond between the State and the appointee).
c. Imposition of Sanctions: The triggering of legal penalties when an act such as a Ministerial appointment contravenes mandatory statutory norms.

Under Article 104(3) of the 2007 UUPT, the legal consequences of bankruptcy extend beyond the corporate estate to the personal assets of the board. Directors are held jointly and severally liable (tanggung renteng) for any remaining corporate obligations that cannot be satisfied by the bankruptcy estate. This statutory mandate ensures that the corporate veil does not serve as an absolute shield when managerial failure leads to

[55] Fayza Dwi Adhiani and Rani Apriani, 2024, "Tinjauan Hukum Penerapan Prinsip Good Corporate Governance dalam Perusahaan," *Jurnal Ilmiah Wahana Pendidikan* vol. 10, no. 12, 230–36, https://doi.org/10.5281/ZENODO.12522529.
[56] Asty Lestari Pratama Putri, Putra Hutomo, and Hedwig Adianto Mau, 2025, "Perlindungan Hukum Bagi Notaris Akibat Pemalsuan Salinan Akta Notaris Yang Dilakukan Oleh Pihak Lain Yang Bukan Penghadap," *Journal of Innovation Research and Knowledge* vol. 4, no. 11.

insolvency.[57]

Under Article 171 of the Bankruptcy Law (UUK-PKPU), a court-sanctioned settlement (homologation) functions as a binding contract. If a debtor materially breaches the obligations specified in this plan, the creditors possess a statutory right to petition for its annulment. Upon proof of non-compliance, the court must rescind the settlement, effectively reverting the debtor to a state of bankruptcy.[58]

Upon a creditor's petition for annulment, the court conducts a factual inquiry to determine whether the debtor's failure to perform was a result of excusable neglect or a breach of the duty of good faith. In US bankruptcy practice, this mirrors a "motion to convert" under Chapter 11, where the court scrutinizes the debtor's behavior to decide if rehabilitative efforts should be terminated in favor of liquidation.[59]

Under Article 291 of the Bankruptcy Law (UUK-PKPU), the legal framework prioritizes the protection of creditors who suffer from a debtor's failure to execute a court-sanctioned settlement. This provision demonstrates that bankruptcy law is not merely a mechanism for procedural finality; it is a substantive instrument designed to enforce good faith and ensure equity for creditors. When a debtor enjoys the protection of a settlement but fails to perform, the law provides a remedial pathway to strip that protection and reinstate the bankruptcy.[60]

Under this framework, a director's failure to execute a court-sanctioned settlement (*homologation*) is elevated from a mere contractual default (*wanprestasi*) to a fundamental managerial failure. In the US tradition, this falls under the "duty of oversight." Directors cannot find refuge in claims of economic hardship or external market volatility if they failed to implement reasonable, transparent, and responsible managerial steps. Consequently, the judicial annulment of a settlement and the subsequent return to bankruptcy serves as a "smoking gun" or a definitive indicator of a

[57] Pangaribuan, "Tanggung Jawab Direksi Terhadap Kerugian Perusahaan Berdasarkan Pasal 97 Uu No. 40 Tahun 2007."
[58] Karina Hasiyanni Manurung et al., "Perlindungan Konsumen Terhadap Kerugian Akibat Kepailitan Perusahaan Properti," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 4 (November 2023): 79–85, https://doi.org/10.5281/ZENODO.10198322.
[59] Zahra Athirah and Heru Sugiyono, "Kepastian Hukum Putusan Pengesahan Homologasi dalam Perkara Kepailitan," *Jurnal Interpretasi Hukum* 4, no. 3 (November 2023): 547–55, https://doi.org/10.22225/juinhum.4.3.8179.547-555.
[60] Ibid.

breach of the duty of care and the duty of good faith.[61] The legal consequence of joint and several liability is that every director must act as an internal monitor for their peers. In US corporate law, this is often discussed under the Caremark Doctrine, which mandates that boards implement and maintain information and reporting systems to oversee the company's compliance and management. Within a collegial board, this principle assumes that checks and balances are not optional but are fundamental to the board's collective fiduciary duty.[62]

Under the Bankruptcy Law (UUK-PKPU), an adjudication of bankruptcy does not result in "civil death." The individual retains their status as a legal subject with the capacity to enter into personal legal relationships (such as marriage or non-proprietary contracts). However, they suffer a specific divestment of authority regarding their assets. They lose the power to manage, alienate, or encumber the bankruptcy estate, a power that is transferred exclusively to the receiver (*kurator*).[63] Article 93(1) of the UUPT functions as a mandatory rule (*jus cogens*). This means the five-year disqualification for directors associated with a bankruptcy is not a suggestion but a strict eligibility requirement. Any appointment made in defiance of this rule is considered *batal demi hukum* (*void ab initio*). In legal terms, the appointment never legally occurred because the candidate lacked the necessary "fiduciary capacity" at the moment of the decree.[64]

