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CIVIL LIABILITY OF STATE-OWNED ENTERPRISE DIRECTORS FOR THE IMPLEMENTATION OF SPECIAL ASSIGNMENTS

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ABSTRACT

This study examines the civil liability of Directors of State-Owned Enterprises (SOEs) when executing special assignments of the state under the reformed framework of Law SOE 2025. Research questions: (1) How should directors' civil liability be assessed through the lens of the Company Law and the Business Judgment Rule (BJR)? (2) What are the proper form and limits of that liability when special assignments generate losses, and what regulatory model best aligns with Good Corporate Governance (GCG)? Method: doctrinal (normative) legal research using statute, conceptual, and case approaches; prescriptive qualitative analysis. Grand Theory: welfare state; Middle Range Theory: fiduciary duty and BJR; corporate governance (GCG/OECD-SOE) as the applied theory. Analysis shows that Law 1/2025 (i) ring-fences SOE property (Arts. 4A(5), 4B), (ii) codifies BJR for SOE organs (Art. 9F), and (iii) restructures special assignments (Arts. 87C–87D: presidential decree, separate accounting, and state funding if financially unviable). Through Art. 94A(b), asset/profit-loss status follows this law as lex specialis. The dissertation proposes a Two-Gate Test: Gate-1 (BJR-first) four cumulative BJR prongs; Gate-2 (Public-Money test) criminal law engages only when public funds (budget/equity injections/compensation/guarantees) are directly impaired and/or there is unlawful conduct (fraud/conflict of interest). Findings: (i) directors' civil liability is fault-based, not outcome-based; (ii) business loss ≠ state loss; (iii) a hybrid model (corporate layer and assignment layer) anchored in BJR and GCG is most proportionate; (iv) harmonisation of the State Finance Law with Law 1/2025 and BJR-first, Public-Money-second enforcement guidance is required to prevent over-criminalisation while safeguarding public accountability.

Keywords: *Civil Liability, SOE Directors, Special Assignment, Business Judgment Rule, Good Corporate Governance.*

Introduction

The theoretical framework underlying the discussion of SOEs is *the welfare state*. In this model, the state does not merely act as a neutral "*night watchman*", but is required to actively promote social justice and public welfare. To support this fiscal capacity, the state does not only rely on taxes and traditional financing, but also on business activities that generate dividends, corporate taxes and added value. This is where SOEs come in as policy instruments and business actors that operate according to modern corporate standards.

State-owned enterprises (SOEs) are business entities whose capital comes from separate state assets, so that after being deposited, they become the assets of a separate company that is a private legal entity. As a consequence, the state acts as a shareholder, while day-to-day management is carried out by the company's organs (the general meeting of shareholders, the board of directors, and the board of commissioners). However, in law enforcement practice, there are still frequent interpretations that equate SOE losses with state financial losses, especially in corruption cases. This conceptual tension gives rise to the risk of criminalisation of business decisions, particularly when the Board of Directors carries out special assignments from the government. This dissertation focuses on the design of civil liability for SOE directors when carrying out special assignments, linking the corporate law regime (PT Law), SOE law, and corruption law, while placing the research within the framework of *the welfare state*.

From a civil law perspective, a state-owned enterprise in the form of a limited liability company is a private legal entity that has the same status as other limited liability companies, as stipulated in Law No. 40 of 2007 concerning Limited Liability Companies, hereinafter referred to as **the "PT Law"**. Furthermore, regarding the capital of SOEs, Article 1 paragraph (1) of the 2003 SOE Law stipulates that the separation of state assets that become SOE capital causes these assets to be transferred to the company, which is separate from state assets. Therefore, in accordance with the provisions of the 2003 SOE Law, it is clear that the capital of SOEs is separated state assets, so that SOEs have capital that is separate from state assets that are not included in the state budget. The inclusion of separated state assets in state-owned companies as part of state finances is based on the idea that the Government is obliged to provide public services in order to achieve the objectives of the state as mandated in the preamble to the 1945 Constitution.

Furthermore, with the amendments to the 2025 SOE Law regarding capital participation, there are provisions in Article 4 and Article 5 (SOE capital framework). Thus, the separation of state assets in Articles 4 and 5 of the 2025 SOE Law is not merely an accounting construct, but a constitutional corporate pillar that ensures the state remains a strong shareholder, while SOEs, particularly Persero companies, can be managed according to modern business logic. At the same time, public service

functions remain guaranteed through a transparent and measurable state funding scheme when special assignments are given.

Although the 2025 State-Owned Enterprises Law clearly separates capital contributed by the state to state-owned enterprises, in fact, when the Job Creation Law was enacted, there were no changes to the State Finance Law. This has resulted in the criminalisation of SOE directors, as recently seen in the case against the President Director of PT ASDP Indonesia Ferry (Persero), Ira Puspadewi, which provides a clear illustration of the tension between the modern business legal framework and the state administrative legal framework, which are not yet fully aligned. The problem arises when the public law approach, particularly the State Financial Management Agency ( ) through the 2003 State Finance Law, still positions SOE assets as part of state assets. This view has implications for the possible application of criminal corruption provisions to SOE officials in situations where business decisions result in potential financial losses to the state, even if they are made professionally and based on adequate analysis. The absence of revisions to the State Finance Law has resulted in a regulatory harmonisation vacuum. As a result, law enforcement officials still use state administrative criminal provisions to address corporate managerial actions.

