Aligning State Finance Regulations with SOE Bankruptcy Policy: Evidence from the United States

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ARTICLE INFO

Article history
Received: June 20, 2024
Revised: March 23, 2025
Accepted: March 28, 2025

Keywords
Aligning;
Bankruptcy;
Policy;
SOE;
State Finance;

ABSTRACT

Existing regulations governing the execution of state-owned enterprise (SOE) assets in Indonesia lack coherence, resulting in legal uncertainty and inconsistencies between state financial policies and bankruptcy laws. This misalignment is evident in the conflicting interpretations of Constitutional Court Decisions No. 48/PUU-XI/2013 and No. 62/PUU-XI/2013, as well as contradictions among the State Finance Law, State Treasury Law, State-Owned Enterprises Law, and Bankruptcy Law. This study aims to examine these regulatory uncertainties and propose solutions that promote legal certainty and justice. This research adopts a normative legal methodology, utilizing a legislative approach and comparative analysis, with a particular focus on the United States as a reference model. The study draws on primary and secondary legal sources, which are analyzed using a deductive method. The findings highlight three key aspects: first, there is significant disharmony within Indonesia's financial and bankruptcy regulations concerning SOEs. Second, in contrast, the United States provides a more structured bankruptcy framework that facilitates business resolution while allowing for government intervention in cases where bankruptcy poses a systemic risk. Third, the study presents several policy recommendations to align Indonesia's state financial and bankruptcy regulations with those governing SOEs, ensuring a more coherent and just legal framework. The findings of this study suggest that the Indonesian government should consider these recommendations to enhance policy frameworks for executing SOE assets, particularly within Limited Liability Company, thereby ensuring a balance between financial accountability and economic stability.

1. Introduction

Indonesia can optimally manage its natural resource potential to foster economic progress.[1] The state can carry out this management by forming a state-owned enterprise (SOE) company. SOE is a company established and managed by the state to carry out activities in the industrial and business sectors. It is expected to manage strategic business

[1] Fidiana Fidiana, Prawita Yani, and Diah Hari Suryaningrum, 'Corporate Going-Concern Report in Early Pandemic Situation: Evidence from Indonesia', *Heliyon*, 9.4 (2023), e15138 https://doi.org/10.1016/j.heliyon.2023.e15138

sectors so that they are not controlled by certain parties.[2] The provisions of Article 33 of the 1945 Constitution of the Republic of Indonesia (UUD 1945) state that the economy is structured as a joint effort based on the principle of family. Furthermore, the state control branches of production that are important to the state and that control the livelihoods of many people.[3] These provisions, by attribution, give the state the authority to control and manage branches of production that concern the livelihoods of many people. One of the government's efforts to manage these branches of production is to form a business entity, namely a SOE.[4] The formation of SOE has the aim and function of managing production sectors to improve the country's economy.[5] The existence of SOE is very strategic in the economic sector, ranging from finance, post, telecommunications, agriculture, mining, fisheries, plantations, forestry, trade, construction, transportation, electricity, and manufacturing to industry. The existence of SOE is expected to allow it to develop and compete with other private companies, so it is necessary to provide facilities in the form of flexibility in determining its business but not free from the principles of a healthy company.[6]

Article 1, number 1, of the SOE Law states that a business entity whose capital is wholly or partly owned by the state through direct investment originating from separated state assets.[7] Furthermore, Article 4, paragraph (2) of the SOE Law states that capital participation in establishing or participating in SOE comes from the state revenue and expenditure budget, reserve capitalization, and other sources. SOE also consists of two forms: public companies (*Perum)* and limited liability companies (*Persero)*.[8] Article 1, Number 4, of the SOE Law provides more detailed details regarding the two forms; the first form is a *Perum* whose entire capital is owned by the state and is not divided into shares, which aims for public benefit in the form of providing high-quality goods and services and at the same time pursuing profits based on the principles of company management, while a Persero is in the form of a limited liability company with at least 51% of its capital owned by the state whose primary purpose of business activities is to pursue profits.[9]

In its business activities, the SOE Persero obtains its capital not only from the state but also from borrowing from banks or non-bank institutions, making loans to the government in the form of bonds, and receiving assistance from abroad. SOE Persero, in carrying out its

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[2] M. Dachyar, Teuku Yuri M. Zagloel, and L. Ranjaliba Saragih, 'Enterprise Architecture Breakthrough for Telecommunications Transformation: A Reconciliation Model to Solve Bankruptcy', *Heliyon*, 6.10 (2020), e05273 https://doi.org/10.1016/j.heliyon.2020.e05273

[3] Wasiaturrahma and others, 'Financial Performance of Rural Banks in Indonesia: A Two-Stage DEA Approach', *Heliyon*, 6.7 (2020), e04390 https://doi.org/10.1016/j.heliyon.2020.e04390

[4] Dian Agustia, Nur Pratama Abdi Muhammad, and Yani Permatasari, 'Earnings Management, Business Strategy, and Bankruptcy Risk: Evidence from Indonesia', *Heliyon*, 6.2 (2020), e03317 https://doi.org/10.1016/j.heliyon.2020.e03317

[5] Ming Ning Xiong and others, 'The Influence of Clan Culture on Business Performance in Asian Private-Owned Enterprises: The Case of China', *Industrial Marketing Management*, 99.September (2021), 97–110 https://doi.org/10.1016/j.indmarman.2021.09.009

[6] Thomas Neise and Javier Revilla Diez, 'Adapt, Move or Surrender? Manufacturing Firms' Routines and Dynamic Capabilities on Flood Risk Reduction in Coastal Cities of Indonesia', *International Journal of Disaster Risk Reduction*, 33.October 2018 (2019), 332–42 https://doi.org/10.1016/j.ijdrr.2018.10.018

[7] Ruslan Prijadi and others, 'The Dynamics of Micro and Small Enterprises (MSE) toward Bankability with Coronavirus Pandemic Adjustment', *Journal of Open Innovation: Technology, Market, and Complexity*, 8.4 (2022), 193 https://doi.org/10.3390/joitmc8040193

[8] Anjar Priyono, Abdul Moin, and Vera Nur Aini Oktaviani Putri, 'Identifying Digital Transformation Paths in the Business Model of Smes during the Covid-19 Pandemic', *Journal of Open Innovation: Technology, Market, and Complexity*, 6.4 (2020), 1–22 https://doi.org/10.3390/joitmc6040104

[9] Alia Bihrajihant Raya and others, 'Challenges, Open Innovation, and Engagement Theory at Craft Smes: Evidence from Indonesian Batik', *Journal of Open Innovation: Technology, Market, and Complexity*, 7.2 (2021), 121 https://doi.org/10.3390/joitmc7020121

business activities, does not always run smoothly, so it can experience problems that disrupt the company's performance. These problems can stem from financial issues, poor company management, organizational challenges, or a weakening economy. The decline in the profit level of an SOE Persero can also impact national income and result in continuous losses until the company is no longer profitable, so it cannot pay off debts to creditors and its employees.[10] According to Article 2, paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy Law, the SOE Persero's inability includes the existence of two or more creditors and not paying at least one debt that has matured and can be collected. Suppose the debtor is genuinely unable to pay off his debts. In such a scenario, bankruptcy serves as the final and most effective measure to safeguard the interests of both the debtor and well-intentioned creditors.[11]

According to Article 1, number 1, of the Bankruptcy Law, bankruptcy is a general seizure of all assets of a bankrupt debtor, which is then managed and settled by the bankrupt debtor's assets by a curator appointed by the court and supervised by a supervising judge. The judge declares bankruptcy by placing a general seizure (*algemene beslag*) against all assets of a debtor. The goal is to pay creditors' bills fairly, evenly, and in balance. Payment of the bill refers to the principle of *pari passu pro rata parte* because the creditor's position is the same. The process is regulated by the ranking or priority of receivables that must be paid first, so this principle only applies to concurrent creditors.[12] Article 21 of the Bankruptcy Law states that bankruptcy includes all the debtor's assets when the bankruptcy declaration decision is pronounced and everything obtained during the bankruptcy. As a result of bankruptcy, the debtor legally loses his right to control and manage his assets included in the bankruptcy estate from the date the bankruptcy declaration decision is pronounced. However, the bankruptcy of an SOE Persero does not fall under this provision. The capital status of an SOE Persero comes from separated state assets, so implementing a general seizure of its assets is not the same as for other legal entities.[13]

Law Number 17 of 2003 concerning State Finance (State Finance Law), Article 2, Letter G, says that state finance includes state or regional assets managed by the government or by other parties. These assets may include money, securities, receivables, goods, and other rights with a monetary value. They also encompass assets divided among state or regional companies. According to Article 2, letter g, of the State Finance Law, state assets that are split up in an SOE Persero are still part of the state's finances. This means that money and goods owned by the state or region and controlled by the state or region cannot be taken away, just like it says in Article 50 of Law Number 1 of 2004 concerning State Treasury (State Treasury Law). [14]

Article 50 of the State Treasury Law, which regulates the application of general seizure of state-owned limited liability companies, cannot be implemented because the assets seized are state assets that anyone is prohibited from seizing, but in practice, many state-

[10] Nahiyah Jaidi and others, 'Ambidexterity Behavior of Creative SMEs for Disruptive Flows of Innovation: A Comparative Study of Indonesia and Taiwan', *Journal of Open Innovation: Technology, Market, and Complexity*, 8.3 (2022), 141 https://doi.org/10.3390/joitmc8030141

[11] Mahameru Rosy Rochmatullah and others, 'Is Quantifying Performance Excellence Really Profitable? An Empirical Study of the Deployment of the Baldrige Excellence Measurement Model in Indonesia', *Asia Pacific Management Review*, xxxx, 2022 https://doi.org/10.1016/j.apmrv.2022.10.006

[12] Richard W. Carney and others, 'The Dynamism of Partially State-Owned Enterprises in East Asia', *Journal of Corporate Finance*, 68. April (2021), 101951 https://doi.org/10.1016/j.jcorpfin.2021.101951

[13] Dorien Kartikawangi, 'Symbolic Convergence of Local Wisdom in Cross–Cultural Collaborative Social Responsibility: Indonesian Case', *Public Relations Review*, 43.1 (2017), 35–45 https://doi.org/10.1016/j.pubrev.2016.10.012

[14] Terry OCallaghan, 'Patience Is a Virtue: Problems of Regulatory Governance in the Indonesian Mining Sector', *Resources Policy*, 35.3 (2010), 218–25 https://doi.org/10.1016/j.resourpol.2010.05.001

owned limited liability companies have been declared bankrupt and meet the requirements for bankruptcy according to the provisions of Article 2 paragraph 1 of the Bankruptcy Law which states that Debtors who have two or more creditors and do not pay in full at least one debt that has matured and can be collected are declared bankrupt by a court decision, either at their own request or at the request of one or more of their creditors.[15]

This uncertainty and inequality before the law conflict with Article 27, paragraph (1), of the UUD 1945, which states that all citizens have equal standing before the law and that the management of state finances in a constitutional manner should only be and must be manifested in the state revenue and expenditure budget so that other forms of finance, such as finances in state-owned companies/regional companies or other legal entities that receive government facilities, do not become the rights and obligations of the state so that the possibility of damages, risks, and uncertainty of their business activities do not become a burden on state finance.[16] It is worth remembering that Article 23, paragraph (1), of the UUD 1945 mandates that state finance be used for the greatest prosperity of the people. In particular, state revenues obtained from taxes and the management of state assets from the economy must be used absolutely for efforts to achieve state goals and not for other purposes outside the state.[17]

Two Constitutional Court decisions, No. 48/PUU-XI/2013 and No. 62/PUU-XI/2013, then emphasized and extended uncertainty and inequality before the law.[18] The decision ruled that SOE capital is still categorized as "state assets," so its management still refers to regulations related to state finances and the state treasury. It also provides authority for the state financial agency and other authorities to conduct audits and supervise finances. Consequently, the decision leaves the regulation of the execution of state-owned enterprise assets in bankruptcy at a standstill.[19] Bankruptcy practice demonstrates this, making it extremely challenging to liquidate the assets of state-owned enterprises. For example, the decision of the Supreme Court of the Republic of Indonesia with Case Number 05/PKPU/2014/PN.Niaga.Sby *jo.* Article 01/Pdt.Sus. Cancellation of Peace/2018/PN.Niaga.Sby *jo.* Article 43 PK/Pdt.Sus-Pailit/2019 on the bankruptcy of PT. Kertas Leces, an SOE Persero. PT. Kertas Leces filed for bankruptcy because it was obligated to pay debts that had matured based on the peace agreement and had not been paid to former employees in the layoffs at PT. Kertas Leces amounting to Rp2,517,996,496.00 and other debts.[20]

The bankruptcy case of PT. Istaka Karya began when one of its creditors, PT. JAIC, filed a bankruptcy petition with the Jakarta Commercial Court on October 25, 2010, due to an unpaid debt of US$7,645,000.83. The dispute stemmed from six negotiable promissory notes worth US$5.5 million, issued by PT. Istaka Karya on December 9, 1998, and due on January 8, 1999. When the company failed to meet its obligations, PT. JAIC filed a lawsuit

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[15] Carney and others.

