

From State Financial Loss to Investment Risk: Reconstructing State Financial Accountability in SOEs Management Based on Fairness and Sustainable Governance

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Abstract

State-Owned Enterprises (SOEs) play a strategic role in national economic development. Yet, their investment management is constrained by the coexistence of the result-based liability paradigm under Law No. 17 of 2003 and the risk-based governance paradigm introduced by Article 3H of Law No. 16 of 2025. This regulatory disharmony creates legal uncertainty that discourages directors from making strategic investment decisions because commercially reasonable investments may be criminalized when they fail. This study examines the paradigm shift in state financial accountability and reconstructs an accountability model grounded in fairness and sustainable governance. Employing normative legal research with statutory, conceptual, and philosophical approaches, the study analyzes legislation, Constitutional Court decisions, legal doctrines, and relevant literature. The findings demonstrate that investment losses should not automatically be classified as state financial losses. Instead, they should be recognized as ordinary business risks, provided

investment decisions are made in good faith, with due care, free from conflicts of interest, and in accordance with the principles of Good Corporate Governance and the Business Judgment Rule. Accordingly, legal accountability should focus on the integrity of the decision-making process rather than solely on financial outcomes. The proposed reconstruction ensures fairness by protecting directors who act professionally and in good faith from unjust criminal prosecution while preserving accountability for managerial negligence and corrupt conduct. This study introduces an investment risk-based state financial accountability model that harmonizes state finance law, SOE law, corporate law, and anti-corruption law by integrating the Business Judgment Rule, fiduciary duty, enterprise risk management, and Environmental, Social, and Governance (ESG) principles. The study's novelty lies in developing a coherent governance framework that distinguishes business risk from negligence and corruption, strengthens legal certainty, promotes sustainable governance, and supports more competitive and innovative SOEs.

Keywords

Risk-Based Governance, State Finance, State-Owned Enterprises, Sustainable Governance.

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Introduction

State-Owned Enterprises (SOEs/BUMN) hold a strategic position in the national economy as state instruments for achieving general welfare, social justice, and sustainable development. In a welfare-state framework, the government not only regulates but also acts as an economic actor by owning and managing enterprises in strategic sectors.¹ SOEs reflect the state's active role in ensuring that sectors affecting people's livelihoods remain under public policies oriented toward national interests.² Thus, SOEs are not merely profit-seeking business entities, but development instruments that carry both economic and social functions.

These characteristics give SOEs a unique position in national economic governance. On one hand, SOEs must adhere to the principles of efficiency, productivity, and profitability like any other corporate entity.³ However, SOEs also carry public functions: providing services, ensuring equitable development, stabilizing the economy, and implementing national strategic projects. This dualism places SOE management at the intersection of corporate logic and state administration logic. In practice, SOEs often make high-risk investments in infrastructure, energy, food, natural resources, and public services.⁴

¹ Mochamad Ikwan Nurul Hikmah, Syahid Akhmad Faisol, Dicky Eko Prasetyo, Kamaluddin Nurdin Marjuni, "Professional Waqf 5.0: Penta Helix Strategy And Legal Pluralism In The Digital Era," *Krtha Bhayangkara* 20, No. 1 (2026): 173-194., <https://doi.org/10.31599/Krtha.V20i1.5312>.

² Dwi Desi Yayi Triana Mahdi, Rafi Oktario, "State-Owned Enterprises Restructuring And Its Challenges In Business Competition From The Perspective Of Antitrust And Competition Law In Indonesia," *UNRAM Law Review* 8, No. 2 (2024): 258–61.

³ Agnes Harvelian Et Al., "Interpretation Of The Constitution On The Arrangement Of State-Owned Enterprises In The National Economic System Based On The Decision Of The Constitutional Court," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, No. 1 (June 30, 2023): 171–88, <https://doi.org/10.19109/Nurani.V23i1.17109>.

⁴ Chyrla Tiffany Mailakay Hernics Wadu Et Al., "Wanprestasi Terhadap Penanaman Modal Asing Berdasarkan Hukum Perdata Indonesia (Studi Kasus Amco Vs Indonesia Melalui ICSID)," *Journal Of Accounting Law Communication And Technology* 2, No. 1 (December 2024): 306–18, <https://doi.org/10.57235/Jalakotek.V2i1.4556>.

These investments are often made not only for commercial reasons but also to address the long-term needs of national development.

Theoretically, every investment activity always contains uncertainty. Investment, by nature, allocates current resources in the hope of obtaining future benefits. However, these benefits can never be fully guaranteed because they are influenced by various factors such as market dynamics, policy changes, global economic turbulence, and internal operational risks. From an economics and corporate governance perspective, risk cannot be eliminated; it is inherent and must be managed rationally.⁵ Therefore, losses in investment activities do not always reflect mistakes or legal violations, but can be a logical consequence of business decisions made rationally, measurably, and in line with the principle of prudence.

Understanding investment risks is crucial to managing SOEs. As state-owned business entities, SOEs need discretion to make strategic decisions, including risky investment decisions, to create long-term value for the company and the country.⁶ In modern governance, the courage to take measured risks is an important prerequisite for innovation, competitiveness, and business sustainability.⁷ Therefore, SOE investment losses should not be based solely on profit or loss outcomes, but should also consider the decision-making process, risk analysis, and underlying governance.

Problems arise when that investment logic confronts Indonesia's state financial law regime. Traditionally, state financial law is built on the paradigm of strict public financial protection. This is reflected in Article 1, paragraph 1 of Law No. 17 of 2003 on State Finance (Law 17/2003), which broadly defines state finance to include money and goods related

⁵ Marika Turava, "The Scope Of The Business Judgment Rule And Its Relation To The Fiduciary Duties Of Company Directors," *Journal Of Law* 1, No. 1 (2023): 224–51, <https://doi.org/10.60131/jlaw.1.2023.7073>.

⁶ Miftahul Haq, "Civil Law And Environmental Protection: Expanding Liability For Sustainable Justice," *RIGGS: Journal Of Artificial Intelligence And Digital Business* 4, No. 3 (August 25, 2025): 3480–85, <https://doi.org/10.31004/Riggs.V4i3.2478>.