The main controversy surrounding state-owned enterprises and corruption is the definition of what constitutes "*state financial losses*" in the context of state-owned enterprises in the form of limited liability companies. Under civil law, state assets that are separated to become the capital of state-owned enterprises change status to become company assets that are separate from state finances. However, in many cases, law enforcement officials will still consider losses incurred by an SOE as state losses. This polemic has an impact on the business climate of SOEs, because as SOEs have the objective of seeking profits by making business decisions, these decisions then pose a risk to the SOE's directors. Business decisions that result in losses for companies in the business world are normal, because these losses can still be covered by other profits. In practice, it is recognised that losses resulting from a business decision are not losses for the company, but losses for that particular transaction only. Furthermore, as a result of this polemic, losses resulting from business decisions can be interpreted as unlawful acts under criminal law. This has raised concerns among SOE directors that any losses from business ventures or decisions could potentially be used as grounds for allegations of criminal corruption, even though such losses are a normal consequence of the business risks of an enterprise.

Returning to the 2025 SOE Law, the new architecture of the 2025 SOE Law seeks to unite the two historical orientations of SOEs, namely profit and public benefit, into a more consistent governance structure: (i) *the profit motive* of limited liability companies (Persero) is still assessed using GCG and *business judgement*

standards, (ii) *the public mandate* is fulfilled through a special assignment scheme with clear gatekeepers and clear sources of funding, and (iii) the status of assets is confirmed as corporate assets, so that they are not automatically transferred to the state treasury. With this framework, the state's role as policy maker remains strong through its privileges and *policy tools*, while SOE management gains the basic certainty to act like a modern corporation.

In practice, this duality of functions often causes legal tensions between economic interests and social responsibilities. A number of corruption cases in state-owned enterprises, such as Jiwasraya, Asabri, PLN, and Pertamina, show differences in interpretation of the boundary between *business losses* and *state losses*. Law enforcement officials tend to interpret every SOE loss as a loss to the state's finances, even though, conceptually, losses arising from business risks cannot always be classified as criminal offences. This situation creates legal uncertainty and has the potential to inhibit the managerial courage of directors in making strategic business decisions.

The tension became even more complex after the enactment of Law No. 1 of 2025 concerning the Third Amendment to Law No. 19 of 2003 concerning State-Owned Enterprises. This regulation brought about a paradigmatic change to the legal construction of SOEs. Article 4 paragraph (2) and Article 4B of the 2025 SOE Law emphasise that profits or losses incurred by SOEs are corporate profits or losses, not state profits or losses. On the other hand, Article 9G of the 2025 SOE Law states that members of the Board of Directors, Board of Commissioners, and Board of Supervisors are not state administrators. This formulation, on the one hand, provides legal protection for SOE managers, but on the other hand, it raises legal debates regarding the relationship between SOEs and the public legal system, especially in relation to civil and criminal liability.

In this context, Gunawan Widjaja emphasises that state-owned enterprises in the form of limited liability companies are private legal entities subject to Law No. 40 of 2007 on Limited Liability Companies, so that the actions of the Board of Directors must be assessed based on the principles of *the Business Judgment Rule* (BJR) and fiduciary duty as applicable to corporations in general (Gunawan Widjaja, *2025*). As long as the Board of Directors' decisions are made in good faith, with due care, and without any conflict of interest, they cannot be classified as unlawful acts. According to Gunawan Widjaja, this principle is the line between business-related managerial errors and criminal abuse of authority.

Therefore, the main issue examined in this study stems from the need to redefine the boundaries of the legal responsibilities of SOE directors between private and public law regimes. This study views that SOE directors acting in special assignments bear professional responsibilities that are measured not only by business results but also by their contribution to public welfare. This construction is

expected to present a model of legal accountability that balances protection for SOE managers and legal certainty for the state and society.

Based on the above descriptions, it can be concluded that although there have been studies related to the accountability of SOE directors, most discuss it from a civil and criminal perspective, while this dissertation research has the novelty of integrating separate perspectives between civil law and corporate law in the context of the implementation of special assignments by the directors of SOEs, taking into account the principles of GCG and protection against excessive criminalisation risks. Therefore, in this research, the researcher bases the research on the title "Civil Liability of SOE Directors for the Implementation of Special Assignments".

Research Method

The type of research in this study is normative legal research, which is research conducted by inventorying positive law, discovering the principles and philosophy (dogma or doctrine) of positive law that are appropriate to apply in resolving a particular legal case (E. Saefullah Wiradipradja, 2016). This research is also multidisciplinary in nature as it examines the responsibilities of the directors of state-owned enterprises who are assigned special tasks by the government.