[16] Minako Sakai, 'Growing Together in Partnership: Women's Views of the Business Practices of an Islamic Savings and Credit Cooperative (Baitul Maal Wat Tamwil) in Central Java, Indonesia', *Women's Studies International Forum*, 33.4 (2010), 412–21 https://doi.org/10.1016/j.wsif.2010.02.015

[17] Taufik Abdullah, Craig Lee, and Neil Carr, 'Defining Success and Failure in the Hospitality Industry's Microenterprises: A Study of Indonesian Street Food Vendors', *International Journal of Hospitality Management*, 109.March 2022 (2023), 103403 https://doi.org/10.1016/j.ijhm.2022.103403

[18] Fuad Rakhman, 'Can Partially Privatized SOEs Outperform Fully Private Firms? Evidence from Indonesia', *Research in International Business and Finance*, 45.January 2016 (2018), 285–92 https://doi.org/10.1016/j.ribaf.2017.07.160

[19] Dian Rahmawati and Deden Rukmana, 'The Financialization of Housing in Indonesia: Actors and Their Roles in the Transformation of Housing Production', *Cities*, 131.May 2021 (2022), 103918 https://doi.org/10.1016/j.cities.2022.103918

[20] Davin Surya Wijaya, 'Tinjauan Yuridis Hak-Hak Karyawan Dalam Permohonan Kepailitan Badan Usaha Milik Negara (Persero)', *SPEKTRUM HUKUM*, 15.2 (2018), 300 https://doi.org/10.35973/sh.v15i2.1122

with the South Jakarta District Court in 2006. The Supreme Court, in Decision No. 1799 K/PDT/2008 dated February 9, 2009, ruled in favor of PT. JAIC, granting its cassation request. This decision, upheld by the South Jakarta District Court (Decision No. 1097/Pdt.G/2006/PN.Jkt.Sel, dated July 29, 2010), became final and legally binding. On August 18, 2010, the court summoned PT. Istaka Karya for a warning (*aanmaning*) to comply with the ruling. PT. JAIC subsequently declared its intent to request asset seizure, including freezing ongoing projects, if PT. Istaka Karya failed to execute the court's decision. The Jakarta Commercial Court ultimately declared PT. Istaka Karya bankrupt through Decision No. 73/PAILIT/2010/PN.JKT.PST on December 16, 2010.[21]

The Central Jakarta Commercial Court initially declared PT. Dirgantara Indonesia bankrupt through Decision No. 41/Pailit/2007-PN.Niaga/Jkt.Pst. However, the Supreme Court later annulled this ruling with Decision No. 075 K/Pdt.Sus/2007. The case began when 6,561 former employees, represented by the Employee Communication Forum Workers Union, filed a bankruptcy petition after being terminated in August 2003. The Central Labor Dispute Resolution Committee (P4P) issued Decision No. 142/03/02-08/I/X/PHK/1-2004 on January 29, 2004, which became legally binding. The decision required PT. Dirgantara to provide pensions based on employees' last wages and old-age security benefits as mandated by Law No. 3 of 1992. The total pension obligations owed by PT. Dirgantara were estimated at approximately IDR 200 billion.[22]

Research is necessary to establish a clear legal framework for regulating the sale of state-owned enterprise (SOE) assets in bankruptcy proceedings following Constitutional Court Decisions No. 48/PUU-XI/2013 and No. 62/PUU-XI/2013. The urgency of this study is underscored by several key considerations. First, the regulation of SOE asset execution in bankruptcy proceedings lacks legal certainty and results in unequal treatment before the law. This contradicts Article 27(1) of the 1945 Constitution (UUD 1945), which guarantees that all citizens have equal standing before the law. Additionally, Article 23(1) of the UUD 1945 mandates that state finances must be utilized for the greatest benefit of the people, particularly revenues derived from taxation and the management of state assets. These financial resources must be directed toward achieving national development objectives, reinforcing the need for a well-defined regulatory framework governing the treatment of SOE assets in bankruptcy.[23]

Second, the disharmony in the State Finance Law, State Treasury Law, SOE Law, and Bankruptcy Law is emphasized and extended by two Constitutional Court decisions, namely Constitutional Court Decision Number 48/PUU-XI/2013 and 62/PUU-XI/2013. Therefore, the government often takes action outside the provisions of the PKPU Law by dissolving bankrupt companies. Whereas Article 31, paragraph (1), states that the decision to declare bankruptcy results in all court implementation decisions regarding any part of the debtor's assets that have begun before bankruptcy must be stopped immediately, and since then, no decision can be implemented, including or also by holding the debtor hostage.[24]

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[21] Alvin Camba, Angela Tritto, and Mary Silaban, 'From the Postwar Era to Intensified Chinese Intervention: Variegated Extractive Regimes in the Philippines and Indonesia', *Extractive Industries and Society*, 7.3 (2020), 1054–65 https://doi.org/10.1016/j.exis.2020.07.008

[22] Agustia, Muhammad, and Permatasari.

[23] Uluc Aysun, 'Duration of Bankruptcy Proceedings and Monetary Policy Effectiveness', *Journal of Macroeconomics*, 44 (2015), 295–302 https://doi.org/10.1016/j.jmacro.2015.03.008

[24] Effnu Subiyanto, 'Excessive Investment Failure Corporate Strategy: A Case Study of the Bankruptcy of the State-Owned Indonesia Airline Garuda Indonesia', *Case Studies on Transport Policy*, 10.2 (2022), 1401–6 https://doi.org/10.1016/j.cstp.2022.05.005

Third, there is legal uncertainty regarding executing state-owned enterprise assets in bankruptcy against SOE in the form of public companies and Persero. The Bankruptcy Law states that SOE in the form of limited or public companies can be declared bankrupt. Executing state-owned enterprise assets in bankruptcy is often based on the Bankruptcy Law and ignores the State Finance Law, the State Treasury Law, and the SOE Law. Thus, there is a clash between the position of SOE *Persero* and *Perum*. The delay in payment often stems from the legal principle of *lex specialis derogat legi generalis*, which asserts that more specific regulations override more general ones, leading companies to resort to bankruptcy regulations. The confusion regarding the concept of state assets reflected in the State Finance Law and the State Treasury Law above also affects the problem of bankruptcy applications in SOE Persero.[25] It is supposed to follow the concept of the State Finance Law. In that case, the assets of SOE Persero can be considered state property. According to the provisions of Article 50, it cannot be executed against the SOE assets due to the prohibition on confiscation of SOE assets. This contradicts the essence of a bankruptcy filing, namely the ability to carry out general execution/seizure of the assets of the debtor who is declared bankrupt as regulated in Article 1, number 1, of the Bankruptcy Law.

Fourth, the current model for controlling the use of state-owned business assets in bankruptcy is still based on broad discussions about Indonesia's state finances, rather than specific rules for how these assets should be used. Indonesian academics have no standard agreement regarding the definition of state finance. An expert whose opinion is often quoted is Goodhart, who argues that state finance is the laws stipulated periodically that give the government the power to carry out expenditures regarding a certain period and indicate the financing tools needed to cover these expenditures. Ending differences of opinion regarding the scope of state finance is crucial. This is because there is a common understanding regarding the application of the legal status of a legal entity's finances, whether related to state finances, regional finances, SOE finances, regionally-owned enterprise finances, or private finances.

In fact, the regulations in other countries, such as the United States, strictly classify state-owned enterprises (SOEs) into strategic and non-strategic categories. For SOEs that are entirely state-owned, the likelihood of bankruptcy is minimal. However, if their capital is partially owned by private shareholders, they may be subject to bankruptcy proceedings.[26] Therefore, unless the government provides special protection, an SOE's assets are still subject to execution if it declares bankruptcy. The United States of America has three relevant laws governing state capital participation in SOE: the Government Corporation Control Act (GCCA), the Federal Credit Reform Act (FCRA), and the U.S. Code Title 31. The alignment and complementarity of the state finance-related laws govern the distribution of state capital in SOE.[27] The GCCA stipulates that SOE capital is separate from the federal budget but remains audited by the government.[28] The FCRA clarifies it that if an SOE receives a loan or guarantee from the government, the funds must be reported as a separate government expenditure. U.S. Code Title 31 ensures that even

[25] Frans Affandhi and others, 'Business Judgement Rule Dikaitkan Dengan Tindak Pidana Korupsi Yang Dilakukan Oleh Direksi Badan Usaha Milik Negara Terhadap Keputusan Bisnis Yang Diambil', *USU Law Journal*, 4.1 (2016), 33–44. https://repositori.usu.ac.id/handle/123456789/22246

[26] Honora Englander and others, 'Comparing Methadone Policy and Practice in France and the US: Implications for US Policy Reform', *International Journal of Drug Policy*, 129 (2024), 104487 https://doi.org/10.1016/j.drugpo.2024.104487

[27] Gulnaz Anjum and Arabella Fraser, 'Vulnerabilities Associated with Slow-Onset Events (SoEs) of Climate Change: Multi-Level Analysis in the Context of Pakistan', *Current Opinion in Environmental Sustainability*, 50 (2021), 54–63 https://doi.org/10.1016/j.cosust.2021.02.004

[28] Anjum and Fraser.

though SOE capital is individual, the company's finances remain transparent and subject to audit and the possibility of asset execution in the event of bankruptcy.[29]

Previous research by Kyunghoon et al. (2021) explained that SOE capital is derived from separated state assets. Separated state assets are the separation of state assets from the state revenue and expenditure budget to be used as state capital participation in SOE so that its development and management are no longer based on the state revenue and expenditure budget system. This study indicates that the Indonesian government has begun actively mobilizing SOEs to revive vital industrialization. By focusing on resolving political issues related to SOE industrialization, the government must strengthen business relations rather than politics. Monitoring mechanisms and performance requirements greatly influence the results of SOE strategy development in Indonesia. Often, a country considers capitalism towards SOE as absolute, but it is necessary to see how the country plays a role in it. This study underscores the importance of a business perspective in resolving SOE issues, particularly during bankruptcy, to ensure the protection of parties' rights.[30] This can be a direction for the Indonesian government's recommendations in resolving SOE bankruptcy issues. Its practice must combine business and legal perspectives to protect the parties' rights.