When a public official, such as the Minister of SOEs, issues an appointment decree that violates explicit statutory prohibitions (Article 93 UUPT and Article 15A SOE Act), that act constitutes an Unlawful Government Act (*onrechtmatige overheidsdaad*). Under Article 10(1)(a) of Law No. 30/2014, such decisions are "legally defective" because they conflict with mandatory regulations and the General Principles of Good Governance (AUPB). This is specifically a breach of the Principle of Due Care (*Asas Kecermatan*), rendering the appointment voidable or null due to a lack of legal certainty.[65]

While the bankruptcy regime (UUK-PKPU) theoretically allows for the restoration

[61] Muammar Syah Reza, "Mitigasi Risiko Tanggung Jawab Secara Tanggung Renteng Dewan Komisaris Atas Kerugian Perusahaan Perseroan Dalam Perspektif Prinsip – Prinsip Tata Kelola Perusahaan Yang Baik (good Corporate Governance)," *Lex LATA* 3, no. 2 (June 2021), https://doi.org/10.28946/lexl.v3i2.1103.
[62] Hudyarto Hudyarto, 2021, "Pertanggungjawaban Putusan Pailit Perseroan Terbatas," *Binamulia Hukum* 10, no. 1, 91–106, https://doi.org/10.37893/jbh.v10i1.444.
[63] Rizqa Nurafrida Santi and Rachmadi Usman, 2025, "Kedudukan Notaris yang Dinyatakan Pailit terhadap Jabatannya," *Jurnal Pendidikan Tambusai* 9, no. 2.
[64] Imam Rahmat Feisal, 2019, "Keabsahan Direktur Perusahaan Pailit Yang Menjadi Direktur Perusahaan Lain," *Rechtidee* 14, no. 2, 225–44, https://doi.org/10.21107/ri.v14i2.5269.
[65] Anisa Norma Ningtyas, 2024, "Rehabilitasi Dan Pembubaran Perseroan Terbatas Sebagai Akibat Dari Putusan Pernyataan Pailit," *ADIL: Jurnal Hukum* vol. 15, no. 2.

of a debtor's reputation and civil rights through rehabilitation, Article 93(1) of the UUPT imposes a rigid, five-year structural prohibition. This creates a legal paradox: a former director may have fully satisfied all creditor obligations and sought legal redemption, yet they remain "statutorily toxic" under corporate law. In US jurisprudence, this is viewed as a conflict between rehabilitative justice (the right to a fresh start) and preventative regulation (the mandate to protect the public from perceived managerial risks).[66] When the "Right to Rehabilitation" in bankruptcy law conflicts with the "Five-Year Bar" in corporate law, a state of legal obscurity arises. This creates a vacuum where the boundary between a valid and an invalid appointment is blurred. In the context of State-Owned Enterprises (SOEs), any ministerial decree issued within this ambiguity carries an inherent defect of title (*defectus tituli*). This means the appointee holds the position under a legally infirm mandate, rendering their subsequent corporate actions vulnerable to challenge and destabilizing the system of public accountability.[67]

Upon the adjudication of bankruptcy, a fundamental shift occurs in the Legal Relations of the entity. Under the framework provided by Soeroso:

a. Status Transformation: The corporation loses its capacity to manage assets (First Legal Consequence).
b. Relational Transformation: A new legal nexus is established where the Receiver (Kurator) becomes the sole representative for all litigation and proprietary acts (Second Legal Consequence).

Any lawsuit or legal action taken against or on behalf of the debtor must be funneled through the Receiver. The directors are effectively sidelined, losing their representative capacity to bind the corporation to third parties.[68]

While Judicial Rehabilitation restores a debtor's "material" legal capacity essentially declaring their integrity "recovered" in the eyes of the court it often fails to achieve "structural" recognition within corporate law. This creates the central tension in the appointment of Sigit Winarto: although an individual may have completed the bankruptcy process, they remain structurally barred by the 5-year disqualification rule. In legal

[66] Siti Halilah and Mhd Fakhrurrahman Arif, 2021, "Asas Kepastian Hukum Menurut Para Ahli," *Siyasah: Jurnal Hukum Tata Negara* vol. 4, no. 2.
[67] Nanik Indah Setyani, Anwar Budiman, and Saefullah Saefullah, "Pertanggungjawaban Perseroan Terbatas Terhadap Kepailitan dalam Perjanjian Pinjaman (Putusan Nomor 34/Pdt.Sus-Pailit/2024/PN Niaga Jkt.Pst dan Putusan Nomor 38/Pdt.Sus-Pailit/2024/PN Niaga Jkt.Pst)," *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora* 4, no. 4 (August 2025): 410–30, https://doi.org/10.55606/jurrish.v4i4.6527.
[68] Ningtyas, "Rehabilitasi Dan Pembubaran Perseroan Terbatas Sebagai Akibat Dari Putusan Pernyataan Pailit.", *op.cit*

theory, this suggests that Fiduciary Trust is a higher standard than mere Civil Capacity; the former requires more than just the settlement of debts; it requires the passage of time or a formal "cooling-off" period to restore institutional confidence.[69] The second category of legal consequences is governed by the Rule of Reason. Unlike automatic consequences (*by operation of law*), these effects only manifest after a formal evaluation by a competent authority—such as the Receiver (*Kurator*), the Supervisory Judge, or the Commercial Court. This framework requires a determination based on proportionality, reasonableness, and factual findings.