⁷ Dicky Eko Prasetyo And Muh. Ali Masnun, "Beneficiary Pays Principle : Rekonstruksi Pengaturan Pelindungan Lingkungan Dalam Mewujudkan Kelestarian Sumber Daya Air," *Jurnal Hukum Lingkungan Indonesia* 11, No. 1 (October 9, 2025): 1–22, <https://doi.org/10.38011/Jhli.V11i1.957>.

to the state's rights and obligations. Specifically, Article 3, paragraph (1) of Law 17/2003 emphasizes several aspects of state finance that must be managed orderly, effectively, efficiently, economically, in compliance with laws and regulations, and with a focus on transparency. The provisions of Article 3, paragraph (1) of Law 17/2003 further clarify that there are strict implementation and accountability requirements in state finance. Related to the loss of state finances, which is understood as any deficiency in money, securities, or goods that are real and definite in amount due to unlawful acts, whether committed intentionally or through negligence. This paradigm arose from the state's need to protect public finances from abuse of authority, maladministration, and corruption. As a result, the legal assessment of losses tends to be result-oriented, focusing on whether actual losses occurred.

This result-based approach becomes problematic when applied to state-owned enterprise (SOE) investment management. An approach that considers only outcomes cannot assess the inherently uncertain nature of investments. In law enforcement practice, losses arising from SOEs' business decisions are often automatically classified as state financial losses, without adequately distinguishing legitimate business risks from unlawful acts. This creates serious conceptual issues within the Indonesian legal system, as it places investment losses, which are inherently part of business activities, into the framework of repressive public legal accountability. This approach gives rise to the criminalization of business judgment, a tendency to criminalize business decisions that result in losses. In the context of state-owned enterprises (SOEs), this phenomenon significantly affects the behavior of boards of directors and company managers. Boards of directors tend to be reluctant to make innovative strategic decisions because of concerns about future legal risks. As a result, decision-making has shifted from creating long-term value to merely avoiding legal risks. This condition can weaken the flexibility, competitiveness, and effectiveness of state-owned enterprises (SOEs) in responding to market dynamics and national development challenges.

Legal changes related to regulating state-owned enterprises (SOEs) have gained momentum, particularly to facilitate the management of investment risks within SOEs. Article 3H of Law No. 16 of 2025 on the Fourth Amendment to Law No. 19 of 2003 on State-Owned Enterprises

(Law 16/2025) introduces a new paradigm in SOE investment management by stating that profits or losses from investment activities are the entity's profits or losses.⁸ The provision explicitly states that investment losses are treated as risks and managed through reserve mechanisms and/or capital accumulation. This regulation carries very significant legal implications as it shifts the perspective on investment losses from a repressive paradigm based on legal sanctions to a managerial paradigm based on risk.

Article 3H paragraphs (1) and (2) of Law 16/2025 clarify that the losses incurred by state-owned enterprises (SOEs) in making investments are no longer solely assessed based on the financial consequences that arise, but must be analyzed based on the decision-making process and underlying risk management. Thus, investment losses are not measured merely by the presence of actual losses, but must consider whether the decision was made through risk identification, risk mitigation, and the application of adequate precautionary principles. This new approach aligns with the development of global corporate governance, which increasingly adopts risk-based governance. In this paradigm, risk management is not merely an internal technical instrument of the company, but a fundamental element of organizational governance. Well-managed risks signal rational, professional decision-making. Therefore, in the context of state-owned enterprises (SOEs), risk management should be understood not only as a managerial practice but also as a legal justification tool for evaluating investment decisions.

The provisions of Article 3H of Law 16/2025, although formulated to adopt risk-based governance as part of developing good governance in the management of state-owned enterprises (SOEs), are not aligned with Article 3 paragraph (1) of Law 17/2003. This is because Law 17/2003 still bases state finance on a paradigm of state financial protection oriented toward recovering state losses and strictly enforcing public accountability. As a result, a disharmony arises between the risk-based approach in state-owned enterprises (SOEs) and the results-based

⁸ Yuzon Sutrirubiyanto Nova Et Al., "Theoretical Review Of The Welfare State On Private Involvement In State-Owned Enterprises," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, No. 1 (June 14, 2025): 5567–79, <https://doi.org/10.31941/Pj.V24i2.6096>.

approach in state financial law. This research focuses on the disharmony between the risk-based approach adopted in Article 3H of Law 16/2025 and the results-based approach in state financial law, as regulated in Article 3 paragraph (1) of Law 17/2003. Therefore, the primary novelty of this research is a conceptual reconstruction of state financial accountability that is more adaptive to the characteristics of investment and risk, especially for BUMN. This research aims to analyze and formulate an ideal and comprehensive harmonization of legislation for adopting risk-based governance as part of developing good governance in managing state-owned enterprises (SOEs), and to harmonize it with Law No. 17/2003. Research on the financial position of BUMN and its relevance to state finance as conventionally regulated in Law No. 17/2003 has essentially been analyzed by several previous researchers, including, first, Hermawan, et al. (2025) in their study focusing on a comparative analysis of the implementation of financial risk management and its impact on profitability and company value in BUMN and private companies in Indonesia, with the novelty of building a new conceptual framework regarding state financial accountability in the management of SOEs based on risk-based governance and critiquing the result-based paradigm that has dominated state financial law.⁹

Syarif's research (2025) focuses on a comparative analysis of the political strategies used by Chinese State-Owned Enterprises (SOEs) and private Chinese companies in managing investment risks in high-risk sectors in Indonesia.¹⁰ This research's novelty lies in its theoretical contribution: developing an analytical model that integrates economic rationality, local political adaptation, business networks, and institutional dynamics as key determinants of foreign investment success. The research conducted by Meilani and Infantri (2026) analyzes the legal politics behind the changes in the State-Owned Enterprises (SOEs) Law through Law Number 1 of 2025 and Law Number 16 of 2025, as well as

⁹ Bambang Hermawan, Miftahil, And Lika Yulia, "The Impact Of Implementing Financial Risk Management On Profitability And Company Value Comparative Study," *Journal Of Social And Education* 1, No. 6 (2025): 1663–76.

¹⁰ Ahmad Syarif, "Navigating Investment In Risky Market: Comparative Analysis Of Chinese State-Owned Enterprises And Private Firms Operating In Indonesia," *Journal Of Current Southeast Asian Affairs* 45, No. 1 (2025): 59–77, <https://doi.org/10.1177/18681034251347972>.

its implications for the institutional reconstruction of SOEs following the establishment of the Danantara Investment Management Agency (BPI).¹¹ The novelty of the research lies in analyzing the relationship between the changes in Law Number 1 of 2025 and the rapid changes through Law Number 16 of 2025 as a manifestation of the government's legal politics in building a model of state corporate capitalism through the establishment of a national superholding. Furthermore, the research introduces a conceptual framework in which the success of Danantara's institutional transformation should be measured not only by economic efficiency but also by constitutional principles, democracy, public accountability, and the sustainability of BUMNs' social functions.