Results and Discussion

Civil Liability of SOE Directors for the Implementation of Special Assignments from the State in the Perspective of Limited Liability Company Law and the *Business Judgment Rule* Principle

The Accountability of SOE Directors

The forms of civil liability of the directors of state-owned enterprises in the implementation of special assignments can be divided into: (i) personal liability; (ii) collective liability; (iii) liability to shareholders and third parties; and (iv) liability for *ultra vires* acts. This classification is in line with the norms in the 2003 Limited Liability Company Law and SOE Law, the 2025 SOE Law, and the developing jurisprudential practice in Indonesia.

Liability for Exceeding Authority (*Ultra Vires Act*)

An *ultra vires* action is an action taken by the Board of Directors that exceeds the limits of its authority as stipulated in the articles of association or GMS resolutions or laws and regulations (Ridwan Khairandy, 2018). Article 92 paragraphs (1) and (2) of the PT Law emphasise that the Board of Directors is only authorised to manage the company in accordance with the company's objectives and within the limits of its authority. If the Board of Directors performs actions outside its authority, the consequences are not only personal liability, but also the potential for the legal action to be invalidated (Mariam Darus Badrulzaman, 2001). Article 99 of the PT Law stipulates that certain strategic actions require the approval of the GMS or the Board

of Commissioners. In the context of special assignments, if the Board of Directors enters into a contract or large transaction outside the authority granted without valid approval, such actions may result in personal liability. This principle aims to maintain a balance between the authority of the Board of Directors and internal control mechanisms.

Limits of Directors' Liability

The limits of directors' liability are a legal mechanism to protect directors who act in good faith and with due care. These limits prevent criminalisation or excessive civil lawsuits against business policies that are taken legally. This limitation is explicitly regulated in Article 97 paragraph (5) of the Limited Liability Company Law, Constitutional Court Decision No. 48/PUU-XI/2013, and SEMA No. 10 of 2014 concerning the Mapping of Legal Issues as Guidelines for the Implementation of Duties for the Court.

Limitations on the liability of directors are an important foundation for ensuring a balance between accountability and legal protection. In the theory *of "risk governance"*, directors have the right to take risks as long as they remain within the confines of the law and governance principles. Therefore, business failure is not always synonymous with legal negligence. In fact, these limitations on liability are necessary to encourage bold yet measured strategic decision-making. It is important to clearly distinguish between business losses inherent in the risks of state-owned enterprises and state losses in the management of state finances.

Regarding this loss, the Researcher can explain from the 2025 SOE Law as follows: According to Article 1 point (10), it is stated that "*SOE capital is and originates from state assets that are separated from the State Revenue and Expenditure Budget*." This means that SOE capital is no longer considered a direct part of the State Budget, but stands alone as separated state assets. Furthermore, Article 66 paragraph (2) reaffirms that: "*All costs incurred in connection with the implementation of special assignments ... shall be charged to the Government budget, as long as the assignment cannot be financed by the relevant SOE*."

Based on the provisions of this article, it means that: SOEs cannot be forced to bear their own losses for performing state duties. The legal implication of this provision is that, with this formulation, SOE losses due to business risks (*business losses*) do not automatically become state losses, unless it can be proven that there has been abuse of authority or bad faith on the part of the company's directors.

Exemption from Board Liability

Article 97 paragraph (5) of the PT Law provides an exemption from liability if the Board of Directors can prove that: (1) the loss was not the result of its error or negligence; (2) it acted in good faith; (3) it had no conflict of interest; and (4) it took adequate preventive measures. In state-owned enterprises (BUMN), this exemption

is relevant when the loss arises from the execution of a special assignment that is commercially high-risk.

Legal Protection for Directors Acting in Good Faith

The *Business Judgment Rule* (BJR) doctrine provides protection to directors from lawsuits if the business decisions they make result in losses, as long as those decisions are rational, based on adequate information, free from conflicts of interest, and in the interests of the company. The BJR is *a presumption of regularity* that directors, as long as they act based on adequate information, in good faith, without conflicts of interest, and within the limits of their authority, cannot be sued under Indonesian positive law simply because the results of their business decisions are detrimental to the company. In Indonesia, the BJR *safe harbour* has been explicitly adopted in Article 97(5) of the Limited Liability Companies Act and is now recodified for state-owned enterprises through Article 9F of the 2025 State-Owned Enterprises Act, with four prerequisites that are substantially identical: (a) the loss is not due to error/negligence; (b) management in good faith and with due care for the interests and in accordance with the objectives; (c) freedom from conflicts of interest; and (d) there are measures to prevent or mitigate losses. This doctrine serves as a process-based review standard, not a guarantee of business results, so that courts and law enforcement agencies should ideally not "second-guess" policies that have been decided by rational and well-documented corporations (Sartika Nanda Lestari, 2015).