In this context, Judicial Rehabilitation is a quintessential application of the Rule of Reason. A debtor's legal status is not "cured" simply because the bankruptcy period has ended; rather, the restoration of their reputation requires a judicial decree confirming that all obligations were satisfied and that no bad faith (*mala fides*) occurred during the liquidation or settlement process.[70]

From a public law perspective, the Minister's decision to appoint an ineligible director constitutes an Unlawful Government Act (*onrechtmatige overheidsdaad*). This act transcends a mere procedural error; it harms the public interest and erodes the credibility of state institutions. Under Articles 80–84 of Law No. 30/2014, state officials may be held personally liable for administrative decisions that cause harm or result from an abuse of authority. Consequently, the legal fallout is dual-layered:[71]

a. Civil/Private: The potential nullification of corporate actions.
b. Administrative/Public: The personal accountability of the Minister for a "legally defective" decree.

The statutory bar against reappointing formerly insolvent directors is not a human rights violation but a proportional legal safeguard ensuring accountability and legal certainty in SOE governance. Applying Soeroso's framework of legal consequences, such an appointment triggers a dual-layered liability: the appointee suffers a loss of legitimacy due to failure to satisfy the financial integrity mandates of Article 15A(2) of the SOE Act, while the appointing official incurs administrative liability for an unlawful government act (*onrechtmatige overheidsdaad*) under Article 10 of the Administrative Law.

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[69] Erna Widjajati, "Akibat Hukum Perusahaan Berbentuk Perseroan Terbatas (pt) Yang Dinyatakan Pailit," *Perpustakaan UPN Veteran Jakarta*, n.d.
[70] Aliya Sandra Dewi, "Rehabilitasi Pemulihan Nama Baik Debitor Pailit Di Indonesia," *The Juris* 7, no. 2 (2023): 286–95, https://doi.org/10.56301/juris.v7i2.1039.
[71] Kholifatus Sya'diyah and Salsabilla Azzahra Niesma Putri, 2025, "Peran Etika Administrasi Publik Dalam Mewujudkan Tata Kelola Pemerintahan Yang Bersih Dan Transparan," *Triwikrama: Jurnal Ilmu Sosial* 6, no. 9 .

This case reveals a profound deviation between the prescriptive norm (*das sollen*) which demands rational, predictable governance through the disqualification of failed fiduciaries and the empirical reality (*das sein*) of Sigit Winarto's reappointment. Despite the judicial confirmation of his negligence in the PT Istaka Karya bankruptcy, his subsequent appointment without judicial rehabilitation renders his corporate authority legally infirm. This "defect of title" creates both internal organizational instability and external invalidity, as the legal efficacy of a director's acts remains contingent upon valid registration with the Ministry of Law and Human Rights to bind third parties. Consequently, this disregard for statutory eligibility erodes public trust and jeopardizes the sovereign integrity of state-owned wealth management.[72]

Absent formal notification and regulatory registration, a director's status remains exclusively internal, lacking the standing necessary to bind the corporation in external legal relations. This procedural deficiency renders any contract executed by such an officer voidable, creating significant liability for third parties acting in good faith. Under the principles of both tort and administrative law, these aggrieved third parties maintain the right to seek damages against directors and commissioners for negligence in failing to perfect their legal authority.

Furthermore, the mandate for regulatory recording is not a mere ministerial task but a substantive instrument of legal certainty; the validity of every corporate act especially the stewardship of sovereign assets is contingent upon the legitimacy of the director's underlying legal title. Consequently, an eligibility defect in the appointment process transcends formal error, fundamentally jeopardizing the enforceability of corporate decisions under both public and private law. Ultimately, the legal standing of an SOE director embodies a dual character, necessitating a precise equilibrium between corporate stewardship and public accountability.[73]

While the Indonesian Company Law (UUPT 2007) defines the Board of Directors as corporate agents serving the entity's commercial interests, the Administrative Procedure Act (Law 30/2014) and Law 28/1999 categorize SOE executives as state officials charged with managing public wealth and executing economic governance. Consequently, an SOE

[72] Dhody AR Widjajaatmadja and Cicilia Julyani Tondy, 2025, "Perlindungan Hukum Bagi Pihak Ke-Tiga Terkait Tindakan Pengurusan Dan Pengawasan Yang Dilakukan Direksi Dan/Atau Komisaris Yang Masa Jabatannya Telah Habis," *CITIZEN: Jurnal Ilmiah Multidisiplin Indonesia* 5, no. 2.
[73] Wahyu Ardiansyah and Anna Erliyana, 2022, "Status Direksi BUMN selaku Penyelenggara Negara Lainnya dalam ketentuan Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan Pasal 87," *Transparansi Hukum* 5, no. 1, https://doi.org/10.30737/transparansi.v5i1.2266.