Compared with the three previous studies mentioned above, this research is original because it focuses on legal reconstruction that distinguishes state-owned enterprise (BUMN) losses as part of the investment process and the management and accountability of state finances, as regulated in Law No. 17/2003. Additionally, the main novelty of this research, which emphasizes the harmonization between Law No. 17/2003 and Law No. 16/2025, is important to ensure legal certainty and justice in the effort to build state financial governance based on sustainable governance that facilitates investment efforts by the state through BUMN, which has not been comprehensively discussed in the three previous studies.

In this study, fairness is a legal accountability framework that balances protecting state assets with the legitimate autonomy of SOE directors in exercising business judgment. Fairness does not imply immunity from legal responsibility; rather, it requires that directors who make investment decisions in good faith, with due care, without conflicts of interest, and in compliance with Good Corporate Governance should not face criminal or administrative liability merely because an investment subsequently results in financial losses. Conversely, where losses arise from managerial negligence, abuse of authority, or corrupt conduct, legal accountability must remain fully enforceable. Accordingly, fairness serves as the normative foundation for distinguishing legitimate business

¹¹ Retno Meilani And Vina Hardyana Infantri, "The Legal Politics Behind Amendments To The SOE Law And The Institutional Reconstruction Of Soes After Danantara" 7, No. 1 (2026): 25–42.

risk from unlawful conduct within Indonesia's state financial accountability system. Against this background, this article addresses two central questions: (1) how the paradigm of state financial accountability has shifted following the enactment of Law No. 16 of 2025, and (2) how a fair and sustainable accountability model can be reconstructed to harmonize state finance law with corporate governance principles. To answer these questions, the article first examines the evolution of Indonesia's legal framework governing SOE investment accountability. It then analyzes the normative implications of the Constitutional Court's jurisprudence and the transition from result-based liability to risk-based governance. Finally, it proposes an investment risk-based state financial accountability model that integrates corporate governance principles, regulatory harmonization, and sustainable governance as a framework for future legal reform.

This research is a normative legal study focused on reconstructing or renewing legal concepts and theories related to sustainable governance through a paradigm shift in state-owned enterprises (SOEs) regarding investment losses, thereby emphasizing the study's conceptual and theoretical aspects. Because doctrinal characteristics are the main focus of normative legal research, this study focuses on state finance concepts, risk-based governance, sustainable governance, and justice theory.¹² This research uses a combined statutory, conceptual, and philosophical approach.

The legal materials used in this research consist of primary legal materials, secondary legal materials, and non-legal materials. The primary legal materials include relevant regulations, particularly the 1945 Constitution of the Republic of Indonesia, with a main focus on Article 33 and Article 23, as well as the conflict between state finance paradigms in Law No. 17/2003, Law No. 1/2004, and Law 16/2025. In addition, the research used relevant court decisions, particularly Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No.

¹² Maalikatussofa Masnun, Muh. Ali, Prasetyo, Dicky Eko, "Reconstruction Of The Normative Legal Research Paradigm In Responding To Global Challenges: An Epistemological Analysis," *Novum: Jurnal Hukum* 12, No. 3 (2025): 372–84, <https://doi.org/10.2674/Novum.V12i03.74364>.

59/PUU-XVI/2018, which were analyzed based on the judges' legal considerations regarding the position of state finance. Secondary legal materials include books, scientific journals, academic articles, research results, and various legal literature relevant to the research topic. In addition, this research uses non-legal materials, including risk management literature, corporate governance, and references from international organizations related to managing state-owned enterprises and risk-based governance.

Legal materials are collected through library research by tracing, inventorying, and classifying legal sources relevant to the research issue.¹³ This process includes identifying legal norms, theories, doctrines, and previous research results related to state financial losses and BUMN investment risks. The legal materials are analyzed comprehensively by identifying potential disharmony, norm conflicts, or legal vacuums that create uncertainty in assessing BUMN investment losses. At this stage, the main focus is the legal disharmony between the dominant result-based paradigm in state financial law and the risk-based paradigm introduced through Article 3H of Law No. 16/2025, by proposing a state financial accountability model for managing BUMN investments. In addition, this research includes reflections based on philosophical considerations in law, drawing on Gustav Radbruch's philosophical perspective.

A. Shift in the Paradigm of State Financial Accountability in State-Owned Enterprises Management: From the Concept of State Loss to Investment Risk

State financial accountability in the management of state-owned enterprises (SOEs) is one of the most complex issues in the development of administrative law and other relevant legal fields, such as state financial law, corporate law, and criminal law in Indonesia. Administrative law plays an important role in regulating state finances in the management of

¹³ Achmad Irwan Hamzani Et Al., "Legal Research Method: Theoretical And Implementative Review," *International Journal Of Membrane Science And Technology* 10, No. 2 (2023): 3610–19.

state-owned enterprises (SOEs) because state finances relate to the management of state finances, which aligns with the conventional meaning of administrative law as running the state “in a dynamic sense.”¹⁴ The complexity of state financial accountability in state-owned enterprises (SOEs) arises because SOEs occupy a unique position as a legal entity that performs two functions simultaneously: as an instrument of the state in realizing public welfare as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia, and as a business entity that must conduct business activities based on the principles of efficiency, professionalism, and profit orientation.¹⁵ This dual position creates legal issues when losses experienced by state-owned enterprises (SOEs) are automatically treated as state losses, opening the door to criminal liability even though these losses result from the business risks inherent in investment activities. This paradigm not only creates legal uncertainty for corporate organs but also fosters a defensive decision-making climate, reducing the competitiveness of state-owned enterprises (SOEs) in responding to the dynamics of the global economy.

Constitutionally, the regulation of state finances is rooted in Article 23 of the 1945 Constitution of the Republic of Indonesia, which states that the State Revenue and Expenditure Budget is established annually by law and implemented openly and responsibly for the greatest prosperity of the people. This provision indicates that managing state finances is part of the constitutional mechanism for realizing the welfare state principle.¹⁶ On the other hand, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides a foundation for state control over branches of production that are important to the state and that sustain the livelihoods of many people. It emphasizes that land,

¹⁴ Eny Sulistyowati Muh. Ali Masnun, Dicky Eko Prasetyo, Mohd Badrol Awang, “Reconstructing Indonesia’s Trademark Registration System Through The Lens Of General Principles Of Good Governance To Realize Substantive Justice,” *Journal Of Law And Legal Reform* 5, No. 3 (2024): 891–912.