The role of the (new) Criminal Procedure Code and (new) Criminal Code in curbing *over-criminalisation*

In November 2025, the Criminal Procedure Code Bill was passed into law and is scheduled to come into effect on 2 January 2026 (along with Law No. 1/2023 on the Criminal Code). This procedural law reform is expected to reinforce the rights of suspects, pretrial hearings, standards of evidence, and important *due process* safeguards so that purely business-related corporate disputes do not automatically jump to criminal proceedings without sufficient *mens rea*. Meanwhile, the new Criminal Code affirms corporate criminal liability (Articles 45–50), which gives judges the option to weigh corporate responsibility versus that of managers more proportionally. The implication for state-owned enterprises: when there is no individual *misfeasance* (fraud/bribery/conflict of interest), the focus should be on corporate instruments, not the criminalisation of individual directors.

Civil Liability in the Perspective of Positive Law and Doctrine

Conceptually, in Indonesian positive law, there are two main bases for civil liability, namely (1) contractual (breach of contract) and (2) non-contractual (unlawful acts/PMH). In contractual relationships, liability arises if the debtor fails to perform as agreed, is late in performing, or performs incorrectly, thereby causing loss to the other party (R. Setiawan, 1981). Meanwhile, in non-contractual relationships, liability arises from violations of general norms, whether derived from legislation, the

subjective rights of others ( ), morality, or propriety. These two types of liability are distinguished by the source of the obligation and the consequences of the remedy, a distinction that is consistently maintained in Indonesian legal doctrine by Subekti, R. Setiawan, Mariam Darus Badrulzaman, and J. Satrio (2001).

Important elements in civil liability include the existence of a legal obligation that has been violated, the losses incurred, the causal relationship between the violation and the losses, and fault in the form of intent (*dolus*) or negligence (*culpa*) (Wirjono Prodjodikoro, 2000).

Causality is at the heart of civil law because it determines the extent to which liability can be imposed and enforced on the party at fault. Modern doctrine combines the *conditio sine qua non* theory with the *adequacy* theory, which limits liability only to reasonable and *foreseeable damages* (Purwahid Patrik, 1994). The theory of *conditio sine qua non* (a condition without which the consequence would not occur) was introduced by Von Buri and later popularised by Von Kries in German law (Lothar Philipps, 1983). Simply put, this theory states that any act that is factually the cause of a consequence must be considered a legal cause, because without that act the consequence would not have occurred. In Latin, "*conditio sine qua non*" means "a *condition without which something will not happen.*" Thus, if an act is eliminated and the consequence also disappears, then that act is considered to be the cause of the consequence. The theory of *adequate causation* is a correction to the theory *of conditio sine qua non*, developed by Von Kries under the name of the theory of adequ*acy*, also known as the theory *of adequate causation* (Von Kries, 1888).

According to this theory, not all factual causes should be considered legal causes; only causes that are adequate according to general experience can give rise to consequences that can be used as a basis for liability. In other words, only cause-and-effect relationships that are objectively reasonable and reasonably foreseeable at the time the act was committed can give rise to legal liability (Mariam Darus Badrulzaman, 2001).

This theory of *adequacy* has been widely accepted in doctrine and jurisprudence in Indonesian positive law, as it is more fair and realistic (Purwahid Patrik, 1994). It is also in line with Article 1247 of the Civil Code, which limits compensation to losses that "*were foreseeable or could have been foreseeable at the time the contract was made*."

Regarding its application in Indonesia, Indonesian judges in practice combine these two theories in assessing civil liability (R. Achmad Fikri, 2023). First stage: using the *conditio sine qua non* theory to examine the factual relationship: *"would the loss have occurred without the act*?" Second stage: using the *adequacy* theory to assess legal appropriateness: *"is the consequence reasonable and foreseeable*?"

This combination is used by the Indonesian Supreme Court in various civil and professional liability rulings (especially doctors and companies), and is referenced by

scholars such as J. Satrio, Mariam Darus Badrulzaman, and Purwahid Patrik (J. Satrio, 2005). Meanwhile, according to Sudikno Mertokusumo, this two-stage approach is a way of "*maintaining a balance between legal certainty and justice*" in assessing liability (Sudikno Mertokusumo, 1993). In the context of civil liability of SOE directors, this combination of theories is very important to distinguish between *business risk* and *legal* fault. With *conditio sine qua non*, we will test in this study whether the directors' decisions actually caused losses. With *adequacy*, we assess whether the losses were a reasonable consequence of a rational policy or due to actual errors. If the directors' decisions were still within the corridor of reasonable policy (*adequate cause within business risk*), then they cannot be held civilly liable. However, if the decision exceeds the authority or disregards *the duty* of care, only then does the causal relationship become "*legally adequate*" to give rise to liability (Erman Rajagukguk, 2021).

Compensation in civil law includes material damages (*damnum emergens* and *lucrum cessans*) and immaterial damages, as stipulated in Article 1243 of the Civil Code (Peter Mahmud Marzuki, 2021). In addition to compensation, there are also mechanisms for contract cancellation (*ontbinding*, as stipulated in Article 1266 of the Civil Code), restitution, or restoration in *kind* where possible (Djuhaendah Hasan, 1996). The applicable principle is *full compensation but not punishment*, which means that compensation is intended to restore, not to punish. This is in line with the views of Purwahid Patrik and Abdulkadir Muhammad that civil law is more oriented towards balance, not retribution (Purwahid Patrik, 1994). Therefore, compensation claims must be proportional and not speculative.