director's conduct must transcend private business discretion, adhering instead to the public law standards of legality, accountability, and the prudential principle. Under this framework, a Ministerial Decree appointing a director such as the reappointment of Sigit Winarto following the PT Istaka Karya insolvency constitutes a State Administrative Act (KTUN) as defined by Law 51/2009. Such a decree satisfies the requisite elements of a formal administrative action: it is a written instrument issued by a state authority that is concrete, individual, and final, thereby generating immediate and enforceable legal consequences for the designated individual and the state.[74]

A Ministerial Decree appointing a director satisfies the five-fold test of a State Administrative Act (KTUN): it is a formal written instrument; it is concrete in its designation of a specific individual (Sigit Winarto); it is individual in scope; it is final as it requires no further administrative ratification; and it generates immediate legal consequences by vesting corporate authority in the appointee. Consequently, such decrees fall squarely within the jurisdiction of the State Administrative Court (PTUN) and are subject to annulment if they contravene the Indonesian Company Law (UUPT) or the SOE Act.

Under administrative doctrine, this appointment is classified as an Individual-Constitutive Act it is predicated on the personal qualifications of the appointee and creates a new legal status. Crucially, in the context of eligibility bars, the Minister's authority is characterized as a Nondiscretionary (Bound) Power rather than *freies Ermessen*; the official is strictly mandated to execute existing statutory requirements regarding director qualifications. Failure to adhere to these mandatory eligibility criteria renders the resulting decree legally defective, as the Minister possesses no discretionary power to waive statutory disqualifications arising from prior insolvency. [75]

Under this classification, a Ministerial Decree appointing a director constitutes a constitutive administrative act, as it vests an individual with the specific legal status and corporate authority of a company organ. However, should such a decree lack a valid statutory basis specifically by violating the mandatory prohibition against reappointing

[74] Ade Irawan Taufik, 2020, "Keputusan Direksi Badan Usaha Milik Negara (Bumn) Sebagai Keputusan Tata Usaha Negara," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 3, hal. 331, https://doi.org/10.33331/rechtsvinding.v9i3.450.

[75] Faisol Rahman, 2018, "KAJIAN YURIDIS PENERBITAN IZIN LINGKUNGAN (Studi Kasus Penerbitan Keputusan Gubernur Jawa Tengah Nomor 660.1/ 6 Tahun 2017 Tentang Izin Lingkungan Kegiatan Penambangan Dan Pembangunan Pabrik Semen PT Semen Indonesia (PERSERO) Tbk. Di Kabupaten Rembang Provinsi Jawa Tengah)", Tesis, Universitas Gadjah Mada.

insolvent fiduciaries under Article 93(1)(b) of the Indonesian Company Law (UUPT) it becomes subject to the doctrine of material illegality (*materiële onrechtmatigheid*). In this context, the appointment is substantively defective, as the executive's exercise of power contravenes the prescriptive eligibility requirements established by law, thereby rendering the constitutive act legally infirm and voidable under judicial review.[76]

Consequently, the Ministerial Decree is subject to judicial annulment by the State Administrative Court (PTUN) for "contravening prevailing statutes" under Article 53(2)(a) of the PTUN Act, a move that effectively strips all subsequent directorial acts of their legal legitimacy. This underscores the function of administrative law not merely as an oversight tool, but as a corrective mechanism against state policies that violate the principles of legality and moral integrity.

The reappointment of Sigit Winarto must therefore be viewed not as a private corporate strategy, but as a state administrative action bound by the General Principles of Good Governance (AUPB) specifically the mandates of due diligence, professionalism, and propriety. The disregard for these principles renders the decree's validity fragile and triggers a state of culpable decision-making (*onrechtmatige besluitvorming*). Practically, this creates a governance paradox: while the state seeks to modernize SOEs, it simultaneously facilitates a "defect of title" that jeopardizes the enforceability of corporate contracts and erodes investor confidence. In the long term, such inconsistency suggests a failure to uphold the rule of law, necessitating rigorous corrective measures to ensure that Good Corporate Governance (GCG) is harmonized with public administrative standards to preserve the integrity of sovereign wealth management.[77] The State, acting through the Minister of SOEs, bears a non-delegable duty to uphold the rule of law by rejecting or rescinding any executive appointment that contravenes statutory mandates or the principles of public integrity. From a public law perspective, the reappointment of Sigit Winarto in defiance of the explicit prohibitions within the Indonesian Company Law (UUPT) and Law No. 1 of 2025 (SOE Act) constitutes a violation of the General Principles of Good Governance (AUPB), specifically the principles of legal certainty and due diligence. Legal certainty requires that administrative decrees be grounded in consistent, accountable legal bases, while due diligence mandates an exhaustive evaluation of material facts prior to the exercise of state authority.