Another research from Siska (2024) examines the status and responsibility of the state in the bankruptcy of SOE *Persero*. A logical consequence of state capital participation in an SOE Persero is that the government shares the risk and bears responsibility for business losses. However, in assuming such risks, the state does not act as a public legal entity. The study suggests that when the state holds 51% or more of an SOE Persero's shares, its position cannot be considered representative of the state itself. At that point, state immunity is lost, and the public financial relationship with the company, which has been transformed into shares, is severed. Consequently, any financial risks, including bankruptcy, do not constitute state losses or impact the state revenue and expenditure budget. Instead, losses are borne by the SOE itself, with the state merely assuming the role of a shareholder.[31] It can be concluded that if there is bankruptcy, all the company's assets, incredibly SOE limited, can be executed to pay debts to creditors. realizing that there are still many problems in various sectors related to the alignment of state financial regulations with soe bankruptcy policy, this study will focus on the alignment of state financial regulations on the execution of state-owned enterprise assets in bankruptcy.

2. Research Method

This is a type of normative legal research based on primary and secondary legal materials so that it can produce new arguments, theories, or concepts as prescriptions for solving problems related to the alignment of state financial policies and the execution of SOE assets in bankruptcy in Indonesia. This study uses a regulatory approach that focuses on principles, systematics, synchronization, and policies,[32] namely those related to state finance and bankruptcy in the State Finance Law, State Treasury Law, SOE Law, Bankruptcy Law, and Constitutional Court Decision Numbers 48/PUU/XI/2013 and 62/PUU/XI/2013. The results of this study argue to solve the legal issue regarding the

[29] Byomkesh Talukder, Keith W. Hipel, and Gary W vanLoon, 'Slow-Onset Events (SOEs) and Future Sustainability', *Current Opinion in Environmental Sustainability*, 58 (2022), 101218 https://doi.org/10.1016/j.cosust.2022.101218
[30] Kyunghoon Kim and Andy Sumner, 'Bringing State-Owned Entities Back into the Industrial Policy Debate: The Case of Indonesia', *Structural Change and Economic Dynamics*, 59 (2021), 496–509 https://doi.org/10.1016/j.strueco.2021.10.002
[31] Siska Windu Natalia and Henry Darmawan Hutag, 'Menyoal Tanggung Jawab Negara Dalam Kepailitan BUMN-Persero', *Jurnal Supremasi*, 2024, 16–34 https://doi.org/10.35457/supremasi.v14i2.2849
[32] Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan ke (Jakarta: Kencana Prenada Media Group, 2013).

regulation of the execution of assets of State-Owned Enterprises in Bankruptcy after Constitutional Court Decision Number 48/PUU/XI/2013 and Constitutional Court Decision Number 62/PUU/XI/2013. Furthermore, a comparative approach was used by countries with the United States of America of America to find legal facts of SOE asset execution arrangements in bankruptcy. The nature of this legal research is prescriptive and applied. Prescriptive research examines the instruments in the law itself related to the purpose of the law, values of justice, the validity of legal rules, legal concepts, and legal norms that can later be used to answer a legal problem. Legal research, being an applied science, serves the purpose of implementing legal rules. The legal materials come from primary and secondary sources, such as laws and regulations, journal articles, and law books. The mechanism of managing legal materials is carried out through interpretation, which is one of the legal discoveries that provides a clear explanation of the text of legislation so that the scope of the rules can be determined about specific events. The deduction method then analyzes the collected legal materials.[33]

3. Results and Discussion

The Regulation of Execution of State-Owned Enterprise Assets in Bankruptcy in Indonesia

The global economic slowdown, structural economic changes, and economic environment have impacted the downturn in State-Owned Enterprises (SOEs)[34] often leading to bankruptcy. The execution of SOEs' assets in bankruptcy in Indonesia is based on various relevant laws and regulations. The Bankruptcy Law, the State-Owned Enterprises Law, the State Finance Law, and other evolving regulations specifically govern the bankruptcy of SOEs. The differing perspectives on the execution of SOE assets cannot be separated from the paradigm of the status of SOE assets. It is influenced by the type of SOE and its share ownership, state finances, and the philosophy and function of SOEs as state-owned enterprises. In this context, SOEs are understood as an extension of the state in performing part of the state's functions to achieve national objectives, mainly promoting public welfare.[35] Therefore, from a legal entity's capital perspective or any similar designation, SOEs execute part of these state functions, and their capital is partly or entirely sourced from state finances. [36]

The paradigm that places and interprets SOE assets as part of the nation's wealth implies that the execution of SOE assets cannot be carried out in the event of bankruptcy. On the other hand, if SOE assets are no longer considered state property, such execution may be permissible. Unfortunately, the existing regulations contradict each other. As a result, the ambiguity in state wealth, as reflected in Law No. 17 of 2003 and Law No. 1 of 2004, influences bankruptcy petitions involving SOEs, particularly those categorized as Persero SOEs. If we adhere to the regulatory framework outlined in Law No. 17 of 2003, SOE Persero assets may be considered state property. According to Article 50 of Law No. 1 of 2004, the courts cannot seize state-owned assets. This means that the laws governing

[33] Peter Mahmud Marzuki.

[34] Qin Lin and others, 'Latest Lessons from the Bankruptcy of State-Owned Enterprises (SOEs) in China: An Interpretative Structural Model (ISM) Approach', *Discrete Dynamics in Nature and Society*, 2022.1 (2022) https://doi.org/10.1155/2022/1109442

[35] Chiara F. Del Bo and others, *State-Owned Enterprises in Developed Market Economies* (Cambridge University Press, 2025) https://doi.org/10.1017/9781009625265

[36] Amir Firmansyah, Aris Machmud, and Suparji Suparji, 'Peran BUMN Sebagai Pilar Utama Ekonomi Nasional Yang Mandiri: Sebuah Kajian Hukum Korporasi', *Binamulia Hukum*, 13.2 (2024), 517–28 https://doi.org/10.37893/jbh.v13i2.952

SOEs and the bankruptcy aspects for SOEs do not share a consistent view regarding the status of SOE assets. Likewise, various Constitutional Court decisions offer different interpretations of SOE assets. The lack of synchronization among these regulations creates legal uncertainty for creditors. Furthermore, the incorrect interpretation of state finances within SOEs also leads to varying forms of accountability in the event of bankruptcy of such enterprises.[37]

This debate can be more structured by categorizing the perspective on bankruptcy execution based on the type of SOE in question, which is distinguished by its capital participation. The first regulation to consider is Law No. 19 of 2003 on State-Owned Enterprises, as amended by Law No. 1 of 2025. The capital contributed to an SOE determines its form. The 2025 SOE Law introduces a new norm stating that an entity is considered an SOE if it meets at least one of the following conditions: a) the Republic of Indonesia owns all or the majority of its capital through direct participation, or b) it holds special rights vested in the Republic of Indonesia. Based on this Law, SOEs are classified into two categories: first, Perusahaan Perseroan (Persero), an SOE in the form of a limited liability company primarily aimed at profit generation. The definition of Persero in the 2025 SOE Law has undergone significant changes. Initially, Persero was understood as an SOE in the form of a limited liability company whose capital was divided into shares, with at least 51% of the shares owned by the state. Under the new law, the percentage of state ownership is eliminated and no longer considered a factor.[38]

Meanwhile, *Perusahaan Perseroan Terbuka* (Publicly Listed Persero) is a Persero whose capital and number of shareholders meet specific criteria or a Persero that conducts a public offering following capital market regulations. This definition remains unchanged. Second, similarly, the definition of Perusahaan Umum remains the same, referring to an SOE whose entire capital is owned by the state and is not divided into shares, with the primary objective of providing and ensuring the availability of goods and/or services for public benefit, to meet the basic needs of society or for strategic purposes, based on the principles of corporate management. This differentiation in the type of capital originating from the state depends on the classification of the SOE. The capital of SOEs is categorized into two types: state budget capital and non-state budget capital. Capital from the state budget is part of the SOE's financial resources and is managed according to the principles of good corporate governance. It originates from cash funds, state-owned assets, state receivables from SOEs or limited liability companies, state-owned shares in SOEs or limited liability companies, and/or other state assets. On the other hand, non-state budget capital consists of revaluation gains, capital reserves, stock premiums, and/or other legitimate sources. These distinctions in capital sources are crucial when determining whether SOE assets can be seized in the event of bankruptcy.

Unfortunately, Law No. 1 of 2025 no longer explains what is related to state wealth; it only regulates the meaning of SOE assets, which are defined as any form of goods or wealth owned by SOEs that can be valued in monetary terms and have exchange value and/or economic value. In this regard, SOE assets do not refer to assets that constitute separated state wealth. However, Article 3A reiterates that the President holds the power to manage SOEs as part of the state administration's authority in managing state finances,

[37] M I Asnawi and others, 'State-Owned Enterprise Financial Governance: Dilemma of State Wealth Separation', *IOP Conference Series: Earth and Environmental Science*, 452.1 (2020), 012036 https://doi.org/10.1088/1755-1315/452/1/012036

[38] Andrew Keay and Joan Loughrey, 'The Concept of Business Judgment', *Legal Studies*, 39.1 (2019), 36–55 https://doi.org/10.1017/lst.2018.29

including the separate state wealth held by SOEs. Separated state wealth, in essence, refers to the assets owned by the state that originate from the state budget and/or other sources, invested by the central government for the long term and in partnership with the central government, and managed separately. Upon further examination, separation under the state budget mechanism means that the state grants authority to the entity managing Separated State Wealth to make its policies without being bound by the standard government budget management framework.[39]

However, Article 2 of Law No. 17 of 2003 has a limitation regarding state finance. One of the definitions includes state or regional wealth managed either independently or by another party in the form of money, securities, receivables, goods, and other rights that can be valued in monetary terms, including the separated wealth in SOE or regional-owned enterprises (ROEs). If we follow this concept, then in the event of bankruptcy, the court cannot seize the state-owned assets. This would also apply to SOEs. However, each type of SOE has a different capital participation. If the interpretation of SOEs is generalized between *Persero* and *Perum*, this could lead to confusion regarding the concept of state wealth, as reflected in Law No. 17 of 2003 and Law No. 1 of 2004, and it would impact bankruptcy petitions involving Persero SOEs.

For example, a SOE in the form of *Perum*, whose entire capital is owned by the state and is not divided into shares, can be linked to Article 2, paragraph (5) of Law No. 37 of 2004, which mentions that in the case where the debtor is a State-Owned Enterprise operating in the public interest, a bankruptcy petition may only be filed by the Minister of Finance.[40] This indicates a difference in bankruptcy procedures between wholly state-owned SOEs without shares, such as *Perum*, and those with shares, including Persero or even *Perusahaan Perseroan Terbuka* (Publicly Listed Persero).

This distinction arises because a Persero operates under the legal framework of a limited liability company (*Perseroan Terbatas*), which is a separate legal entity with a clear distinction between the rights and obligations of its shareholders and management (separate entity, separate liability). Moreover, the current definition of a Persero no longer requires the state to hold at least 51% of its shares. Instead, it is now structured as a limited liability company primarily focused on profit generation, allowing greater flexibility in state ownership. Consequently, a Persero increasingly resembles a private limited liability company and can thus be treated analogously. In contrast, while state-owned enterprises (SOEs) function as instruments of the state, they are also recognized as independent economic entities. This perspective differs significantly from *Perum*, which maintains a direct connection to the state and serves the public interest, particularly given that its capital is entirely state-owned and not divided into shares.