In addition to direct liability, civil law also recognises indirect liability or liability for other parties, such as *vicarious liability* (Article 1367 of the Civil Code), whereby an employer is liable for the actions of their subordinates, as well as *product liability* under the Consumer Protection Act, which adheres to the principle of limited *strict liability*.

In the context of state-owned enterprises, the difference between *corporate losses* and *state losses* must be clearly understood. SOE directors who act within the corridor of corporate law, in accordance with Article 97 of the Limited Liability Company Law, are protected by the *Business Judgment Rule* (BJR) doctrine as long as the actions are carried out in good faith, with due care and adequate information (Yahya Harahap, 2020). This principle emphasises that reasonable business risks do not give rise to personal liability. In the case of special assignments (*Public Service* Obligation/PSO), especially since the operational costs of the special assignments carried out by the NUMN directors are borne by the state in accordance with the provisions of Article 87C paragraph (2) of the 2025 State-Owned Enterprises Law, so that the losses incurred are purely the result of the implementation of the social mandate and, in the researcher's opinion, this does not constitute a civil law liability for the directors, unless there is gross negligence or a conflict of interest proven to

have been committed by the directors of the state-owned enterprise. Thus, civil law provides rational protection for state economic policy makers, while maintaining the principles of accountability and substantive justice.

Civil law analysis of corporate losses

From a civil law perspective, the liability of SOE directors for corporate losses is primarily regulated in Article 97(3) of the Limited Liability Companies Act, which states that members of the board of directors are fully liable personally if they are guilty of misconduct or negligence in the performance of their duties. This norm affirms the principle of *fault liability*, rather than *strict liability*. Thus, losses arising from pure business risks do not necessarily give rise to legal liability if there is no element of fault or negligence on the part of the directors.

In practice, the assessment of whether or not there has been a mistake must refer to the parameters set out in Article 97(5) of the Limited Liability Companies Act, namely: decisions are made in good faith, with full responsibility, and with reasonable consideration based on adequate information. If these three elements are fulfilled, then members of the board of directors cannot be held personally liable. This doctrine is known as *the Business Judgment Rule* (BJR) (Yahya Harahap, 2020). The doctrine has been adopted in Indonesian corporate law through various jurisprudence, and has become a legal shield for directors to make managerial decisions without fear of criminalisation.

Unlike public losses, corporate losses in civil law are a consequence of *business risk*. Bismar Nasution emphasises that in civil law, corporate losses can only give rise to liability if it can be proven that there has been an unlawful act (*onrechtmatige daad*) or a clear breach of contract by a corporate body (Bismar Nasution, 2019). This means that losses resulting from market fluctuations, policy changes, or investment failures that have undergone rational consideration do not fall under the category of unlawful acts.

Thus, when compared to the 2003 SOE Law, the 2025 SOE Law provides clearer provisions on accountability: namely, that the Board of Directors may adhere to the *business judgement rule* standard as long as it fulfils the elements of the PT Law's *(good faith, prudence,* no conflict of interest, and preventive measures). while public policy intervention through special assignments is framed by presidential decisions, state funding support, and separate accounting safeguards.

In the context of state-owned enterprises (SOEs), the application of corporate criminal liability theory becomes increasingly complex because SOEs have two functions, namely (1) a business function; and (2) a social function. SOE directors who carry out special assignments on behalf of the state often face the risk of criminalisation if their managerial decisions are deemed to have caused losses to the state. With the theory of corporate criminal liability, it becomes crucial to assess the boundaries of corporate criminal liability and the civil liability of directors.

Based on the Welfare State Theory, as presented by Philipus M. Hadjon and Hotma P. Sibuea, the state has a constitutional obligation to realise social justice through intervention in the economic sector (Philipus M. Hadjon, 2005). State-owned enterprises (SOEs) are instruments of the state to carry out the function *of bestuurszorg*, which is the state's active responsibility to serve the interests of the people (Hotma P. Sibuea, 2025). In this context, the implementation of special assignments given to SOEs based on ministerial decisions is a form of administrative authority delegation from the government to state corporations. Thus, when the Board of Directors carries out these tasks, it is not merely acting as a business entity, but as an implementer of public policy that serves a social function. Therefore, in carrying out its activities, it is important for the Board of Directors to adhere to *fiduciary duty. The theory of Fiduciary Duty* and *Business Judgment Rule (BJR)* limits the scope of the Board of Directors' responsibility to be in line with the principle of substantive justice (Sutan Remy Sjahdeini, 1993).