[76] Nurul Hidayah Tumadi, 2023, "Keputusan Tata Usaha Negara (beschikking)," *Siyasah: Jurnal Hukum Tata Negara* 6, no. 2.
[77] Hendra Hendra and Arry Halbadika Fahlevi, 2024, "Implementation of Good Corporate Governance (GCG) Principles in PDAM Tirta Ogan, Ogan Ilir District," *Iapa Proceedings Conference*, hal. 187, https://doi.org/10.30589/proceedings.2024.1052.

By issuing an administrative decree to appoint an individual statutorily barred due to prior insolvency, the Minister commits an act of culpable decision-making (*onrechtmatige besluitvorming*) that fails the rational basis test and disregards the fiduciary standards of public administration. Such an appointment establishes a detrimental precedent, signaling that directorial liability for corporate failure can be circumvented via administrative loopholes, thereby undermining the transparency and accountability pillars of the 2025 SOE Reform. Within the corporate framework, the resulting legal fallout remains inextricably linked to the Board of Commissioners, whose failure to exercise oversight in the vetting process facilitates a breach of both internal corporate governance and the broader social contract between the State and the public.[78] Pursuant to Article 108(1) and (2) of the Indonesian Company Law (UUPT 2007), the Board of Commissioners is mandated to oversee management policies and provide advisory guidance to the Board of Directors. Consequently, the Board's failure to prevent or contest the appointment of an ineligible director specifically one statutorily barred due to unrehabilitated insolvency constitutes a culpable omission with profound legal ramifications. Within the framework of State-Owned Enterprises (SOEs), this duty is amplified by Article 32(2) of the 2025 SOE Act, which compels commissioners to ensure corporate governance adheres to the prudential principle and the mandates of Good Corporate Governance (GCG).

Should the Board fail to execute rigorous oversight by facilitating the reappointment of a failed fiduciary without verified judicial rehabilitation, the commissioners incur derivative administrative and moral liability for the resulting systemic breach. While Article 114(5) of the UUPT provides a safe harbor, it is conditional: to be exonerated from liability, a commissioner must affirmatively demonstrate that they exercised oversight in good faith, with due care, and remained free from any conflict of interest regarding the challenged directorial appointment.[79] If the Board of Commissioners maintains a passive stance despite possessing knowledge of a candidate's prior adjudication of bankruptcy specifically by failing to lodge a formal objection with the shareholders or the Minister of SOEs such inaction constitutes culpa in vigilando (negligence in oversight). Under US fiduciary standards, this is analyzed as a breach of the duty to monitor, where the Board's

[78] Martha Vivy, Ramli Siregar, and Windha, "Pertanggungjawaban Direksi Karena Kelalaian Atau Kesalahannya Yang Mengakibatkan Perseroan Pailit," *TRANSPARENCY: Jurnal Hukum Ekonomi* 1, no. 1 (2013), https://media.neliti.com/media/publications/14691-ID-pertanggungjawaban-direksi-karena-kelalaian-atau-kesalahannya-yang-mengakibatkan.pdf.
[79] Rosida Diani Diani, 2019, "Tanggung Jawab Komisaris Dalam Hal Perseroan Terbatas Mengalami Kerugian," *Simbur Cahaya*, 39–46, https://doi.org/10.28946/sc.v25i1.322.

failure to prevent the appointment of a statutorily disqualified individual results in derivative liability for the commissioners, as their silence facilitates a violation of mandatory eligibility norms and the prudential principle of corporate governance.[80]

While the Board of Commissioners does not possess the primary power of appointment, they bear a non-delegable fiduciary and moral obligation to verify compliance with the integrity and eligibility mandates established by the Indonesian Company Law (UUPT) and the SOE Act. Normatively, the reappointment of a formerly insolvent fiduciary without judicial rehabilitation exposes a profound lack of integration between corporate insolvency regimes and public law. This creates a jurisdictional friction where the execution of the *lex specialis* (SOE Law) actively undermines the mandatory norms of the *lex generalis* (UUPT). Under the hierarchy of norms, the application of a special statute must remain harmonized with the foundational principles of general law to preserve the unity and consistency of the legal system, ensuring that public sector appointments do not circumvent the prudential standards required of all corporate entities.[81]

The SOE Act, as lex specialis, cannot negate the fundamental moral and legal prohibitions established in the Company Law (UUPT) regarding the disqualification of formerly insolvent fiduciaries. Rather, these statutes must be interpreted harmoniously to balance corporate efficiency with the protection of the public interest. As custodians of sovereign assets, State-Owned Enterprises must serve as paradigms of equitable corporate governance. Consequently, the five-year bankruptcy bar should not be viewed as a mere administrative hurdle, but as a realization of the Public Trust Doctrine. This doctrine mandates that the State, acting as a public trustee, is duty-bound to delegate the management of national wealth exclusively to individuals of proven integrity who remain free from legal blemish.[82] The Public Trust Doctrine establishes that an SOE directorship is not a personal entitlement but a public mandate imbued with profound moral and legal dimensions. Neglecting this principle subverts both the corporate order and public confidence in the legal and governmental apparatus. The juridical consequences are