This perspective is relevant when referring to the principle of *Lex specialis derogat legi generali*, which states that if there is a specific legal rule governing a particular issue, and there is also a more general legal rule governing the same problem, the specific rule will apply and override the general one. In the case of bankruptcy, including the bankruptcy of State-Owned Enterprises (SOEs), this regulation is provided for under Law No. 37 of 2004. Therefore, the bankruptcy regime for SOEs should be based on this law.

[39] Reni Anggriani, F.X.Joko Priyono, and Nanik Tri Hastuti, 'The Separated State Property in State-Owned Enterprises', *Sociología y Tecnociencia*, 13.1 (2023), 26–43 https://doi.org/10.24197/st.1.2023.26-43

[40] Cintya Sekar Ayu Permatasari and Octa Nadia Mellynda, 'Temporary Measures on Bankruptcy: Alternatives to the Moratorium on Act 37/2004 in Resolving Indonesian Bankruptcy During the COVID-19 Pandemic', *Lex Scientia Law Review*, 5.2 (2021), 19–40 https://doi.org/10.15294/lesrev.v5i2.50600

Additionally, Article 4A of Law No. 1 of 2025 and its explanation states: "The state capital in SOEs, whether originating from capital participation in the establishment of the SOE or its changes, is the wealth of the SOE and the responsibility of the SOE." This provision explains that an SOE is a private legal entity, and its capital, whether derived from the state budget or non-state budget sources, is owned and managed by the SOE itself. Consequently, SOEs must be handled following the principles of good corporate governance.[41]

Concerning this research, it is noteworthy that the Constitutional Court has also considered that SOEs, as an extension of the government in carrying out public administration functions broadly, are thus responsible for managing state finances. However, this must be understood within the context of different paradigms. On the other hand, provisions for filing a bankruptcy petition against an SOE in the form of Persero are not found in Law No. 37 of 2004. The omission of provisions regarding the bankruptcy of Persero SOEs in Law No. 37 of 2004 has led to legal uncertainty. Furthermore, referring to Article 2 of Law No. 17 of 2003, which states that one element of state finances includes state wealth that is managed either independently or by another party in the form of money, securities, receivables, goods, and other rights that can be valued in monetary terms, including separated wealth in state-owned or regional-owned enterprises, this raises further implications for bankruptcy proceedings involving Persero SOEs.[42]

Ultimately, conflicting laws from various sectors will hinder the approach of differentiating the types of State-Owned Enterprises (SOEs) to determine whether their assets can be seized. If one attempts to address the debate by defining state finances as something that can be seized based on whether the wealth is contributed to the SOE or merely managed by the SOE, this concept would first be challenged by Article 2 of Law No. 17 of 2003, which states that state wealth, including assets managed by another party (in this case, wealth managed by the SOE), is considered an element of state finances. However, on a more technical level in Indonesian judicial practice, the National Working Meeting of the Supreme Court in 2010 guided judges regarding the attachment of collateral or the execution of assets belonging to SOEs or ROEs. The Court concluded that the Court could seize the assets of SOEs or ROEs. State finances contributed (capital participation) into an SOE or ROEs can be seized. In other words, state wealth that has been contributed as capital to an SOE or ROE can be seized because it is no longer considered state property but has become the property of the SOE or ROE. However, state property managed by an SOE or ROE cannot be seized or executed—this follows Article 50 of Law No. 1 of 2004.

This classification method remains unsatisfactory when applied directly, as there is a need for a more decisive approach in its implementation. The existing regulations are contradictory. However, if one still wishes to explore further, previous Constitutional Court decisions can provide insight. For example, in Decision No. 77/PUU-IX/2011, the Court considered that, following the enactment of Law No. 1 of 2004, Law No. 19 of 2003, and Law No. 40 of 2007, debts owed to state-owned banks are no longer considered state

[41] Olivier Butzbach and others, *State-Owned Enterprises as Institutional Actors in Contemporary Capitalism and Beyond* (Cambridge University Press, 2025) https://doi.org/10.1017/9781009474115

[42] Matías Herrera Dappe and others, 'State-Owned Enterprises as Countercyclical Instruments: Quasi-Experimental Evidence from the Infrastructure Sector', *World Development*, 179 (2024), 106608 https://doi.org/10.1016/j.worlddev.2024.106608

debts that should be delegated to the State Receivables Management Agency (PUPN). Instead, these debts can be settled directly by the management of each state-owned bank. The Court deemed that the state-owned bank, being a limited liability company (Persero), has its wealth separated from state wealth, and all business actions, including the management of debts, should be handled by the management of the respective bank without being transferred to PUPN.

It must be understood that the state serves as the SOE's founder and capital contributor (shareholder). As a capital contributor, the state can control the SOE through decisions made at the General Meeting of Shareholders (GMS). The state's responsibility is limited to the amount of capital invested. If the SOE incurs losses exceeding its capital, the state is not responsible for covering those losses. The Constitutional Court's decision annulled the provisions of Law No. 49 of 1960, stripping PUPN of its authority to manage state receivables and transferring this authority to the enterprise holding the debt. Every enterprise holding a debt is expected to carry out or continue the debt collection process independently.[43]

In Constitutional Court Decision No. 48/PUU-XI/2013, the Court extended the definition and scope of state finances under Law No. 17 of 2003, affirming that it does not conflict with the norms outlined in the 1945 Constitution of the Republic of Indonesia regarding state finances. Article 23 of the 1945 Constitution does not imply that managing state finances is solely limited to the state budget. Therefore, the role of SOE in managing state finances must be accompanied by a clear assertion that the management of state-owned infrastructure and assets must be accountable to the prevailing paradigm. It ensures the state can oversee and manage state finances transparently and responsibly. Consequently, other entities that utilize government-provided facilities or use state assets must still be subject to oversight, aligning with sound and accountable financial management principles.[44]

In addition to Constitutional Court Decision No. 48/PUU-XI/2013, the Court also issued another ruling in the same year related to the state capital participation in SOE and its dynamics within the state financial regime. However, this ruling focused more on the Financial Audit Board's (BPK) authority to audit the separated state assets. Through Decision No. 62/PUU-XI/2013, the Court affirmed that state assets derived from state finances, separated from the state budget to be used as capital participation in SOE, remain part of the state financial regime. In this ruling, the Court clarified that the separation of state assets, viewed from a transactional perspective, does not constitute a transfer of rights. Therefore, there is no legal consequence in which rights are transferred from the state to SOE, ROE, or any similar entities. As a result, these separated state assets remain classified as state assets. The implication is that the BPK retains the authority to audit these assets, as they remain part of state finances. Referring back to Decision No. 48/PUU-XI/2013, it is reaffirmed that SOE/ROE are considered state-owned entities, and as previously thought, they are extensions of the state. Therefore, there is no reason to argue that the BPK no longer has the authority to audit them.

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[43] R. P. (Riyanita) Putri, I. (Iman) Jauhari, and S. W. (Sri) Rahayu, 'Implikasi Putusan Mahkamah Konstitusi Nomor 77/Puu-Ix/2011 Dalam Pelaksanaan Penyelesaian Piutang Negara Pada Bank Badan Usaha Milik Negara', *Jurnal Hukum Samudra Keadilan*, 11.2 (2016), 209–19. https://jurnal.usk.ac.id/MIH/article/view/5757

[44] Aditya Pandu Wicaksono and others, 'The Effect of Ownership Structure on Water Disclosure in Indonesian Companies', *Journal of Open Innovation: Technology, Market, and Complexity*, 10.1 (2024), 100185 https://doi.org/10.1016/j.joitmc.2023.100185

In response to the paradigm of SOE as extensions of the state, which are operated based on a business paradigm (business judgment rules), distinct from government administration, which operates under a government paradigm (government judgment rules), the Constitutional Court opines that, fundamentally, state assets have transformed into SOE's capital, which is subject to the laws of business management. However, this separation of state assets does not mean they are no longer considered state assets, as the separation is not legally construed as a transfer of ownership. Therefore, these assets remain state property; thus, the state's authority over oversight remains applicable.

Nevertheless, the paradigm of state oversight must evolve. It should no longer be based on the management of state assets within the framework of government administration (government judgment rules) but instead on the business management paradigm (business judgment rules). This implies that the oversight of SOE should be carried out within the context of business judgment rules. Essentially, the doctrine of business judgment rules can provide legal protection for the management of SOE, ensuring that directors are not held personally accountable for SOE's losses.[45] However, this must be followed by proof that the loss was not due to the fault or negligence of the directors;[46] the board of directors has made business policies in accordance with good faith and the principle of prudence; and there is no conflict of personal interest when making business policies.[47] BJR in Indonesia was also adopted in Law No. 40 of 2007.[48,]

In essence, Decision No. 48/PUU-XI/2013, which was subsequently reinforced by Decision No. 62/PUU-XI/2013, consistently and explicitly stated that the assets of SOE, whether separated or not, are considered part of the state's financial resources. However, it is essential to note that the Constitutional Court also emphasized that the management paradigm for SOE assets is no longer based on "government judgment rules," but on "business judgment rules." On the other hand, Decision No. 77/PUU-IX/2011 stipulates that SOE assets, including all its receivables, are considered separate from state assets.

Therefore, referring to the legal reasoning in the Constitutional Court's decisions, an inconsistency arises in the positioning of SOE assets within the framework of state financial law. This differing perspective creates uncertainty for the directors of SOEs with the state capital, as they face the risk of economic losses to the state and the threat of criminal liability for corruption. Such a concept contradicts the principle of limited liability.[49] Consequently, it is clear that the conflicting regulations regarding the execution of SOE assets, as outlined in various sectoral laws and Constitutional Court decisions, need to be resolved to provide legal certainty for both state finances and debtors.

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[45] Narendra Jatna and Hasbullah Hasbullah, 'Penerapan Business Judgment Rule (BJR) Dalam Pengawasan Pengelolaan Keuangan Negara', *Co-Value Jurnal Ekonomi Koperasi Dan Kewirausahaan*, 15.3 (2024) https://doi.org/10.59188/covalue.v15i3.4661

[46] Juan Kasma and Christian Andersen, 'Business Judgment Rule and Corporate Governance as the Strategic Imperative of Indonesian State-Owned Enterprise', *European Journal of Law and Political Science*, 3.4 (2024), 51–58 https://doi.org/10.24018/ejpolitics.2024.3.4.151

[47] Aniek Tyaswati, Wiji Lestari, and Totok Tumangkar, 'The Business Judgement Rules (BJR) Doctrine As Legal Protection Against Board of Directors In BUMN', *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 22.2 (2023), 899–909 https://doi.org/10.31941/PJ.V22I2.4666

[48] Yafet Yosafet and Wilben Rissy, 'Business Judgement Rule: Ketentuan Dan Pelaksanaannya Oleh Pengadilan Di Inggris, Kanada Dan Indonesia', *OLD WEBSITE OF JURNAL MIMBAR HUKUM*, 32.2 (2020), 275–93 https://doi.org/10.22146/JMH.56117

[49] Amalia Ghinarahmatina, 'Akibat Hukum Pemisahan Kekayaan Negara Melalui Penyertaan Modal', *Lex Journal : Kajian Hukum Dan Keadilan*, 2.2 (2018) https://doi.org/10.25139/LEX.V2I2.1414

The Regulation of Execution of State-Owned Enterprise Assets in Bankruptcy in the United States

The main difference between how SOE assets are handled in bankruptcy in Indonesia and the US is that the US uses market mechanisms and federal bankruptcy law, and the government steps in if bankruptcy affects the whole system.[50] The United States of America has two branches of government: federal and state. SOE categories in the United States of America include Government-Owned Enterprises (GOEs) and Government-Sponsored Enterprises (GSEs).[51] The types of SOEs in the federal government are GOEs and GSEs. Meanwhile, the types of SOEs in state governments are municipal corporations. The U.S. Bankruptcy Code regulates the SOE asset execution policy in the United States of America.[52] Chapter 7 on Liquidation explains that entities that qualify as debtors can file for bankruptcy. The requirement refers to the classification of the SOE's capital status, whether it is entirely owned by the state or divided into shares of other entities. Liquidation can occur if the capital includes both government and private shares. Chapter 9 regulates the bankruptcy of SOEs in the state (municipal corporations), and companies can file for bankruptcy if permitted by law in their respective states.