¹⁵ Bernadette Holli Kristiani, “PANCASILA ECONOMIC SYSTEM: A MILESTONE IN INDONESIA’S NATIONAL ECONOMIC DEVELOPMENT,” *Sociae Polites* 26, No. 1 (June 30, 2025): 66–76, <https://doi.org/10.33541/Sp.V26i1.6987>.

¹⁶ Hidayatulloh And Éva Erdős, “State-Owned Enterprise’s Debt In The State Financial Regime,” *Sriwijaya Law Review* 7, No. 1 (2023): 105–20, <https://doi.org/10.28946/Slrev.Vol7.Iss1.1843>.Pp105-120.

water, and natural resources contained therein are controlled by the state and used to the greatest extent for the prosperity of the people.¹⁷ These provisions provide constitutional legitimacy for establishing state-owned enterprises (SOEs) as instruments to manage and strengthen the national economy. Thus, SOEs are intended not only to generate financial profits but also to perform strategic functions in ensuring public services, maintaining national economic stability, expanding public access to basic needs, and promoting sustainable national development.

More detailed regulations regarding state finances are then outlined in Article 1, paragraph 1 of Law No. 17/2003, which defines state finances as all rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that the state can own in connection with the execution of those rights and obligations. This definition is broad and encompasses almost all forms of wealth connected to the state, including wealth derived from state capital participation in state-owned enterprises (SOEs). Article 2, letter g of Law No. 17/2003 states that the scope of state finances includes state wealth or regional wealth managed by the state itself or by others in the form of money, securities, receivables, goods, and other rights that can be valued in money, including wealth separated in state-owned enterprises or regional-owned enterprises. This provision has become a major source of academic debate and law enforcement practice because it treats separated state wealth as part of state finances, even though the capital company has legally become corporate assets or, in this context, SOEs.

The paradigm used by Law No. 17/2003 also aligns with Article 1, paragraph 1 of Law No. 1 of 2004 on State Treasury (Law 1/2004), which defines state treasury as the management and accountability of state finances, including investments and separated wealth. However, read systematically within the corporate legal regime, the norm raises a conceptual issue regarding the change in the legal status of state capital after the capital injection. In corporate law theory, injecting state capital into a corporation transforms the legal status from public wealth to

¹⁷ Thamasi Masnun, Muh Ali, Prasetio, Dicky Eko, Konara, "Financial Reconstruction Of State-Owned Enterprises In Indonesia As Special State Finances: Public Or Private Law?," *Jurnal Hukum Bisnis Bonum Commune* 9, No. 1 (2026): 44–62, <https://doi.org/10.30996/Jhbbc.V9i1.132464>.

corporate capital, which is subject to the principle of separate legal entity.¹⁸ This means that once the capital is deposited as state shares, the asset is no longer under the state's direct control but becomes the property of the corporate legal entity, which has wealth separate from its shareholders. In this position, the state no longer acts as a public authority, but rather as a shareholder with rights and obligations like any other shareholder.

This view aligns with the Constitutional Court's decisions as the Constitution's final interpreter.¹⁹ This is as emphasized in Constitutional Court Decision No. 48/PUU-XI/2013, Constitutional Court Decision No. 62/PUU-XI/2013, and Constitutional Court Decision No. 59/PUU-XVI/2018, which, although adjudicating different cases, all reinforce that the management of SOE finances must adhere to the principles of good corporate governance, including accommodating the business judgment rule doctrine.²⁰ In Decision No. 48/PUU-XI/2013, the Court rejected the argument that separated state assets lose their public character after being invested in SOEs. The Court reasoned that because the capital originates from public funds and serves constitutional objectives, the state retains a legitimate interest in ensuring accountability over its management. However, the Court did not conclude that SOEs should therefore be governed exclusively by public financial law. Instead, it acknowledged that SOEs operate as corporate entities whose management must comply with corporate governance standards. Accordingly, the Court treated public accountability and corporate autonomy as complementary, not mutually exclusive, principles.

A similar reasoning appears in Decision No. 62/PUU-XI/2013, where the Court emphasized that the constitutional obligation to

¹⁸ Anita Kamilah And Trini Handayani, "The Application Of Business Judgment Rule Principles: The Protection For State-Owned Enterprises Directors To Business Risk Failure," *Unifikasi : Jurnal Ilmu Hukum: Jurnal Ilmu Hukum* 8, No. 1 (2021): 18–27, <https://doi.org/10.25134/Unifikasi.V8i1.3927>.

¹⁹ Noviyanti Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, "Discrimination Related To Labour Age Limitation In Indonesia : A Human Rights And Comparative Law Perspective," *Suara Hukum* 6, No. 2 (2024): 228–54.

²⁰ Ariawan Gunadi Berry Gunawan, "Doctrin Business Judgment Rule Analysis As An Effort To Protect The Law Of Directors Of Limited Liability Companies In Indonesia And The United States," *Edunity* 2, No. 10 (2023): 1198–1209.

safeguard state assets cannot eliminate the need to apply corporate law principles to SOEs. The Court recognized that directors must be allowed to make commercial decisions within the framework of Good Corporate Governance (GCG), because excessive state intervention would undermine the commercial objectives for which SOEs are established. Therefore, although separated state assets remain constitutionally connected to state finances, their management cannot simply be equated with ordinary public financial administration. The Court further refined this approach in Decision No. 59/PUU-XVI/2018 by emphasizing that accountability mechanisms must be compatible with the characteristics of corporate management. Rather than adopting a purely outcome-oriented assessment based on whether financial losses occur, the Court implicitly recognized that directors' conduct should be evaluated according to whether they exercised their authority prudently, in good faith, and in accordance with corporate governance standards. Although the Court did not explicitly formulate the Business Judgment Rule, its reasoning demonstrates an important shift from evaluating business decisions solely on financial outcomes toward assessing the legality of the decision-making process itself.