[80] Ramadan Prabowo and Muhammad Ridwan Lubis, "Tinjauan Hukum Pidana terhadap Kebijakan Keamanan di Perumahan Berdasarkan Peraturan Perumahan (Studi tentang Tanggung Jawab Pengelola dan Hak Warga)," *Jurnbal Begawan Hukum (JBH)* 3, no. 2 (2025): 01–10.
[81] Shinta Agustina, 2015, "IMPLEMENTASI ASAS LEX SPECIALIS DEROGAT LEGI GENERALI DALAM SISTEM PERADILAN PIDANA," *Masalah-Masalah Hukum* vol. 44, no. 4, 503–10.
[82] Erin Ryan, Holly Curry, and Hayes Rule, 2021, "Environmental Rights for the 21st Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement," *Cardozo Law Review* 42, no. 6.

twofold: first, the appointment is subject to administrative annulment for violating the principle of legality and due care; second, it triggers personal accountability for the appointing official who disregarded the mandates of law and propriety. Thus, appointing an ineligible, formerly insolvent fiduciary transcends mere administrative error, escalating into a crisis of governmental ethics and constitutional credibility.

To fortify this accountability framework, Indonesian law should consider adopting strict liability and vicarious liability as pillars of Good Corporate Governance (GCG) to close existing normative gaps. While the Indonesian Penal Code (KUHP) currently rejects strict liability in favor of the culpability principle which requires proof of mens rea legal scholars increasingly advocate for its application in exceptional offenses involving the public interest. In complex, collective environments like SOEs, where proving intent is often impractical, strict liability serves not as a denial of fault, but as a critical corrective instrument to eliminate impunity and ensure the integrity of sovereign wealth management.[83]

While strict liability remains largely unrecognized as a general principle under the Indonesian Penal Code (KUHP), it has established a significant foothold in modern administrative and corporate law, where liability is predicated on normative responsibility inherent to a specific legal function rather than proof of subjective fault. In the corporate sphere, this no-fault liability arises from an absolute legal duty to protect the public interest. A salient example is found in Article 22(33) of the Job Creation Omnibus Law, which amends Article 88 of the Environmental Protection and Management Act (UUPPLH), explicitly codifying the principle of strict liability (*pertanggungjawaban mutlak*) for any individual or legal entity whose business activities pose a substantial threat to the environment.[84] This provision reinforces that commercial actors bear legal liability for damages resulting from their activities, irrespective of any evidentiary proof of fault or negligence. Such a framework demonstrates that Indonesian jurisprudence is increasingly adopting the principle of strict liability as an effective regulatory instrument to ensure compliance and due diligence in sectors where the public

[83] Munira Rezkina and Sanusi Bintang, "The Application of Strict Liability Principle in Aceh Province's Forest Fire Cases," *Student Journal of International Law* 1, no. 2 (January 2022): 100–115, https://doi.org/10.24815/sjil.v1i2.19276.
[84] Mamudji, *Metode Penelitian Dan Penulisan Hukum*.

interest is paramount.[85]

This statutory framework illustrates that Indonesian jurisprudence has selectively integrated strict liability into its public interest protection strategies. This transition reflects a shift from formalistic justice toward a substantive and utilitarian paradigm, positioning the law as a proactive instrument for risk mitigation and social welfare. Within this framework, strict liability does not abolish the requirement of fault entirely but serves as a corrective mechanism to bridge the "legal gaps" often exploited by sophisticated corporate actors.

Extending this paradigm to SOE governance, the principle of strict liability could be integrated into administrative regulations to govern the appointment of directors. Under a modern administrative framework, the appointing authority would bear objective accountability for the legal consequences of their decrees, regardless of personal intent or subjective negligence. Thus, if an ineligible candidate is appointed in violation of statutory bars, the official incurs automatic administrative and moral liability. This aligns with the doctrine of objective accountability in public governance, which posits that official responsibility is predicated not on mens rea, but on strict adherence to established legal standards and the general principles of good governance.[86]

In this framework, the doctrine of vicarious liability serves as the conceptual counterpart to strict liability, establishing a regime of hierarchical accountability between superiors and subordinates, or between the corporation and its officers. Within US legal academia, this reflects the principle of respondeat superior, wherein a principal is held legally liable for the wrongful acts of its agents committed within the scope of their authority. In the context of SOE governance, this doctrine ensures that the State, as the ultimate principal, cannot distance itself from the legal defects of its appointees, thereby reinforcing a chain of responsibility that binds the appointing authority to the fiduciary performance and eligibility of the board.[87]

Historically rooted in the common law doctrine of *respondeat superior* meaning "let the master answer" this principle dictates that a superior is held legally liable for the