However, in practice, the US government always seeks corporate restructuring, as in Chapter 11, by conducting a bailout before the company goes bankrupt. The primary purpose of establishing SOE is to protect the vital public sector. This means that SOE in the United States of America can be bankrupt depending on the company's legal entity structure and capital ownership, whether GOEs, GSEs, or municipal corporations. GOEs are companies whose capital is wholly owned by the federal government, so their operations are not based on profit alone but rather on protecting vital assets so that there is no market monopoly. For example, the Tennessee Valley Authority is a federally owned electricity provider.[53]

GSEs are private companies that receive financial and regulatory support from the government, but the state does not fully own the capital because its purpose is to support the progress of specific economic sectors. For example, companies that provide housing, education, and agricultural assets.[54] GSEs are more flexible because the shareholders are multi-party, although the federal government still intervenes.[55] This means that GSEs can absolutely be bankrupted and their assets executed because state finances are transformed into corporate finances. This means, that GSEs can absolutely be bankrupted and their assets executed because state finance is transformed into corporate finance. The same is true for municipal corporations in states that aim to manage state-level public services. Because their capital consists of state shares and other entities, municipal corporations are

[50] Andre Harrison and Robert R. Reed, 'Gross Capital Inflows, the U.S. Economy, and the Response of the Federal Reserve', *Journal of International Money and Finance*, 139 (2023), 102943 https://doi.org/10.1016/j.jimonfin.2023.102943

[51] Jun Wang and Hao Song, 'Sino-US Trade War, the Principle of Competitive Neutrality and the Reform of China's State-Owned Enterprises', *Transnational Corporations Review*, 11.4 (2019), 298–309 https://doi.org/10.1080/19186444.2019.1694809

[52] Tahsin Imtiazul Huq and others, 'The Takeover Tango: Unraveling the Impact of State-Owned Enterprise Acquisitions on American Competitors', *Research in International Business and Finance*, 68 (2024), 102167 https://doi.org/10.1016/j.ribaf.2023.102167

[53] Fangsu Dong, Huaichen Dong, and Lei Zhang, 'Accountability and the Quality of Information Disclosure of State-Owned Enterprises', *Finance Research Letters*, 71 (2025), 106462 https://doi.org/10.1016/j.frl.2024.106462

[54] Quang Neo Bui and Kalle Lyytinen, 'Aligning Adoption Messages with Audiences' Priorities: A Mixed-Methods Study of the Diffusion of Enterprise Architecture among the US State Governments', *Information and Organization*, 32.4 (2022), 100423 https://doi.org/10.1016/j.infoandorg.2022.100423

[55] M. Haffner and H. van der Heijden, 'Government Sponsored Enterprises in the United States', in *International Encyclopedia of Housing and Home* (Elsevier, 2012), pp. 311–15 https://doi.org/10.1016/B978-0-08-047163-1.00414-8

susceptible to bankruptcy, transforming assets funded by state finance into corporate finance.[56]

In the United States of America, several laws regulate the finances, funding, and capital of government corporations. These include the Government Corporation Control Act (GCCA), the Federal Credit Reform Act (FCRA), and U.S. Code Title 31. The GCCA separates the financial management, auditing, and capital of federal state-owned corporations from the national budget.[57] In the context of separated state assets, the GCCA stipulates that the federal SOE has its assets and capital separate from the central government's finances. Still, the SOE must be subject to the state's financial audit and control mechanisms.

The Federal Credit Reform Act (FCRA) is a law that regulates how the federal government manages, records, and reports loans and credits made to all government entities, including state-owned enterprises. The FCRA was created to ensure that the government budget accurately accounts for federal loans and credits. The FCRA explicitly regulates SOE capital separated from the federal budget, namely capital provided to state-owned enterprises, which is counted as a separate state asset.[58] For example, the GSEs' asset budgets would be designated as segregated capital, but the government could still take over the companies through a bailout or conservatorship in a crisis.

U.S. Code Title 31 on Money and Finance regulates state finances, including how the government manages state assets separated into state-owned enterprises. Separated state assets refer to assets used to run a business, but the company's operations remain under government supervision. Congress's approval determines the formation of an SOE, providing capital from government assets for independent management. If the state owns the entire capital, the possibility of bankruptcy is minimal, but if the capital is divided into other shares, the SOE can be declared bankrupt.[59] Thus, if an SOE goes bankrupt, its assets can still be executed unless there is special protection from the government. It is concluded that the three laws related to state finances have been aligned and complementary in regulating the distribution of state capital in an SOE. The GCCA stipulates that SOE capital is separated from the federal budget but remains audited by the government. The FCRA clarifies that if an SOE receives a loan or guarantee from the government, the funds must be reported as a separate state expenditure. U.S. Code Title 31 ensures that even though SOE capital is separated, the company's finances remain transparent and subject to audit and the possibility of asset execution if the company goes bankrupt.

Thus, it can be seen that, *firstly*, the regulation of the execution of SOE assets in the form of a company in the United States of America can indeed be declared bankrupt and its assets executed.[60] The provisions in the U.S. Bankruptcy Code and the derivative laws

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[56] Joshua Maine, Timur Uman, and Emilia Florin-Samuelsson, 'Actors Constructing Accountability in Hybrid Organisations: The Case of a Swedish Municipal Corporation', *The British Accounting Review*, 56.5 (2024), 101207 https://doi.org/10.1016/j.bar.2023.101207

[57] Timothy M. Komarek, Kyle Butts, and Gary A. Wagner, 'Government Contracting, Labor Intensity, and the Local Effects of Fiscal Consolidation: Evidence from the Budget Control Act of 2011', *Journal of Urban Economics*, 132 (2022), 103506 https://doi.org/10.1016/j.jue.2022.103506

[58] Ruxandra Pavelchievici, 'The Federal Reserve's Supervisory and Regulatory Function: Transformations and Challenges since the Great Recession', in *Reference Module in Social Sciences* (Elsevier, 2024) https://doi.org/10.1016/B978-0-44-313776-1.00191-4

[59] Englander and others.

[60] Alexander Radygin, Yury Simachev, and Revold Entov, 'The State-Owned Company: "State Failure" or "Market Failure"?1', *Russian Journal of Economics*, 1.1 (2015), 55–80 https://doi.org/10.1016/j.ruje.2015.05.001

on state finances also align with the requirements for SOE to be declared bankrupt. The U.S. Bankruptcy Code regulates the requirements for SOE that can be declared bankrupt if they have the status of an independent commercial company that is not considered part of the government, do not receive explicit guarantees from the government for their debts, and meet the requirements as debtors under the law. However, if we look at the practice, the US government will not simply allow an SOE to go bankrupt. The government tends to bail out or intervene in other ways to save the SOE that manages the vital assets.[61] So, asset execution on SOE that are entirely owned by the government is very unlikely to occur because there is no explicit guarantee from the federal government.

The United States of America SOE can be declared bankrupt depending on its legal status and capital ownership, whether it is a GOE, GSE, or municipal corporation. The U.S. Bankruptcy Code does not automatically apply to GOEs because they are regulated differently by special laws, so if it is in financial trouble, the options are restructuring, privatization, or bailout.[62] The federal government wholly owns GOEs and grants them near immunity from bankruptcy. Examples include the Postal Reorganization Act of 1970, the Rail Passenger Service Act of 1970, and the Tennessee Valley Authority Act of 1933. A federal regulator directly supervises the GOE market mechanism, the Federal Deposit Insurance Corporation (FDIC).[63] Meanwhile, technically, the government can declare GSEs bankrupt. GSEs are private entities receiving government support but not directly part of the government. The government usually bails out or nationalizes GSEs in financial trouble to prevent systemic impacts. However, if the government fails to rescue GSEs from their debt burden, they will face bankruptcy just like regular private companies.[64]

The United States of America government also enforces Debtor in Possession (DIP), similar to PKPU in Indonesia.[65] DIP is regulated in Chapter 11 of the U.S. Bankruptcy Code. DIP is more effective when compared to PKPU because a) the debtor continues to manage his own company so that management is more flexible; b) there is an automatic stay process (all lawsuits, asset seizures, and debt collection are temporarily suspended) immediately after the application; c) it is easier to get access to new funding (DIP financing) in the form of priority loans; and d) the DIP period is more flexible so that the company has time for the recovery process based on the agreement.[66] Based on the effectiveness of the company's rescue operations, DIP outperforms PKPU. PKPU is stricter and more rigid. If it fails, the SOE immediately enters the bankruptcy and liquidation determination, while the regulation in the United States of America chooses to provide an alternative to save the company. However, there are three asset execution mechanisms available if the SOE declares bankruptcy: administration (asset management),

[61] Luise Noring, 'Public Asset Corporation: A New Vehicle for Urban Regeneration and Infrastructure Finance', *Cities*, 88 (2019), 125–35 https://doi.org/10.1016/j.cities.2019.01.002

[62] Georges Tsafack, Yifei Li, and Natalia Beliaeva, 'Too-Big-to-Fail: The Value of Government Guarantee', *Pacific-Basin Finance Journal*, 68 (2021), 101313 https://doi.org/10.1016/j.pacfin.2020.101313

[63] Ryan LaFond and Haifeng You, 'The Federal Deposit Insurance Corporation Improvement Act, Bank Internal Controls and Financial Reporting Quality', *Journal of Accounting and Economics*, 49.1–2 (2010), 75–83 https://doi.org/10.1016/j.jacceco.2009.09.007

[64] Cristiano Antonelli, Federico Barbiellini Amidei, and Claudio Fassio, 'The Mechanisms of Knowledge Governance: State Owned Enterprises and Italian Economic Growth, 1950–1994', *Structural Change and Economic Dynamics*, 31 (2014), 43–63 https://doi.org/10.1016/j.strueco.2014.08.004

[65] Matthew J. Baker, Metin Cosgel, and Thomas J. Miceli, 'Debtors' Prisons in America: An Economic Analysis', *Journal of Economic Behavior & Organization*, 84.1 (2012), 216–28 https://doi.org/10.1016/j.jebo.2012.07.010

[66] Lochner Marais and Jan Cloete, 'Housing Policy and Private Sector Housing Finance: Policy Intent and Market Directions in South Africa', *Habitat International*, 61 (2017), 22–30 https://doi.org/10.1016/j.habitatint.2017.01.004

receivership (asset seizure), and liquidation (asset settlement). Another difference with Indonesia is that because the country consists of states, there is a unique bankruptcy mechanism for municipal corporations.