Collectively, these Constitutional Court decisions therefore cannot be interpreted merely as reaffirming the broad definition of state finances under Law No. 17 of 2003. Their more significant contribution lies in recognizing that constitutional protection of state assets must coexist with corporate governance principles. The Court attempts to balance two competing constitutional values: safeguarding public wealth and ensuring that SOEs retain sufficient managerial autonomy to compete effectively in commercial markets. This balance provides an important constitutional foundation for distinguishing legitimate business risk from unlawful conduct. From an economic perspective, every investment always contains elements of uncertainty and risk.²¹ Risk is inherent in business activities and cannot be eliminated, but it can be managed through risk management mechanisms. Therefore, investment

²¹ Harshita Srivastava And Sana Moid, "Behavioral Biases And Individual Investors Investment Decisions: Mediating Role Of Financial Risk Tolerance," *Quality & Quantity* 60, No. 1 (September 2, 2025): 2275–95, <https://doi.org/10.1007/S11135-025-02352-Y>.

losses do not always indicate a violation of the law. On the contrary, losses can occur because of changes in market conditions, exchange rate fluctuations, commodity price changes, economic crises, technological disruptions, or other external factors beyond the board of directors' control. If all such losses are classified as state losses with criminal implications, the board of directors will tend to avoid making strategic decisions necessary to increase the company's value. This phenomenon is known as the over-criminalization of business decisions: the tendency to use criminal law instruments excessively against business decisions that should be evaluated through corporate governance mechanisms.²²

Normatively, the main issue in managing state-owned enterprises (SOEs) is not whether the state still has an interest in the capital it contributes, but how to distinguish between the state's interest as a shareholder and its interest as a regulator. When the state acts as a shareholder, its legal relationship is private and subject to corporate law regimes. By contrast, when the state performs regulatory, supervisory, and law enforcement functions, the relationship falls within public law. Failure to distinguish between these two positions has led to overlapping legal regimes, ultimately creating uncertainty about the limits of SOE directors' accountability. Therefore, a paradigm shift is needed that no longer views all SOEs' losses as automatic state losses, but rather places these losses within the framework of investments that carry business risks, without diminishing the possibility of legal accountability if there is proven abuse of authority, conflict of interest, fraud, or corrupt acts. This paradigm shift provides the foundation for reconstructing the state financial accountability system to better align with the principles of the rule of law, legal certainty, justice, and good corporate governance. This research examines the Business Judgment Rule doctrine as applied to SOEs to promote fairness and sustainable governance.

The changes to various laws regulating state-owned enterprises (SOEs), which represent one of the progressive orientations in the form of a paradigm shift to ensure that the management and accountability system of state finances within SOEs becomes more progressive and

²² Dennis J Baker, "From Regulation To Crime Control: Preventive Justice In The Governance Of Global Markets," *Chinese Journal Of International Law* 25, No. 1 (March 17, 2026), <https://doi.org/10.1093/Chinesejil/Jmag009>.

flexible based on a risk-based paradigm introduced through Article 3H of Law No. 16/2025, essentially aim to clarify the function and position of SOEs in investment management in Indonesia. This way, losses from investments cannot be treated entirely as state losses, which would make SOE directors hesitant to take business steps deemed risky. This is because business losses are an inherent consequence of business activities conducted to obtain profit (profit-oriented activities). Every investment decision essentially always carries the possibility of either making a profit or incurring a loss. Those risks are an inherent part of the market mechanism and do not always reflect a company's management errors. The decline in stock value, investment project failures, changes in commodity prices, currency exchange rate depreciation, increased production costs, changes in international regulations, or force majeure conditions are examples of factors that can cause company losses without any element of unlawful conduct. Therefore, in corporate management, business risk is recognized as an inseparable part of a company's activities. As long as the decision is based on adequate information, made in good faith, free from conflicts of interest, and aimed at the company's interests, the resulting loss cannot be immediately classified as a legal violation.²³

The main issue in regulating state financial losses in Indonesia is the disharmony among various laws and regulations on state financial losses, particularly in state-owned enterprises (SOEs). This disharmony becomes more apparent when compared to the regulations in Law Number 40 of 2007 concerning Limited Liability Companies (Law 40/2007), which emphasizes that the responsibility of the board of directors is not based on the outcome in the form of the company's profit or loss, but rather on the decision-making process. In Indonesia, the substance of the Business Judgment Rule is actually reflected in Article 97 of Law No. 40/2007 on Limited Liability Companies. The provision states that the board of directors is fully responsible for managing the company in the company's best interests. However, the board of directors cannot be held accountable for the company's losses if they can

²³ ILHAM, SYAMSUL BACHRI, MARTHEN ARIE, NUR AZISA, "Corporate Criminal Liability Related To The Business Judgment Rule Doctrine," *Russian Law Journal* 11, No. 3s (2023): 53–61, <https://doi.org/10.52783/RLJ.V11i3s.736>.

prove that the losses were not due to their fault or negligence, that they managed the company in good faith and with caution, that there was no conflict of interest, and that they took actions to prevent the occurrence or continuation of those losses. The provision indicates that Indonesian corporate law has adopted a process-oriented accountability approach, based on the quality of the decision-making process, not merely the outcome achieved. However, in practice, implementing these regulations still faces obstacles because they have not yet been fully integrated with the state financial law regime and the anti-corruption law.

Disharmony among state finance laws, particularly Law 17/2003 and Law 16/2025, can create legal uncertainty and inconsistency in implementing state financial management and accountability in state-owned enterprises (SOEs). In Lon Fuller's view, legal uncertainty resulting from disharmony among regulations renders those provisions ineffective and irrelevant. Even if enforced, these regulations will fall far short of legal values such as certainty and justice. One implication of this disharmony is the criminalization of business judgment, which involves using criminal law instruments to evaluate business policies that corporate law should assess. In practice, law enforcement officers often focus more on the existence of financial losses than on whether the decision-making process met the professional standards set by corporate law. As a result, an investment's success or failure is only known after the project is completed. At the same time, the law assesses the decision's legality based on outcomes that emerge years later (hindsight bias). This approach contradicts the business judgment rule because the law should assess decisions based on the information available when the decision was made (*ex-ante* assessment), not on results known only after the project is completed (*ex post* assessment).²⁴ If the hindsight-bias approach continues to be upheld, the board of directors will lose the courage to innovate, expand the business, restructure the company, or make long-term investments needed to enhance the competitiveness of state-owned enterprises (SOEs) on a global scale. Therefore, the primary measure of the board's accountability should be based not only on financial losses

²⁴ Lucie Josková, "The Business Judgment Rule In The Czech Republic," *Acta Universitatis Carolinae Iuridica* 68, No. 3 (2022): 37–47, <https://doi.org/10.14712/23366478.2022.34>.

but also on adherence to good corporate governance principles. A board that follows all governance procedures, conducts due diligence, prepares investment feasibility analyses, obtains approval from the authorized corporate bodies, and transparently documents the entire decision-making process should receive legal protection even if the investment ultimately fails due to market changes or other external factors.

The paradigm of investment risk is inseparable from the development of risk-based governance, a governance approach that makes identifying, measuring, mitigating, and controlling risk an integral part of corporate decision-making. In modern corporate governance, risk is no longer seen as something to be completely avoided, but as a variable that must be professionally managed to create added value for the company and its shareholders. This approach has evolved alongside the growing complexity of the business world, shaped by globalization, economic digitalization, geopolitical shifts, energy transitions, technological disruptions, climate change, and fluctuations in international financial markets. All these factors indicate that no business decision is completely free from risk. Therefore, successful corporate governance lies not in eliminating all risks, but in the company's ability to manage them in a measured, documented, transparent, and accountable manner.