[85] Saskia Eryarifa, 2022, "Asas Strict Liability dalam Pertanggungjawaban Tindak Pidana Korporasi Pada Tindak Pidana Lingkungan Hidup," *Jurnal MAHUPAS: Mahasiswa Hukum Unpas* 1, no. 2, hal. 103–22.
[86] Muhammad Sawir, 2022, *Akuntabilitas Organisasi Publik Konseptual dan Praktik* (Yogyakarta: Deepublish).
[87] Lana Aulia Afiftania and Dian Purnama Anugerah, "Penerapan Prinsip Vicarious Liability dalam Pertanggungjawaban Perseroan Terbatas," *Notaire* 5, no. 3 (October 2022): 415–34, https://doi.org/10.20473/ntr.v5i3.40084.

actions of a subordinate, provided such acts occur within the scope of employment or authorized agency. Within the framework of corporate law, vicarious liability serves as the foundational mechanism for attributing legal responsibility to the entity for statutory or tortious violations committed by its directors or employees during the execution of their official functions. In the context of SOE governance, this doctrine ensures that the legal failures of individual fiduciaries are not isolated incidents but are attributed upward to the institutional and ministerial authorities responsible for their oversight and authorization.[88] Consequently, when an SOE director violates appointment prohibitions or acts *ultra vires*, liability transcends the individual to encompass the SOE as a public entity and the Minister as the supervising organ. This structural relationship mirrors a principal-agent framework, where the controller's oversight failure constitutes a form of derivative liability. Despite the substantive eligibility requirements codified in Laws No. 1 and 16 of 2025, the statutory framework suffers from a critical sanctioning gap: imperative prohibitions exist without explicit administrative, civil, or institutional penalties for their breach. This normative vacuum transforms mandatory law into mere ethical guidelines, stripping the statute of its preventive and corrective functions. Because SOE appointments impact sovereign wealth and public interest, this imbalance between expansive ministerial discretion and minimal legal risk necessitates the adoption of strict liability. Such a normative shift would impose objective accountability on the appointing authority for statutory non-compliance, ensuring that the burden of legal consequences remains fixed regardless of subjective intent or *mens rea*.[89]

Under this framework, the locus of liability shifts from a subjective inquiry into "wrongful intent" to an objective determination of "legal responsibility for the normative breach." Consequently, whenever an appointment contravenes statutory eligibility requirements, the appointing official incurs automatic administrative and institutional liability by operation of law. The application of strict liability in this context is not intended to criminalize policy discretion, but rather to fortify legal certainty and the prudential principle within SOE management. By imposing objective accountability, officials are precluded from invoking ignorance, ministerial error, or discretionary

[88] Rodliyah Rodliyah, Any Suryani, and Lalu Husni, 2021, "Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia," *Journal Kompilasi Hukum* 5, no. 1, hal. 191–206, https://doi.org/10.29303/jkh.v5i1.43.

[89] Messy, Rosmaria, and Try Yanuaria, "The Concept of Strict Liability in Indonesian Criminal Law and Its Application to Environmental Crimes," *Jurispro* 2, no. 2 (2025).

immunity as defenses against factual non-compliance. This approach harmonizes with the core tenets of Good Corporate Governance (GCG) specifically accountability and responsibility by ensuring that public authority is tethered to transparent legal consequences. Furthermore, the existing sanctioning gap within the SOE Act necessitates the integration of vicarious liability, particularly to address the hierarchical and collective nature of state decision-making.[90]

SOE directorial appointments are inherently institutional processes involving a complex nexus of ministries, shareholders, and corporate organs. Within this matrix, vicarious liability ensures that legal accountability transcends mere technical executors to encompass those with the structural authority and capacity to prevent statutory violations. Consequently, liability is not confined to the formal signatory but is attributable to the institutional actors who exercise controlling influence over the appointment process. As noted by Professor Barda Nawawi Arief, the principle of strict liability constitutes a rigorous statutory accountability framework; under this doctrine, a corporation as a distinct legal persona cannot divest itself of the legal consequences arising from its actions, even in the absence of evidence regarding subjective fault or negligence.[91]

Building upon this logic, vicarious liability facilitates a vertical transfer of responsibility within the organizational hierarchy, whereby the legal liability of subordinates ascends to the superior or the entity exercising policy control. Integrating strict and vicarious liability into SOE governance establishes an equilibrium between personal and institutional accountability, effectively eliminating impunity for public officials regarding strategic decisions involving sovereign wealth. This framework aligns with the doctrine of objective accountability, where official conduct is measured not by subjective intent, but by strict adherence to statutory norms, eligibility standards, and the General Principles of Good Governance (AUPB). Consequently, if an appointment violates mandatory prohibitions such as the bankruptcy bar administrative liability is automatically imputed to the appointing official, regardless of the absence of provable malice or a conflict of interest. This argument is particularly salient given the current

[90] Ridwan Yoga Pratama, "Implementasi Asas Strict Liability Atas Tanggungjawab Produk Dalam Hukum Perlindungan Konsumen: Studi Perbandingan Antara Indonesia & Amerika Serikat," *Lex Stricta Jurnal Ilmu Hukum* 4, no. 1 (2025): 81–92.
[91] Rodliyah, Suryani, and Husni, "Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia."

limitations in Indonesian law regarding the attribution of liability within modern business groups.[92]

Traditionally, the law recognizes corporations as discrete legal entities, often lacking adequate frameworks to address the liability nexus between parent and subsidiary companies. This regulatory vacuum permits the abuse of the corporate form, where parent companies exercise strategic control while evading liability behind the shield of separate legal personality. While international practice has developed the doctrine of piercing the corporate veil to prevent such evasion, its application in Indonesia remains sporadic and under-institutionalized. Consequently, in transnational or complex structures, parent company liability remains elusive, necessitating the adoption of vicarious liability a principle rooted in Article 1367 of the Indonesian Civil Code to shift accountability to those who exercise factual control.