Administration is regulated under Chapter 9 for municipal corporations and Chapter 11 for GSEs. Chapter 9 deals with municipal bankruptcy or state government SOEs, which are regulated under Sections 901-946. These sections share similarities in safeguarding public assets from enforcement. The bankruptcy of state government entities, including cities, counties, districts, and local government agencies, provides a mechanism for debt restructuring without the need to sell all assets outright. This provision does not apply to the federal government because it is further regulated by the laws of each state. It also regulates automatic stays, that is, all claims and debt collection are temporarily stopped if the debtor files an administrative application to the court. In the case of municipal corporations, the appointment of an administrator is not regulated because the government continues to run its public assets. For example, the government restructured $18 billion in debt during the bankruptcy of a water and transportation company in the City of Detroit. Articles 1101-1174 regulate GSEs as SOEs operating commercially, using Chapter 11. Administrative steps are carried out by submitting DIP financing to obtain new asset loans. Chapter 11 emphasizes the reorganization or restructuring of the company. This article stipulates that SOEs can restructure debt without selling their assets directly. Corporate SOEs tend to use this arrangement, although most have special protections. Unlike Chapter 7 (total liquidation), which focuses on asset sales, this provision allows companies to restructure debt while continuing to operate their business.[67]

Receivership or asset seizure that allows the receiver to seize or sell the assets of a company that fails to pay its debts. The acquisition of assets is done through the Federal Receivership. A court from the FDIC institution appoints the receiver. The sale or transfer of assets can be made in part or whole according to the amount of state capital participation. The United States of America system is more flexible than Indonesia because it allows SOEs to continue operating through Chapter 9 or Chapter 11. In contrast, in Indonesia, the central government will directly take over most SOEs.[68]

Liquidation or settlement of SOE assets is regulated in Chapter 7, Articles 701-784. SOEs in the United States of America are rarely liquidated; usually, they get a bailout or restructuring outside the court. In the liquidation process, the bankruptcy administrator sells the debtor's assets to pay debts to creditors. The company dissolved after the assets were sold because there was no restructuring plan, as in Chapter 11. The court appoints the administrator to manage the bankrupt company's assets, including the liquidation process and the distribution of funds to creditors, as explained in Articles 701-704.[69] The court authorizes the administrator to temporarily maintain business operations prior to the sale of the assets. The administrator will distribute and dispose of the assets to their legal owners prior to the final liquidation. Priority of debt payment in bankruptcy, including debts to the government or the public.

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[67] Karsten Müller, 'Busy Bankruptcy Courts and the Cost of Credit', *Journal of Financial Economics*, 143.2 (2022), 824–45 https://doi.org/10.1016/j.jfineco.2021.08.010

[68] Donald M. DePamphilis, 'Alternative Exit and Restructuring Strategies', in *Mergers, Acquisitions, and Other Restructuring Activities* (Elsevier, 2022), pp. 485–505 https://doi.org/10.1016/B978-0-12-819782-0.00018-6

[69] Samuel Antill and Steven R. Grenadier, 'Optimal Capital Structure and Bankruptcy Choice: Dynamic Bargaining versus Liquidation', *Journal of Financial Economics*, 133.1 (2019), 198–224 https://doi.org/10.1016/j.jfineco.2018.05.012

Second, the status of SOE assets in bankruptcy in the United States of America, whether they become state or corporate property, depends on the legal entity structure. GOEs are companies whose capital is wholly owned by the government, so their assets are state property and cannot be executed in bankruptcy.[70] For example, the Tennessee Valley Authority (TVA) is a federally owned electric utility specifically regulated under the Tennessee Valley Authority Act of 1933 and not subject to the U.S. Bankruptcy Code. As a government-controlled public agency, TVA is immune to bankruptcy declarations. If it were to experience a financial crisis, Congress would restructure it directly, not through bankruptcy court. The United States of America government establishes its funding with the United States of America Postal Service (USPS) from the state treasury and all assets owned by the federal government, although the business is operated independently. When financial problems occur, the government will take full responsibility by bailing out or restructuring.[71]

GSEs are companies that receive government support but are not part of the government. GSEs capital can be in the form of government equity, bonds, and private investment (private equity and debt) so that government assets are separated from the company.[72] However, if a GSE fails, the government can take control (conservatorship) rather than allowing complete bankruptcy to occur. This means that the GSEs' assets remain the property of the company, separate from the state's finances. In a crisis, the government can nationalize or regulate them, and they will still fail and go bankrupt. On the other hand, Chapter 9 provides the ability to bankrupt municipal corporations and execute their assets.[73] The sources of capital are government equity participation and public-private partnerships. Municipal corporations can borrow, collect taxes, and own and manage their assets. Exercisable assets include non-essential property, tax revenues, and investments, but essential public services remain protected. The difference with federal SOEs is that municipal corporations are subject to state law.

Third, SOE assets in bankruptcy in the United States of America can be executed depending on the company's legal status, whether it is GOEs, GSEs, or municipal corporations. GOE assets cannot be executed, and if there is a restructuring, it is regulated by special laws enacted by Congress. This is because GOE capital is 100% owned by the government. The government will conduct a bailout and restructuring if there is a financial downturn.[74] The United States of America Government is very firm in distinguishing between SOE arrangements funded entirely by state finances and public-private partnership companies.[75] The capital or shares of GSEs and municipal corporations are privately owned so they can be sold to cover losses if they default.

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[70] Josef C. Brada, 'Corporate Governance Following Mass Privatization', *Journal of Comparative Economics*, 44.4 (2016), 1132–44 https://doi.org/10.1016/j.jce.2016.10.003

[71] Rongxing Guo, 'Economic Systems in Transition', in *Understanding the Chinese Economies* (Elsevier, 2013), pp. 85–105 https://doi.org/10.1016/B978-0-12-397826-4.00006-8

[72] Christophe Spaenjers and Eva Steiner, 'Specialization and Performance in Private Equity: Evidence from the Hotel Industry', *Journal of Financial Economics*, 162 (2024), 103930 https://doi.org/10.1016/j.jfineco.2024.103930

[73] Laura Ryser and others, 'Municipal Entrepreneurialism: Can It Help to Mobilize Resource-dependent Small Communities Away from Path Dependency?', *Regional Science Policy & Practice*, 15.7 (2023), 1477–93 https://doi.org/10.1111/rsp3.12649

[74] Donald M. DePamphilis, 'Alternative Exit and Restructuring Strategies: Bankruptcy, Reorganization, and Liquidation', in *Mergers, Acquisitions, and Other Restructuring Activities* (Elsevier, 2019), pp. 471–91 https://doi.org/10.1016/B978-0-12-815075-7.00017-6

[75] Shinichi Takata and Kazuyoshi Hidaka, 'New Public-Private Partnership Based on the Interactive Collaboration in the Space Sector', *Acta Astronautica*, 231 (2025), 25–36 https://doi.org/10.1016/j.actaastro.2025.02.009

In Chapter 11, the SOE asset execution mechanism operates as follows: a) The debtor files Chapter 11 to obtain protection from creditors and avoid direct asset seizure; b) Preparation of a reorganization plan involves creating a plan to pay creditors, sell certain assets if necessary, or make operational changes. If the company remains profitable after restructuring, it will continue to operate;[76] c) Creditors and the court approve the plan; d) The company emerges from bankruptcy with a healthier financial structure if the plan is successfully implemented. If municipal corporations experience financial difficulties, the state government will use Chapter 9 to restructure debt without having to sell the assets of the SOE.

The order of distribution of proceeds from state-owned enterprise bankruptcy in the United States of America is as follows: a) Administration and liquidation costs; b) Secured creditors; c) Unsecured creditors; d) Employees and pension funds; e) Government and taxes owed; e) Investor.[77] Examples of exercisable assets include mortgage portfolios and securities, bonds and financial instruments, operating income and financial reserves, physical assets (offices, buildings, equipment, machinery), stocks, non-essential property, tax revenues, municipal reserve funds, and privatized public services. Meanwhile, non-exercisable assets include direct government guarantees, except in special bailouts; funds held in trust for mortgage securities; financial support from the government; and employee funds.[78]

In the United States of America, the rules for SOE asset execution make it clear what kind of SOE it is (strategic or commercial). This is because the legality of the steps and process of asset execution in the event of bankruptcy is affected. One special regulation to protect strategic assets is not subjecting strategic SOEs to the General Bankruptcy Law and further regulating them in a special institution law. The goal is to ensure the continuity of essential public services for the community, prevent the liquidation of strategic assets, protect the interests of workers, and maintain the sovereignty and stability of the country's economy. However, if a commercial SOE with cumulative equity participation from other entities experiences a financial downturn, the government will hand over the settlement to the company. Therefore, independent execution is possible if a company declares bankruptcy. However, the federal government does not immediately let commercial SOEs go bankrupt by continuing to make other efforts, such as restructuring.

Alignment of State Financial Regulations on the Execution of State-Owned Enterprise Assets in Bankruptcy

State finances in Indonesia are regulated by Law Number 17 of 2003 (State Finance Law), which defines state finances as the state's rights and obligations that can be valued in money, as well as everything in the form of money or goods belonging to the state related to the implementation of these rights and

[76] Donald M. DePamphilis, 'Alternative Exit and Restructuring Strategies', in *Mergers, Acquisitions, and Other Restructuring Activities* (Elsevier, 2018), pp. 623–51 https://doi.org/10.1016/B978-0-12-801609-1.00017-8
[77] Pascal François and Hassan Naqvi, 'Secured and Unsecured Debt in Creditor-Friendly Bankruptcy', *Journal of Corporate Finance*, 80 (2023), 102413 https://doi.org/10.1016/j.jcorpfin.2023.102413
[78] Stjepan Srhoj and others, 'The Impact of Delay: Evidence from Formal out-of-Court Restructuring', *Journal of Corporate Finance*, 78 (2023), 102319 https://doi.org/10.1016/j.jcorpfin.2022.102319

obligations.[79] That means that state finances focus on two main aspects, namely state rights and obligations that can be valued in money, such as state rights in the form of income (taxes, customs duties, including dividends from SOEs) and state obligations in the form of debt expenditures, such as employee salary payments, subsidies, and infrastructure investment; and everything that can belong to the state related to the implementation of rights and obligations, such as money, physical and non-physical assets used to complete the rights and obligations of the state towards public services.

The intersection between state finances and capital participation in the form of state assets, including SOE assets, is essential to clarify its harmony because in business, the problem of debts and receivables is crucial.[80] Company capital generally comes from bank loans, capital investment, or bond issuance.[81] If a company cannot complete its obligations to pay loans or investor dividends, it is at risk of bankruptcy, including SOE companies. Bankruptcy in Indonesia is regulated in Law Number 37 of 2004 (Bankruptcy Law), which also regulates SOE bankruptcy. SOEs occupy a strategic position as vital companies for the greatest prosperity of the people. Still, SOEs, especially Persero, may experience the risk of losses that have the potential to bankrupt them.[82]

SOE regulations in Indonesia are contained in Law Number 19 of 2003 *jo.* Law Number 11 of 2020 *jo.* Law Number 6 of 2023 *jo.* Law Number 1 of 2025. The state wholly or primarily owns the capital of SOEs through direct participation, which originates from separated state assets. SOEs in Indonesia are classified into two: namely, Persero in the form of limited liability companies with capital divided into shares, all or at least 51% of whose shares are owned by the state, and public companies are SOEs whose capital is entirely owned by the state and not divided into shares, for the public benefit in the form of providing high-quality goods and services and at the same time pursuing profits based on the principles of company management.[83]

State assets separated in state finances can be analyzed using the theory of Legal Transformation explained by Arifin Soeria Atmadja. In the context of SOE, state capital participation reflects the allocation function, where the government invests capital to develop strategic sectors that cannot entirely rely on the private sector. The separation of state assets, as outlined in government regulations on capital participation, makes the state a public legal entity, and legal actions against it are still in the public sphere. However, when the state separates the assets into shares that are an inseparable part of a Persero, then the legal actions taken by the state will enter the private sphere. The legal consequences of separating state assets in SOE Persero cause a change in legal status called "legal transformation," namely from state finances to company finances. With that,