Fiduciary duty limits the scope of the Board of Directors' responsibility in two ways: **First**, ensuring that the Board of Directors remains accountable for breaches of trust (e.g., abuse of authority, conflicts of interest, gross negligence). **Second**, protecting the Board of Directors from excessive claims if it has carried out its mandate honestly, carefully, and loyally. Thus, "*limitation of liability*" here means that the Board of Directors can only be held liable if it is proven that *there has been a breach of fiduciary duty*, but not because of poor business results (Sutan Remy Sjahdeini, 1993).

BJR is *the* "*twin*" of *fiduciary duty* in modern corporate law. This doctrine asserts that: "*Directors cannot be held liable for losses incurred by the company as long as business decisions are made in good faith, based on adequate information, without conflicts of interest, and in the interests of the company.*" The purpose of BJR is not to absolve directors of all responsibility, but to prevent substantive injustice, namely punishing directors for failed business decisions that were rational at the time they were made (Ridwan Khairandy, 2018). This is because the law does not assess the outcome of a decision , but rather the *decision-making* process. This is what is meant by "*limiting the scope of responsibility to be in line with substantive justice*": the law must consider the context and intent, not merely financial losses.

Within the framework of *Good Corporate Governance (GCG)*, the ideal model of civil liability for SOE directors is one that integrates legal protection (through BJR) with public accountability (through the principles of transparency and *fairness*) (OECD, 2015). As stated by Muchammad Zaidun, GCG requires a balance between *managerial discretion* and *public control*, so that the Board of Directors has room for innovation without sacrificing legal responsibility (Ni Luh Made Mahendrawati, 2022). This principle is also in line with the OECD's (2015) view that SOE directors must have

professional freedom in business decision-making, while remaining subject to transparent public reporting mechanisms (Riza Fadhila, 2023).

Thus, the answer to Question No. 1 can be confirmed that the civil liability of SOE directors for the implementation of special assignments is corporate and proportional in nature, based on the principles *of fiduciary duty* and *the Business Judgment Rule*, within the framework of a welfare state that guarantees a balance between legal protection and public accountability .

The novelty of this study lies in the hybrid accountability model that integrates three areas of law, namely:

(1) corporate law,
(2) administrative law, and
(3) social welfare law into a more equitable, rational accountability system that is in line with the values *of Good Corporate Governance* in the era of modern state-owned enterprises

The ideal form and limits of civil liability of SOE directors in the implementation of special assignments that subsequently cause losses, as well as the regulatory model to ensure alignment with the principles of *Good Corporate Governance*

Conceptual Basis for Ideal Civil Liability

Ideal accountability is not an absolute concept; it exists in the space between legal protection for administrators and public accountability to the interests of the state and society. The concept of ideal accountability is rooted in the welfare state theory, which holds that every economic activity of the state, including the management of state-owned enterprises, is part of the constitutional social responsibility to improve the welfare of the people (Philipus M. Hadjon, 2005). Therefore, the model of how SOE directors should be held accountable must combine the logic of business- s with public ethics: protecting professional freedom, while ensuring that every business decision is oriented towards the common good.

Ideal Parameters for Board Responsibility in Special Assignments

In an effort to develop an ideal civil liability system for the directors of state-owned enterprises, it is necessary to determine objective legal parameters as a basis for assessment. These parameters serve to distinguish between liability arising from personal misconduct and "*reasonable business risks as a consequence of state economic policy*" (Sudikno Mertokusumo, 1993). Therefore, there are several parameters that can be used to determine the ideal form of accountability for SOE directors, as follows: The first parameter of ideal accountability is *good faith*; The second is the principle of *duty of* care, the third is competence and *due diligence*, the fourth is *compliance with the law*, the fifth is *transparency and accountability* (Muchammad Zaidun, 2020), and the sixth is proportionality between social objectives and economic risks. If the special assignment results in economic losses

but is carried out in the public interest, the state is obliged to bear the compensation as stipulated in Article 87C of the 2025 SOE Law.

In the context of state corporate law, this is the meeting point between *freedom to manage* and *duty to account*. This model of responsibility will create a balance between legal protection for policy makers and public trust in state-owned enterprises as instruments of development.

Thus, all six become ethical and legal standards for assessing whether there has been any misconduct or negligence on the part of the directors of state-owned enterprises (Bintan R. Saragih, 2010). If these parameters are applied consistently, a system of accountability will be created that is not only legal and formal, but also humanistic and in line with the values of a welfare state, where the law plays a role not to punish, but to uphold civilised justice (Hotma P. Sibuea, 2025).

Limits of Board Accountability: *Safe Harbor* Principle

Safe harbour conceptually originates from corporate law practice in the United States, which was later adopted into the legal systems of other countries, including Indonesia (Black's Law Dictionary, 2019). With *safe harbour*, the law no longer assesses the final outcome (*outcome-based liability*), but rather the decision-making process (*process-based accountability*). This principle ensures substantive justice for directors acting in good faith (Bismar Nasution, 2019).