Drawing from the strict liability model used in environmental law to protect constitutional rights under Article 28H(1) of the 1945 Constitution, SOE governance should adopt a similar no-fault framework to address the "sanctioning gap." Currently, prohibitions against appointing insolvent directors (Art. 93 UUPT; Art. 15A SOE Act) are merely declarative due to the absence of explicit penalties. As a State Administrative Act (KTUN), such appointments constitute an unlawful government act (*onrechtmatige overheidsdaad*) when they violate the General Principles of Good Governance (AUPB). To ensure structural correction, a multilayered sanctioning model is required: administrative annulment of the decree, civil liability for resulting financial losses to the state, and institutional sanctions such as the restriction of state capital injections (*PMN*) or corporate freezes. Ultimately, under Indonesia's presidential system, the Minister of SOEs bears primary administrative accountability, while the President maintains the constitutional mandate to supervise and sanction ministerial negligence to preserve the integrity of public wealth management.[93]

Recent developments have increased this structural complexity with the establishment of Danantara, a private-law legal entity mandated to manage state assets professionally and strategically under Government Regulation (PP) No. 10 of 2025. This

[92] Hendrik Saputra, "Legal Liability of Subsidiaries For Unlawful Actions Committed By The Parent Company (Holding Company) In The Structure of A Limited Liability Company," *Journal of Law, Politic and Humanities* 5, no. 6 (2025).
[93] Evi Oktarina, "Dinamika Kewenangan Presiden Republik Indonesia Di Bidang Legislatif Pasca Perubahan Undang-Undang Dasar 1945," *Lex Librum* 11, no. 2 (2025): 243–50.

regulation formally delineates Danantara's legal status, fiduciary duties, and institutional authority, while establishing its organizational hierarchy, governance standards, and the specific mechanisms for oversight and public accountability. In US legal terms, Danantara functions as a specialized sovereign wealth management vehicle, necessitating a harmonized application of corporate and administrative law to ensure that its strategic autonomy remains subject to the prudential principle and rigorous state supervision.[94]

While Danantara is normatively intended to centralize and professionalize sovereign asset management, the current lack of granular regulatory clarity regarding the jurisdictional boundaries between Danantara, the Minister of SOEs, and the President risks creating a diffusion of responsibility. This ambiguity facilitates a "blame-shifting" environment where institutional accountability for defective decisions including the appointment of ineligible directors is obscured across multiple actors. Consequently, under the framework of *ius constituendum* (the law as it should be), any legislative reform to the SOE Act must explicitly map the hierarchy of liability to prevent fragmented accountability.

By integrating vicarious liability, the law ensures that institutional responsibility remains tethered to the organ exercising factual control. Simultaneously, adopting strict liability within administrative law would ensure that violating directorial eligibility mandates triggers automatic legal consequences, precluding the need to prove subjective fault. Such a transition would transform the bankruptcy bar from a mere aspirational ethical standard into an enforceable legal instrument, essential for harmonizing SOE governance with Good Corporate Governance (GCG) principles and restoring the public trust in state wealth management.

C. CONCLUSIONS

Under the prevailing Indonesian legal framework, specifically Article 93 of Law No. 40 of 2007 and Article 15 of Law No. 1 of 2025, the appointment of former directors of bankrupt enterprises to leadership positions within State-Owned Enterprises (BUMN) constitutes a direct violation of statutory prohibitions and fundamental Good Corporate Governance (GCG) principles if executed within the five-year restrictive period without proper judicial rehabilitation. Such appointments, as exemplified by the case of Sigit

[94] Joel Axel Bernard and Agus Suprajogi, "Status Hukum Danantara Berdasarkan Undang – Undang BUMN dalam Perspektif Peyelenggaraan Pemerintahan yang Baik," *Arus Jurnal Sosial dan Humaniora* 5, no. 2 (August 2025): 2220–21, https://doi.org/10.57250/ajsh.v5i2.1462.

Winarto at PT JIEP, are considered *void ab initio* and are fundamentally incompatible with the principles of accountability and responsibility, thereby undermining the integrity of state assets and the public trust doctrine. Consequently, these *ultra vires* actions entail significant legal implications, including the potential classification of the appointment as an *onrechtmatige overheidsdaad* (unlawful government act) and the imposition of administrative sanctions ranging from written reprimands to the revocation of appointment authority against the responsible state organs to ensure institutional integrity and the restoration of the rule of law within the public sector.

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