[79] Tiyas Asri Putri and Tundjung Herning Sitabuana, 'Pengawasan Pengelolaan Keuangan Negara Terhadap Badan Usaha Milik Negara', *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan*, 1.7 (2022), 1003–18 https://doi.org/10.54443/sibatik.v1i7.118

[80] Kartini Laras Makmur, 'Why Only Scrutinise Formal Finance? Money Laundering and Informal Remittance Regulations in Indonesia', *Journal of Economic Criminology*, 6 (2024), 100111 https://doi.org/10.1016/j.jeconc.2024.100111

[81] Dikky Indrawan and others, 'Food Banks as a Social Innovation Initiative: A Comparison of Social Enterprise Models between Indonesia and Malaysia', *Journal of Open Innovation: Technology, Market, and Complexity*, 11.1 (2025), 100464 https://doi.org/10.1016/j.joitmc.2024.100464

[82] Maslani and others, 'Strengthening the Competitiveness of State-Owned Enterprises', *Journal of Open Innovation: Technology, Market, and Complexity*, 10.1 (2024), 100199 https://doi.org/10.1016/j.joitmc.2023.100199

[83] Indra Ardhanayudha Aditya and others, 'Understanding Service Quality Concerns from Public Discourse in Indonesia State Electric Company', *Heliyon*, 9.8 (2023), e18768 https://doi.org/10.1016/j.heliyon.2023.e18768

this theory can convince that state assets that have been separated into SOE assets, then the burden and responsibility of the state as a public legal entity in SOEs are cut off.[84]

Law Number 1 of 2025 (Law SOE) explains that SOE capital consists of the state revenue and expenditure budget and the non-state revenue and expenditure budget. SOE capital originating from the state revenue and expenditure budget is cash, state property, state receivables, shares, and other state assets. Meanwhile, SOE capital originating from non-state revenue and expenditure budgets is in the form of asset revaluation profits, reserve capitalization, share premiums, and other legitimate sources. SOE capital originating from non-state revenue and expenditure budgets also includes separated state assets, namely state assets originating from the state revenue and expenditure budget to be used as state capital participation in Persero and public companies.[85] That means, if viewed from the business perspective of a bankrupt SOE Persero, the separated state assets will be transformed into company assets that can be fully seized or executed to pay debt obligations to creditors.[86]

However, in practice, judges making bankruptcy decisions often encounter doubts due to different understandings regarding the position of SOE about state finances. The State Finance Law states that state assets that are separated and then managed by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state/regional companies, are still part of state finances.[87] This means that SOE capital is categorized as part of public finance. Based on the law, the decision to declare SOE bankrupt by a judge that results in the seizure of company assets will be contrary to the State Finance Law. In practice, the judge in a commercial court can annul his decision on bankruptcy against an SOE at the cassation level, or if the bankruptcy application is granted at the cassation level, it will be annulled at the judicial review level.[88]

SOE Persero capital from state assets that are still included in state finances, which creates uncertainty about SOE's status as an independent company. In addition, SOE Persero is a company, not a state institution. If this happens, it cannot confiscate or execute assets detrimental to creditors, as stated in Law Number 1 of 2004 (State Treasury Law). The state treasury is the management and accountability of state finances, including investments and assets that are separated and stipulated in the state revenue and expenditure budget. This regulation provides new arrangements for managing state finances that have implications for managing SOE assets, including bankruptcy. The scope of state finances includes assets separated in SOEs that remain part of state finances.[89]

The confusion of substance related to state assets is reflected in the State Finance Law and the State Treasury Law, affecting the bankruptcy application of Persero. Following the concept of the State Finance Law, the SOE's limited assets can be considered state property, which, according to the provisions of the State Treasury Law, cannot be

[84] Windu Natalia and Darmawan Hutag.
[85] Eva Hotnaidah Saragih, 'Individual Attributes of Change Readiness: A Case Study at Indonesia State-Owned Railway Company', *Procedia - Social and Behavioral Sciences*, 172 (2015), 34–41 https://doi.org/10.1016/j.sbspro.2015.01.332
[86] Rodrigo Wagner, 'Can the Market Value State-Owned Enterprises without Privatizing Them? An Application to Natural Resources Companies', *Resources Policy*, 59 (2018), 282–90 https://doi.org/10.1016/j.resourpol.2018.07.015
[87] Ward Berenschot and others, 'Corporate Contentious Politics: Palm Oil Companies and Land Conflicts in Indonesia', *Political Geography*, 114 (2024), 103166 https://doi.org/10.1016/j.polgeo.2024.103166
[88] Srhoj and others.
[89] Kim and Sumner.

executed. This is because there is a rule prohibiting the confiscation of SOE assets.[90] Therefore, both laws are contrary to the concept of filing for bankruptcy, namely that general execution/seizure can be carried out on the assets of debtors declared bankrupt as regulated in the Bankruptcy Law.

The Constitutional Court's decision 48/PUU-XI/2013 made things even more confusing. It basically turned down the applicant's whole application based on Article 2, letter g, the phrase "or by another party," and "including assets separated in state/regional companies" because it was thought to expand what "state finances" meant. This decision is essential for understanding the state's financial status in SOE capital. This decision confirms that the capital of an SOE Persero originating from state capital participation remains state assets when first included. Still, after becoming SOE capital, the assets change into company assets subject to corporate law and no longer state finances directly.[91] Meanwhile, Constitutional Court Decision No. 62/PUU-XI/2013 confirms that state assets managed by SOE remain state assets, even though they are managed in a corporate entity. This ruling differs from Decision No. 48/PUU-XI/2013, which emphasizes the separation of assets after becoming SOE capital. Thus, there is dualism in the financial status of SOE, depending on the legal perspective used, whether from state finance or corporate law.[92] The dualism of SOE financial status, where the capital included in SOE is considered state finance (MK No. 62/PUU-XI/2013), but after becoming company capital, it is considered corporate assets (MK No. 48/PUU-XI/2013), creates legal uncertainty in the management and supervision of SOEs. Thus, a policy of harmonization is needed between the State Finance Law, the State Treasury Law, the SOE Law, the Bankruptcy Law, and similar laws and their derivatives, concretely as follows:

First is the alignment of the State Finance Law with the SOE Law. In particular, Article 2, letter g, of the State Finance Law explains that separated state assets are still part of state finances, while Article 1, paragraph (10), of the SOE Law states that separated state assets are state assets originating from the state revenue and expenditure budget to be used as state capital participation in Persero and public companies and other Persero. The State Finance Law states that state/regional assets are managed independently or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated by state/regional companies.[93] This means, that the law classifies SOE capital, including Persero, as part of state finances and can be interpreted as public finances, not company finances. This regulation is appropriate for public companies because the state's financial condition is 100% capital participation owned by the government, so the capital status is still state finances, including state assets that are separated because the participation results will return to the state treasury.

However, it is contrary to the meaning of state assets separated in the SOE Law, especially Persero, that limits are determined until the status of this state finance changes to company finance. This is due to the condition of capital participation, which is not

[90] Wicaksono and others.

[91] Oly Viana Agustine, 'Keberlakuan Yurisprudensi Pada Kewenangan Pengujian Undang-Undang Dalam Putusan Mahkamah Konstitusi', *Jurnal Konstitusi*, 15.3 (2018), 642 https://doi.org/10.31078/jk1539

[92] Merdiansa Hamsa Paputungan, 'Diskursus Kewenangan Audit BPK Terhadap Keuangan Bumn (Perseroan) Pasca Putusan Mk Nomor 62/PUU-XI/2013', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 29.3 (2018), 430 https://doi.org/10.22146/jmh.26884

[93] Akbar Baitullah and Indah Cahyani, 'Pengaturan Pengelolaan Dan Pengawasan Keuangan Negara Terhadap Badan Usaha Milik Negara (BUMN)', *INICIO LEGIS*, 2.2 (2021), 153–63 https://doi.org/10.21107/il.v2i2.13049

100% of the separated state assets.[94] For example, suppose the percentage of state capital participation is only more than 51%. In that case, it is concluded that 49% of the capital is not state finances but the rights of the parties who make capital participation in shares.[95] So, the state is not allowed to claim full ownership of SOE, and if bankruptcy occurs, the state loses its immunity and acts as an ordinary shareholder. Another real piece of evidence is that when SOE distributes dividends, namely, the SOE Persero will receive dividends according to the percentage of share ownership, as well as other investors according to the percentage that has been set in the agreement. The State Finance Law, which categorizes SOE capital as state finances, also contradicts the Limited Liability Company Law, which states that limited liability company finances are those owned by the company.

If the above two articles aren't brought together, it could lead to legal uncertainty about the SOE capital status, which could affect how assets are used in the event of bankruptcy, as well as uncertainty about SOE as a separate company. Therefore, it is necessary to a) harmonize the definition of separated state assets in Article 2, letter g, of the State Finance Law by clarifying that "state assets separated in SOE Persero change their status to become company assets"; b) another option is to say in derivative regulations that capital flowing into SOE Persero from the state budget is no longer considered state finance after capital participation; c) add a clause to the SOE Law that says "capital that has become participation in SOE Persero is a company asset and is subject to corporate law, not state financial law."

A suggestion for aligning the substance in Indonesia could be to look at the parts of the U.S. Bankruptcy Code and related laws on state finances in the U.S. that have been changed to match the requirements for SOEs to be declared bankrupt. The United States of America State Finance Law determines that the separated state assets will be transformed into company assets that can be fully seized or executed to pay debt obligations for creditors.[96] Meanwhile, the U.S. Bankruptcy Code regulates the requirements for SOEs to be declared bankrupt if they are independent commercial companies not considered part of the government, do not receive explicit government guarantees for their debts, and meet the requirements as debtors under the law.[97] However, the US government will not simply allow an SOE to go bankrupt if we look at the practice.[98] The government tends to bail out or intervene in other ways to save the SOE that manages the vital assets.[99] So, asset execution on SOEs that are entirely owned by the government is very unlikely to occur because there is no explicit guarantee from the federal government.

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[94] Roberto Tarigan, Firdaus Firdaus, and Hayatul Ismi, 'Tinjauan Yuridis Terhadap Perubahan Status Badan Hukum BUMN Pada PT Perkebunan Nusantara V Pasca Terbentuknya Holding Perkebunan Nusantara Dikaitkan Dengan Kekayaan Negara Dalam Perseroan', *Jurnal Ilmu Hukum*, 12.1 (2023), 1 https://doi.org/10.30652/jih.v12i1.8318

[95] Masyitoh Basabih, Eko Prasojo, and Amy Yayuk Sri Rahayu, 'Emerson's Framework on the Output of Public-Private Partnership on Hemodialysis Services in Indonesia Regional Hospitals', *Global Transitions*, 7 (2025), 56–68 https://doi.org/10.1016/j.glt.2025.01.001

[96] Steve Mackey, 'The Original Bailout of US Corporations: The Public Relations Bailout', *Public Relations Review*, 36.1 (2010), 1–6 https://doi.org/10.1016/j.pubrev.2009.10.008

[97] Jieqiong Gao and Chinmoy Ghosh, 'The Longer-Term Impact of TARP on Banks' Default Risk', *The Quarterly Review of Economics and Finance*, 95 (2024), 346–57 https://doi.org/10.1016/j.qref.2023.10.001

[98] Erasmo Giambona, Florencio Lopez-de-Silanes, and Rafael Matta, 'Stiffing the Creditor: Asset Verifiability and Bankruptcy', *Journal of Financial Intermediation*, 52 (2022), 100962 https://doi.org/10.1016/j.jfi.2022.100962

[99] Noring.