The 2025 State-Owned Enterprises Law, particularly Article 87C, reinforces this principle by stipulating that losses resulting from the implementation of lawful assignments are the responsibility of the state, not the personal responsibility of the Board of Directors. The *safe harbour* principle is also closely related to the *Business Judgment Rule* (BJR) doctrine, which has been discussed previously at . The BJR serves as *a "gateway"* for the application of *safe harbour* because it provides a rational framework for judges or auditors in assessing the behaviour of the Board of Directors (Ridwan Khairandy, 2018). If the Board of Directors can prove that the policy taken has gone through a process of risk analysis, professional consultation, and has been reported transparently, then the decision must be protected by law, even if the result leads to losses for the Company (OECD, 2015). Thus, *safe harbour* and BJR are two sides of the same coin: one protects against legal claims, the other ensures the integrity of the decision-making process (Romli Atmasasmita, 2021). In judicial practice, the *safe harbour* principle has been implicitly recognised by the Constitutional Court in Decision No. 48/PUU-XI/2013, which emphasises that once state assets are included as SOE capital, their management becomes the responsibility of the corporation, not the public.

Ideal Model of Civil Liability of State-Owned Enterprise Directors

The ideal model of civil liability for directors of state-owned enterprises arose from the need to address the imbalance between excessive legal responsibility and limited legal protection in the practice of state-owned enterprise management

(Sudikno Mertokusumo, 1993). Within the framework of welfare state theory, this ideal model emphasises that the state has a responsibility to protect every corporate officer who acts in the context of implementing public policy (Philipus M. Hadjon, 2005). This is because SOE directors are part of *the "hand of the* state" that carries out the function *of bestuurszorg* through economic activities. Meanwhile, from the perspective of *fiduciary duty* and *Business Judgment Rule* (BJR) theory, this ideal model provides assurance that SOE directors will remain protected as long as they act in good faith, based on adequate information, and without conflicts of interest (Yahya Harahap, 2020). Based on modern corporate responsibility theory, directors cannot be held personally liable for any business risks that occur as long as they remain within the corridor *of business loss* (Erman Rajagukguk, 2021). This ideal model takes the form of a *Hybrid Corporate Accountability Model*, which combines the principles of corporate (*private*) law with *public* accountability mechanisms (OECD, 2015).

In conclusion, the ideal model of civil liability for SOE directors is one based on substantive justice and balance of values, whereby directors are protected by *the Business Judgment Rule* as a legal safeguard, while at the same time being guided by the principles *of Good Corporate Governance* as a moral compass (Bintan R. Saragih, 2010). This model is an academic innovation because it successfully integrates corporate law, administrative law, and welfare law into a coherent conceptual framework.

Legal Regulation Model: Integration of the Corporate Regime and the Public Regime

The ideal model of civil liability for SOE directors requires cross-legal regime integration that can bridge the interests of corporate business s with the social mission of the state (Jimly Asshiddiqie, 2020). Therefore, legal regulations regarding the liability of SOE directors must be placed within the framework of corporate law, state administrative law, and the principles of the welfare state. These three regimes do not negate each other, but rather complement each other, thereby creating a legal system that is consistent, fair, and oriented towards public welfare.

The ideal arrangement must also ensure synchronisation between the implementing regulations under the two laws. For example, the provisions in Minister of State-Owned Enterprises Regulation No. PER-01/MBU/2011 on the Implementation of *Good Corporate Governance* in State-Owned Enterprises need to be updated to include mechanisms for director accountability in the implementation of special assignments, including reporting, evaluation and performance compensation systems. With this regulatory harmonisation, the implementation of the *Business Judgment Rule* (BJR) principle can run concurrently with the application of *Good Corporate Governance* (GCG) without overlapping authority between agencies.

From the perspective of welfare state theory, this legal integration reflects the active function of the state, which not only regulates but also protects economic

policy actors who act in good faith (Hotma P. Sibuea, 2025). The welfare state does not use the law as a tool of repression, but rather as a means of protecting responsible public policy. The implementation of this integrative model also needs to be supported by coordinated public and corporate audit mechanisms.

Thus, the ideal legal regulatory model is one that is capable of uniting corporate legal discipline with public legal values, whereby the directors of state-owned enterprises are legally accountable to the company and morally accountable to the public (Ridwan Khairandy, 2018). This model gives rise to a two-dimensional accountability system, namely: (Bintan R. Saragih, 2010)

(1) Legal accountability based on personal fault, and
(2) Social accountability based on integrity and transparency.

This is the concrete form of a modern welfare state, which affirms that the law not only regulates human behaviour, but also governs the relationship between power, corporations and the welfare of the people (Philipus M. Hadjon, 2007).

Implementation of *Good Corporate Governance* (GCG) Principles

Conceptually, GCG in SOEs functions as *an ethical infrastructure* that connects private corporate principles with public values (Suryono Sukanto, 2022). The main principles of GCG, namely *transparency, accountability, responsibility, independence,* and *fairness,* serve as practical guidelines in limiting and directing the actions of the Board of Directors (Kamaruddin, 2022).