In the context of state-owned enterprises (SOEs), implementing risk-based governance is highly strategic because SOEs generally manage business sectors with high investment values, long timeframes, and high uncertainty. Toll roads, ports, airports, power plants, oil refineries, defense industries, telecommunications, and natural resource downstream projects are examples of strategic investments that inherently carry economic, market, political, technological, and regulatory change risks.²⁵ In such situations, a project's success depends not only on the quality of the company's management but also on external factors beyond the board of directors' control. Therefore, if losses arising from changes in economic conditions or market dynamics

²⁵ Po-Hsiang Liu And Jui-Chu Lin, "Integrated Risk Assessment And Mitigation Strategies For Geothermal Energy Development: Technical, Socio-Political, And Financial Dimensions," *Sustainable Energy Research* 12, No. 1 (October 25, 2025): 64, <https://doi.org/10.1186/S40807-025-00218-3>.

are directly classified as state losses with criminal implications, the state will create disincentives for state-owned enterprises (SOEs) to make strategic investments truly needed to support national economic growth.

From a legal perspective, distinguishing between business risk, business negligence, and fraud is crucial to building a fair accountability system. Business risk is a normal risk inherent in every business activity and cannot be avoided even if all legal procedures have been followed. This risk can arise due to changes in commodity prices, a decrease in market demand, a global economic crisis, exchange rate fluctuations, natural disasters, or technological developments that alter market structures. In such cases, the company's losses cannot form the basis for imposing criminal liability on the board of directors because no unlawful wrongdoing is involved. The second category is business negligence, which refers to losses arising from the board of directors' failure to fulfill their professional duties. For example, the board may neglect investment feasibility analysis, fail to conduct due diligence, disregard risk management recommendations, or make decisions without adequate information. Negligence like this can lead to legal liability, but that liability does not always have to be criminal. In many modern legal systems, liability is more often civil, administrative, or corporate unless the negligence is accompanied by intent or abuse of authority.

The third category is fraud or corrupt acts. In this category, criminal law should be placed as the *ultimum remedium*, used strictly and effectively.²⁶ Fraud is characterized by intent to obtain unlawful benefits, abuse of power, deliberate conflicts of interest, document manipulation, collusion, bribery, gratification related to positions, embezzlement of company assets, or other actions that meet the elements of corruption.²⁷ Thus, not every company loss constitutes corruption, but any corruption that causes losses to state-owned enterprises (SOEs) must be held accountable under criminal law. The distinction between

²⁶ Dicky Eko Prasetyo, "Politik Hukum Omnibus Law Terkait Cybercrime Di Indonesia Dalam Perspektif Hukum Progresif," *Indonesian Journal Of Law Studies* 3, No. 1 (2024): 27–41.

²⁷ Muhammad Zainul Arifin Et Al., "Concealment Of Assets In Money Laundering," *AML/CFT Journal The Journal Of Anti Money Laundering And Countering The Financing Of Terrorism* 3, No. 2 (June 27, 2025): 138, <https://doi.org/10.59593/Amlcft.2025.V3i2.75>.

these three categories matters because, until now, law enforcement practices have tended to equate all losses of state-owned enterprises (SOEs) with state losses without first classifying their sources. Such an approach blurs the line between business failure and corruption. As a result, criminal law instruments have evolved into tools for evaluating business decisions, whereas criminal law should address abuse of authority with a clear element of wrongdoing.

From a legal-theory perspective, this condition not only contradicts the principle of legal certainty but also risks overlooking proportionality and justice, because it treats every investment failure the same without considering the characteristics of its causes. Therefore, reconstructing state financial accountability in the management of state-owned enterprises (SOEs) should aim to create a more harmonious model among state financial law, corporate law, SOE law, and anti-corruption law. This reconstruction is not intended to reduce the protection of state assets or weaken anti-corruption efforts, but rather to ensure that each legal regime is applied in accordance with the object and characteristics of its legal relationship. When the state acts as a regulator, public law mechanisms remain in effect to ensure the accountability of government administration. However, when the state acts as an investor through capital participation in state-owned enterprises (SOEs), the resulting legal relationship must reflect corporate law principles, including the doctrine of separate legal entity, fiduciary duty, the Business Judgment Rule, and the implementation of Good Corporate Governance.

The shift from state loss to investment risk logically follows the transformation of the state's role in the modern economy. The state no longer functions solely as a regulator but also as an investor that must adhere to corporate governance principles when investing in state-owned enterprises (SOEs). Therefore, the system of state financial accountability must shift from a result-based liability approach to a process-based accountability approach. This shift will balance the protection of state assets, legal certainty for directors, the effectiveness of anti-corruption efforts, and the increased competitiveness of state-owned enterprises (SOEs). Thus, the reconstruction of state financial accountability not only provides legal certainty regarding the boundary between business risk and state financial loss but also serves as a

foundation for the creation of professional, fair, sustainable SOE governance that can support national economic development in accordance with the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia.

B. Reconstruction of State Financial Accountability in the Management of State-Owned Enterprises Based on Justice and Sustainable Governance

Reconstruction generally refers to the process of reassembling, rebuilding, or reformulating a concept, system, theory, or structure based on a critical evaluation of existing conditions, to produce a better, more relevant form that meets the needs of contemporary development. In the legal context, reconstruction means reformulating norms, concepts, or legal systems that are deemed inadequate to better align with the values of justice, legal certainty, utility, and societal development.²⁸ Reconstructing state financial accountability in the management of state-owned enterprises (SOEs) is necessary not only because of regulatory disharmony but also because of a paradigm shift in the state's role in modern economic activity. The state is no longer merely a regulator performing governmental functions, but also an investor, shareholder, and economic actor investing capital in strategic sectors through state-owned enterprises (SOEs).

The transformation brings the consequence that the accountability system for the management of state wealth, which has been separated, can no longer fully use the paradigm of administrative law and state financial law as applicable to the management of the State Revenue and Expenditure Budget (APBN), but must be constructed harmoniously with the principles of corporate law, modern corporate governance, and the characteristics of investments that inherently contain risks.²⁹ Thus, the legal reconstruction in this context aims to

²⁸ Muhammad Akmal Habib Dicky Eko Prasetyo, "Lex Sportiva And Lex Ludica: The Existence And Reconstruction Of Sports Law Principles In The Postmodern Era," *Novum: Jurnal Hukum* 12, No. 3 (2025): 412–28.