Second, the alignment of the State Finance Law and the Bankruptcy Law, namely that there is a doubt for judges in deciding bankruptcy due to the difference in the status of SOE about state finances. In particular, Article 2, letter g, of the State Finance Law states that one of the elements of state finances is state assets managed by the state itself or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state/regional companies, with Article 2, paragraph (5), of the Bankruptcy Law stating that in the case of the debtor being an insurance company, reinsurance company, pension fund, or SOE engaged in the public interest, a petition for a declaration of bankruptcy can only be submitted by the Minister of Finance. The Bankruptcy Law does not clearly define SOEs engaged in the public interest, thus creating uncertainty as to whether Persero such as PLN and Pertamina are also included in this category.[100] PLN and Pertamina provide vital public services but are legally Persero, which should be subject to ordinary business laws and not require permission from the Minister of Finance to be declared bankrupt.[101] The potential for discrimination based on equality before the law often occurs in SOE- Persero compared to public companies, which are more clearly considered part of the public interest.[102]

The primary alignment with Article 2, letter g, of the State Finance Law emphasizes that "state assets that have become SOE capital are no longer part of state finances and can be subject to bankruptcy mechanisms." Align Article 2, paragraph (5) of the Bankruptcy Law by providing a more precise definition of SOEs that operate in the public interest so that there are no multiple interpretations if bankruptcy occurs. Add a clause: what is meant by SOE engaged in the field of public interest is SOE in the form of Perum and/or SOE that has been determined by the government as an essential public service provider. With this alignment, judges will have legal certainty in deciding the bankruptcy of SOE Persero and avoid doubts due to overlapping regulations between the State Finance Law and the Bankruptcy Law.

Meanwhile, the SOE bankruptcy regulations in the United States of America clearly distinguish between strategic and commercial SOE classifications. Special laws specifically regulate strategic SOEs.[103] One special arrangement the United States of America Government makes to protect strategic assets is not subjecting strategic SOEs to the General Bankruptcy Law. This arrangement ensures the continuity of essential public services for the community, prevents the liquidation of strategic assets, protects workers' interests, and maintains the sovereignty and stability of the country's economy.[104] The goal is to ensure the continuity of essential public services for the community, prevent the liquidation of strategic assets, protect the interests of workers, and maintain the sovereignty and stability of the country's economy. For example, GOEs whose capital is wholly owned by the federal government. GOEs carry out public services that are vital or not commercially profitable, so their operations are not based solely on profit. For

[100] Indri Dwi Apriliyanti and others, 'To Reform or Not Reform? Competing Energy Transition Perspectives on Indonesia's Monopoly Electricity Supplier Perusahaan Listrik Negara (PLN)', *Energy Research & Social Science*, 118 (2024), 103797 https://doi.org/10.1016/j.erss.2024.103797

[101] Muhammad Ichsan, Matthew Lockwood, and Maghfira Ramadhani, 'National Oil Companies and Fossil Fuel Subsidy Regimes in Transition: The Case of Indonesia', *The Extractive Industries and Society*, 11 (2022), 101104 https://doi.org/10.1016/j.exis.2022.101104

[102] Dhamar Yudho Aji and Utomo Sarjono Putro, 'System Dynamics Modeling of Leveraging Geothermal Potential in Indonesia towards Emission Reduction Effort: A Case Study in Indonesia State-Owned Energy Enterprise', *Renewable Energy Focus*, 51 (2024), 100612 https://doi.org/10.1016/j.ref.2024.100612

[103] Giambona, Lopez-de-Silanes, and Matta.

[104] François and Naqvi.

example, the Tennessee Valley Authority, as a government-owned electricity provider, is specifically regulated by the Tennessee Valley Authority Act of 1933.[105] One recommendation for the Indonesian government is to consider implementing special regulations for strategic SOEs so that they cannot be immediately declared bankrupt, thereby affecting economic stability. In Indonesian SOE bankruptcy, restructuring can be given more weight than liquidation, and selective asset execution mechanisms can be used to tell the difference between strategic and non-strategic assets.

Third, the alignment of the Bankruptcy Law and the State-Owned Enterprises Law, namely Article 2 paragraph (5) of the Bankruptcy Law, which states that in the case of the debtor being an insurance company, reinsurance company, pension fund, or SOE operating in the public interest sector, a petition for a declaration of bankruptcy may only be submitted by the Minister of Finance, with Article 55 paragraph (1) of the State-Owned Enterprises Law stating that the Board of Directors may only submit a petition to the district court for the Perum to be declared bankrupt based on the minister's approval. That means, the Bankruptcy Law determines that SOEs engaged in public interests are only public companies, as explained in this article, because the only person who submits a bankruptcy application is the Minister of Finance.[106] The exclusive authority of the Minister of Finance to file for bankruptcy of an SOE may conflict with the SOE Law, which gives the Minister of SOE the authority to approve the bankruptcy of a Perum.[107] This Bankruptcy Law has incomplete and imperfect regulations related to the type of SOE as in the SOE Law, namely, a Perum or a Persero, because what is meant by SOE is only a Perum. Conversely, there is no regulation governing bankruptcy applications for SOEs in the Persero format.[108]

The implication is that bankruptcy law for SOE Persero is inconsistent. Meanwhile, the SOE Law shows that SOEs whose directors can file for bankruptcy do not clearly state the rules involving the Minister of Finance in bankruptcy.[109] So, to avoid legal uncertainty in the process of SOE Persero asset bankruptcy,[110] Article 55, paragraph (1), of SOE needs to be aligned with the Bankruptcy Law. It can be added: "The Board of Directors can only file for bankruptcy with the district court with the approval of the authorized minister in their business field." The Minister of Finance has authority over SOEs in the financial sector, while the Minister of SOE has authority over those in the non-financial sector." The Bankruptcy Law necessitates the alignment of authority based on the business field of the SOE, with the Minister of Finance overseeing the financial sector and the Minister of SOE overseeing the non-financial industry.

Adding an explicit definition of SOEs engaged in the public interest in the Bankruptcy Law that "what is meant by SOEs engaged in the public interest is SOEs in the form of public companies and SOEs that have been designated by the government as providers of

[105] DePamphilis, 'Alternative Exit and Restructuring Strategies'.
[106] Fanisa Luthfia and Triani Triani, 'The Authority of Oil and Gas Special Task Force as a Company Holder and Implementers of Upstream Oil and Gas Bussiness Activity: A Juridical ViewPoint', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 1.1 (2023), 31–38 https://doi.org/10.53955/jsderi.v1i1.5
[107] Ahmad Dwi Nuryanto, Reza Octavia Kusumaningtyas, and Bukhadyrov Habibullo, 'The Imperative of Social Justice on the Insolvency and Workers' Wage', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.3 (2024), 209–32 https://doi.org/10.53955/jsderi.v2i3.48
[108] Rakhman.
[109] Eve Warburton, 'Nationalist Enclaves: Industrialising the Critical Mineral Boom in Indonesia', *The Extractive Industries and Society*, 20 (2024), 101564 https://doi.org/10.1016/j.exis.2024.101564
[110] Jose Antonio Ordonez and others, 'Coal, Power and Coal-Powered Politics in Indonesia', *Environmental Science & Policy*, 123 (2021), 44–57 https://doi.org/10.1016/j.envsci.2021.05.007

essential public services." The aim is to provide a clear definition of SOEs engaged in the public interest and to distinguish the authority between the Minister of Finance and the Minister of SOE in filing for bankruptcy. To align the authority between the Minister of Finance and the Minister of SOE, a clause can be added that "SOEs in the form of public companies submit bankruptcy applications based on the approval of the Minister of SOE, while for SOEs operating in the financial sector, bankruptcy applications are submitted by the Minister of Finance." Alternatively, a clear definition can be formulated in implementing regulations, such as government regulations or regulations of the minister of finance, to determine the list or criteria for SOEs "operating in the field of public interest."

Fourth, the State Finance Law and the State Treasury Law are in line with each other. Article 2 of the State Finance Law says that one part of state finance is managing state assets, which can be money, securities, receivables, goods, and other rights that can be valued in money. These assets can be split up in state or regional companies. Article 50 of the State Treasury Law says that it is against the law for a judge to declare an SOE bankrupt, which means taking away the company's assets.[111] Article 2 raises uncertainty regarding the status of SOE assets, whether they are still part of state finances or have become company assets. Suppose SOE assets originating from the state revenue and expenditure budget are considered part of state finances. In that case, the inability to seize these assets during bankruptcy proceedings could potentially violate principles of business law.[112] Meanwhile, Article 50 of the State Treasury Law explains that state property in the SOE cannot be confiscated for the benefit of another party. Any party is prohibited from confiscating money or securities belonging to the state/region, whether in a government agency or a third party; money that must be deposited by a third party to the state/region; movable property belonging to the state/region, whether in a government agency or a third party; immovable property and other property rights belonging to the state/region; and property belonging to a third party controlled by the state/region that is needed for the implementation of government duties.[113]

The State Treasury Law conflicts with bankruptcy principles, as company assets should be subject to seizure to repay creditors. If all SOE assets are deemed state property, creditors are unable to enforce their claims, adversely affecting business and investment climates. In practice, bankruptcy rulings involving SOEs are frequently overturned at higher judicial levels. To address this issue, state assets allocated to SOEs should be classified as company assets under business law. The law should clearly distinguish SOE assets from commercial goods and stipulate that only non-strategic assets utilized as business capital can be subject to seizure. Harmonizing financial regulations would enhance legal certainty, drawing on insights from U.S. SOE bankruptcy frameworks.

4. Conclusion

This research demonstrates disharmony in the regulation of State-Owned Enterprise (SOE) asset execution in Indonesia due to the desynchronization of financial policies, as

[111] Denny Lie, 'Implications of State-Dependent Pricing for DSGE Model-Based Policy Analysis in Indonesia', *Economic Analysis and Policy*, 71 (2021), 532–52 https://doi.org/10.1016/j.eap.2021.06.003
[112] A. Halimatussadiah and others, 'Progressive Biodiesel Policy in Indonesia: Does the Government's Economic Proposition Hold?', *Renewable and Sustainable Energy Reviews*, 150 (2021), 111431 https://doi.org/10.1016/j.rser.2021.111431
[113] Liliana Inggrit Wijaya and others, 'Financial Immunity of Companies from Indonesian and Shanghai Stock Exchange during the US-China Trade War', *Heliyon*, 8.2 (2022), e08832 https://doi.org/10.1016/j.heliyon.2022.e08832

seen in Constitutional Court Decisions Number 48/PUU-XI/2013 and 62/PUU-XI/2013. Additionally, inconsistencies exist among the provisions within the State Finance Law, State Treasury Law, SOE Law, and Bankruptcy Law. In contrast, the regulation of SOE asset execution in bankruptcy in the United States relies on market mechanisms and federal bankruptcy procedures, with government intervention occurring primarily in systemic bankruptcy cases. In the United States, SOEs may be declared bankrupt based on their legal entity structure and capital ownership, whether they are Government-Owned Enterprises (GOEs), Government-Sponsored Enterprises (GSEs), or municipal corporations. The U.S. Bankruptcy Code governs bankruptcy procedures, while the Government Corporation Control Act (GCCA), Federal Credit Reform Act (FCRA), and U.S. Code Title 31 regulate financial matters. These laws work harmoniously, clearly distinguishing between strategic and non-strategic SOEs. A policy alignment is necessary between the State Finance Law, State Treasury Law, SOE Law, Bankruptcy Law, and related regulations and their derivatives. This includes: (a) harmonizing the State Finance Law with the SOE Law; (b) the State Finance Law with the Bankruptcy Law; (c) the Bankruptcy Law with the SOE Law; and (d) the State Finance Law with the State Treasury Law.

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