²⁹ Fuad Akhdlori And Virgie Delawillia Kharisma, "Collaborative Governance In Optimizing Nontax State Revenue In The Sports Sector Case Study:

create an accountability system that can maintain a balance between the interests of the state as a shareholder, legal certainty for state-owned enterprise (SOEs) organs, the effectiveness of anti-corruption efforts, and the enhancement of the competitiveness of state-owned enterprises in facing global economic competition.

The philosophical foundation of the reconstruction of state financial accountability in the management of state-owned enterprises (SOEs) based on justice and sustainable governance is fundamentally rooted in the idea of three basic legal values as proposed by Gustav Radbruch, which include justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*), and utility (*zweckmäßigkeit*).³⁰ These three basic values must be understood as an inseparable unity in building a system of state financial accountability. So far, legal accountability in state-owned enterprises (SOEs) has focused more on protecting state finances through a repressive approach oriented toward uncovering state losses. This approach seeks legal certainty by applying public legal norms, such as criminal law. Still, in many cases, it sacrifices justice and utility because every investment failure is often perceived as a legal violation. This leaves the BUMN board of directors in a dilemma. On one hand, they must increase the company's value through innovation and business expansion; on the other, they risk criminalization if their business decisions do not yield the projected profits. Therefore, reconstructing state financial accountability must balance these three fundamental legal values so that protecting state assets does not eliminate room for professional, good-faith business decision-making.

From a justice perspective, equating every SOE investment loss with a state financial loss disregards the distinct legal nature of corporate investment. It unfairly exposes directors acting in good faith to criminal liability. From a legal certainty perspective, the coexistence of Law No.

Implementation Of The 2022 South Sumatera National Recreational Sports Festival (FORNAS VI 2021),” In *The 4th International Conference On Governance, Public Administration, And Social Science*, Vol. 1, 2023, 295–308, <https://doi.org/10.18502/Kss.V8i11.13554>.

³⁰ Bayangsari Wedhatami Dicky Eko Prasetyo, Muh Ali Masnun, “Legal Uncertainty Of Golf Game As Sports And Entertainment Branch In Local Tax Imposition,” *Wawasan Yuridika* 4, No. 1 (2024): 76–93, <https://doi.org/10.25072/Jwy.V8i1.4369>.

17 of 2003 and Law No. 16 of 2025 creates inconsistent standards for determining directors' responsibility. From a utility perspective, an outcome-oriented accountability regime discourages strategic investment and innovation by encouraging excessively risk-averse corporate behavior. Accordingly, the proposed reconstruction seeks to balance these three legal values by replacing outcome-based evaluation with a governance framework centered on the integrity of the decision-making process.

From the perspective of legal certainty, the main issue in managing state-owned enterprises (SOEs) today is the lack of a clear boundary on when an investment loss can be categorized as a state loss that incurs public legal liability, including criminal liability. Law No. 17/2003 and Law No. 1/2004 share the same paradigm: result-based liability, so every loss incurred by state-owned enterprises (SOEs) is considered a direct loss to the state. However, Law No. 16/2025 adopts a risk-based governance paradigm, meaning not all losses incurred by SOEs are considered state losses, especially losses from SOEs' investments as part of business risk. This difference in paradigms aligns with Satjipto Rahardjo's view that law is not just a structure of regulations, but also encompasses ideas, culture, and behavior.³¹ In this context, the paradigm in Law No. 17/2003 and Law No. 1/2004 centers on securing state finances through public accountability. However, as it has evolved, the state finance paradigm under Law 17/2003 and Law 1/2004 no longer aligns with societal developments, including a country's investment needs. Therefore, investment requires a paradigm shift to risk-based governance, as regulated in Law 16/2025.

The development of the state finance paradigm under Law 16/2025, which contradicts the state finance paradigm under Law 17/2003 and Law 1/2004, can be resolved through legal principles, particularly the principle of legal preference. Legal principles are important not only to clarify the meaning of legal norms but also to annul the substance of legal norms that do not align with the "moral

³¹ Dicky Eko Prasetyo, Muh. Ali Masnun, And Noviyanti Noviyanti, "Post-Election Reconciliation In 2024 As A Constitutional Convention In Indonesia: A Progressive Legal Culture Perspective," *Jambura Law Review* 7, No. 1 (January 31, 2025): 176–96, <https://doi.org/10.33756/Jlr.V7i1.26999>.

praxis” contained in legal principles. The principle of *lex posterior derogat legi priori*, where legislation with the same hierarchical level and substance formulated most recently or currently excludes the substance of legislation with the same hierarchical level and substance.³² This reinforces that the result-based liability paradigm as adopted in Law 17/2003 and Law 1/2004 is substantively declared invalid since the enactment of Law 16/2025, which emphasizes the risk-based governance paradigm. Moreover, the existence of Law No. 16 of 2025, which excludes the result-based liability paradigm as adopted in Law No. 17 of 2003 and Law No. 1 of 2004, is also based on the legal principle of *lex specialis derogat legi generalis*, where specific legal rules with the same substance exclude general legal rules.³³ Law No. 16 of 2025 on State-Owned Enterprises (SOEs) is a special law that can override Law No. 17 of 2003 and Law No. 1 of 2004, which generally regulate state finances.

The paradigm of risk-based governance under Law 16/2025, viewed through the legal entity theory and the separate legal entity theory, is also relevant because the state invests capital in a corporation, and the resulting legal relationship becomes a corporate relationship between shareholders and the corporation. The capital deposited indeed comes from state finances, but once converted into shares, it becomes part of the corporation’s wealth, which the company’s organs manage independently. The state no longer acts as a public authority, but rather as a shareholder whose rights and obligations are subject to the corporate legal mechanism. The management of these assets is no longer conducted through government administrative mechanisms, but rather through corporate organs consisting of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners as regulated in the Limited Liability Company Law. The state exercises its ownership function through the General Meeting of Shareholders (GMS), not through direct intervention in the company’s operational

³² Bagus Surya Dharma Et Al., “Harmonization Of Laws Regulating The Formation Of Village Government Work Plan Drafting Teams,” *Ex Aequo Et Bono Journal Of Law* 2, No. 2 (January 31, 2025): 69–81, <https://doi.org/10.61511/Eaejbol.V2i2.2025.1092>.

³³ Purwanto Purwanto Et Al., “Streamlining Regional Regulations With Omnibus Law For Legal Harmonization,” *Rechtsidee* 12, No. 2 (December 26, 2024): 7–13, <https://doi.org/10.21070/Jihr.V13i1.1038>.

activities. Thus, the relationship between the state and state-owned enterprises (SOEs) should be understood as an investment relationship based on fiduciary governance, rather than merely an administrative relationship. The state seeks dividends, increased company value, and long-term economic benefits, while the board of directors must manage the company professionally in the corporation's best interests. This relationship requires balancing state oversight of invested assets with respect for the board's independence in carrying out business functions.

The reconstruction of the legal relationship is the foundation for the formation of a more adaptive model of state financial accountability to the dynamics of the modern economy, because only through a proper understanding of the position of the state as a shareholder and state-owned enterprises (SOEs) as independent legal entities can the legal system provide balanced protection for public interests while also creating legal certainty for corporate organs. Reconstructing state financial accountability in the management of state-owned enterprises (SOEs) will yield substantial changes if it is oriented toward harmonizing regulations while also reconstructing accountability standards for the board of directors as the organ that performs the company's management functions. To harmonize regulations, it is necessary to recognize special state finances, namely state finances separated in SOEs/Regional SOEs or Village-Owned Enterprises. Law No. 17/2003 and Law No. 1/2004 should include and emphasize these special state finances, along with a distinct accountability mechanism separate from general state finances.

The proposed model integrates the Business Judgment Rule, fiduciary duty, and good faith into a single standard of directors' accountability. These principles complement rather than stand apart. The Business Judgment Rule protects directors from liability for bona fide commercial decisions that subsequently result in financial losses. Fiduciary duty defines directors' substantive obligations to exercise due care and loyalty toward the corporation. At the same time, good faith provides the ethical benchmark ensuring that managerial discretion is exercised honestly, transparently, and without conflicts of interest. Together, these principles shift legal assessment from financial outcomes toward the quality of the decision-making process.

Risk-based governance rests on the understanding that risk is inseparable from investment activities. Every corporate decision carries

the possibility of profit or loss, so the law should not treat risk as identical to wrongdoing. In that framework, the main focus of oversight is no longer on whether an investment results in a loss, but rather on whether the investment decision was made through a process that meets professional standards, based on adequate risk analysis, adhering to the principle of prudence, and supported by an effective internal control system.

This approach aligns with the development of international corporate governance, which treats enterprise risk management as an integral function of the board of directors and the board of commissioners. Thus, governance success is not measured by the ability to eliminate all risks, but by the company's ability to manage risks rationally and document them. Therefore, accountability indicators need to be reconstructed through a more systematic classification. First, losses due to ordinary business risk arise from market fluctuations, changes in economic conditions, technological changes, force majeure, or other external factors beyond the board of directors' control. Losses in this category should not result in criminal liability if the board of directors has met the standards of the business judgment rule, fiduciary duty, and good faith. Second, losses due to managerial negligence arise when the board of directors neglects professional standards, fails to conduct feasibility analyses, does not perform due diligence, or ignores internal control systems. Liability for this category is more appropriately placed in the realm of administrative or civil matters, unless intent or abuse of authority accompanies the negligence. Third, losses due to unlawful acts (fraud or corruption), which are losses arising from abuse of power, intentional conflicts of interest, bribery, gratuities, asset embezzlement, financial statement manipulation, or other actions that meet the elements of corruption. The reconstruction of that classification will provide legal certainty because each form of loss is assessed based on the character of its cause, not merely based on the consequence of the decrease in the company's asset value.

From the above description, this research offers a new model that can be referred to as the investment risk-based state financial accountability model, built on five main pillars: (1) a clear separation between normal investment risks, managerial negligence, and corrupt acts; (2) the application of the Business Judgment Rule, fiduciary duty,

and good faith as the main standards of board accountability; (3) the use of risk-based governance and enterprise risk management as preventive oversight instruments; (4) the harmonization of state financial law regimes, state-owned enterprise law, corporate law, and other related laws; and (5) the integration of Environmental, Social, and Governance (ESG) principles as indicators of the success of state investment management oriented toward sustainability. Through this model, state financial accountability no longer functions merely as a repressive mechanism to identify mistakes after losses occur, but also becomes a preventive instrument that encourages professionalism, innovation, legal certainty, and sustainability in investments made by state-owned enterprises (BUMN).

Conclusion

The findings of this study demonstrate that the traditional outcome-based approach to state financial accountability is no longer adequate for governing investment activities undertaken by State-Owned Enterprises (SOEs). The enactment of Law No. 16 of 2025 signifies a normative shift toward risk-based governance, under which legal accountability is assessed primarily through the integrity of the decision-making process rather than the mere occurrence of financial losses. This study argues that investment losses should be distinguished from managerial negligence and fraudulent conduct by applying objective governance standards, including the Business Judgment Rule, fiduciary duty, good faith, and Good Corporate Governance. Such an approach strengthens legal certainty for SOE directors while preserving effective protection of state assets and maintaining the role of criminal law in addressing intentional misconduct.

The principal contribution of this article lies in the development of an investment risk-based state financial accountability model that integrates state finance law, corporate law, SOE law, and anti-corruption law into a coherent governance framework. Unlike the existing accountability regime, which predominantly relies on *ex post* identification of state financial losses, the proposed model adopts a preventive and process-oriented approach built upon five interconnected pillars: differentiated classification of investment losses, governance-

based directors' accountability, risk-based governance, regulatory harmonization, and sustainability through Environmental, Social, and Governance (ESG) principles. By reconciling public accountability with corporate governance principles, this model contributes to the theoretical development of Indonesian state finance law and corporate governance by redefining the legal relationship between the state as shareholder and SOEs as separate legal entities.

From a law reform perspective, this study recommends harmonizing Law No. 17 of 2003 on State Finance, Law No. 1 of 2004 on State Treasury, Law No. 40 of 2007 on Limited Liability Companies, Law No. 16 of 2025 on State-Owned Enterprises, and relevant anti-corruption legislation. Such harmonization should explicitly set objective legal parameters to distinguish ordinary business risk, managerial negligence, and corruption, ensuring consistent application of risk-based governance within Indonesia's state financial accountability system. This study is limited by its normative legal methodology, which relies primarily on statutory interpretation, constitutional jurisprudence, and doctrinal legal analysis without incorporating empirical evidence on judicial practice or law enforcement in SOE investment cases. Future research should therefore examine how Indonesian courts, prosecutors' offices, and anti-corruption investigations apply the Business Judgment Rule and fiduciary duty in SOE cases. Comparative empirical studies with jurisdictions that have successfully integrated corporate governance principles into public-sector investment accountability would also provide valuable insights for strengthening future legal reforms.

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None.