In international corporate law practice, the implementation of GCG has proven effective in reducing legal risks for directors. *The International Finance Corporation* (IFC, 2020) notes that companies that consistently implement GCG experience a significant reduction in corporate litigation cases. In the Indonesian context, the implementation of GCG in state-owned enterprises (SOEs) has been regulated through Minister of SOEs Regulation No. PER-01/MBU/2011, which was updated by PER-09/MBU/2012 on the implementation of good corporate governance. However, this regulation is still normative in nature and does not explicitly state the direct link between GCG and the legal protection of directors in the performance of special assignments. The model proposed in this dissertation offers a new approach: GCG must be an integral part of the civil liability of directors, not merely an administrative guideline.

In conclusion, the implementation of GCG principles in SOEs is key to perfecting the ideal civil liability model for directors (M. Yusri Arifin, 2022). GCG functions as *an* ethical-legal *system* that upholds the balance between the professional freedom of the Board of Directors and the public responsibility of the state. By making GCG an integral part of state corporate law, Indonesia can realise sound, transparent and fair governance in line with the ideal of a welfare state that combines economic efficiency with civilised humanity.

Synchronisation with Welfare State Theory

The theoretical foundation of the entire analysis in this dissertation is based on *Welfare State* **Theory**, which views the state not merely as a night watchman (*nachtwachterstaat*), but as an active agent in realising the welfare of the people through legal and economic policies. Welfare state theory also demands harmony between legal certainty and substantive justice. According to Satjipto Rahardjo, the law should not exist solely to impose sanctions, but to serve humanity and create social happiness. The law should not punish someone simply for normal business failures, but only for real mistakes that are ethically accountable (Satjipto Rahardjo, 2009).

Within this framework, the accountability model formulated in this dissertation is *the Hybrid Corporate Accountability Model,* which embodies the principle of equitable welfare. This model does not remove the legal responsibility of SOE directors, but changes the way it is assessed: from a result-based *approach* to *a process-based justice approach*. This approach ensures that public policy continues to be implemented without sacrificing legal justice.

As a theoretical consequence, the integration between welfare state theory and modern corporate law makes state-owned enterprises a rational and just instrument of the state ( ). The state is tasked with creating a legal ecosystem that provides space for managerial creativity while upholding ethical responsibility. In this way, corporate law in Indonesia is no longer a restrictive system, but rather one that fosters public trust in the management of state assets (Jürgen Habermas, 1996).

Thus, the synchronisation between welfare state theory and the practice of civil liability of SOE directors shows that law is no longer understood merely as a tool of control, but also as an instrument of protection for responsible policy makers. This is where the strength of the researcher's dissertation concept lies: it presents a new reading of the relationship between the state, corporations, and public welfare, where legal responsibility is no longer oriented towards punishment, but towards the sustainability of social justice and civilised humanity (Bintan R. Saragih, 2010).

Principles Underpinning the Ideal Accountability Model

The ideal model of civil liability for SOE directors can only stand firm if it is built on a foundation of strong and coherent legal principles. The principle of legal certainty (*rechtszekerheid*) affirms that every SOE director is entitled to clarity regarding the limits of their authority and legal protection for decisions made in good faith. The principle of justice (*gerechtigheid)* means that the liability of the Board of Directors must be determined proportionally between the fault and the consequences incurred. The law should not punish someone solely for economic losses, but for proven moral and legal wrongdoing (D.N. Aidit, 2021). Furthermore, the principle of accountability is a moral pillar in the modern accountability model. This principle not only requires that every action of the Board of Directors be

accountable to shareholders and the public, but also demands transparency in the decision-making process. The principle of proportionality has a corrective function against overly rigid legal tendencies. This principle ensures that legal actions taken against the Board of Directors are always commensurate with the level of misconduct committed. The principle *of balancing of interests* is the common thread between the interests of the state as a shareholder and the interests of the public as beneficiaries of economic policy.

In the Indonesian legal system, these five principles do not stand alone, but rather complement each other. Legal certainty provides direction, justice provides meaning, accountability provides legitimacy, proportionality provides limits, and balance provides harmony. When these five principles work simultaneously, a legal system is formed that is not only effective, but also humane (M. Arifin, 2022). This principle distinguishes a welfare state based on the rule of law ( ) from a formalistic rule of law that only assesses legality without considering substantive justice.

In international practice, the application of these principles is key to the governance of state-owned corporations. *The* UNCTAD *Report on Corporate Accountability* (2022) states that countries with value-oriented legal systems are able to create public corporations that are resilient and trusted by the public. Indonesia needs to adopt a similar approach by strengthening the normative and ethical aspects of law in state-owned enterprise regulations, so that the management of state-owned enterprises is not only economically profitable but also legally dignified.

Normative and Practical Implications of the Ideal Model

The civil liability model for SOE directors formulated in this study not only offers theoretical ideas, but also has normative implications for legislators, supervisory authorities, and law enforcement agencies (J.C.T. Simorangkir, 2023). The normative and practical implications of this model encompass interconnected legal, institutional, and cultural dimensions (Lili Rasjidi and I.B. Wyasa Putra, 2022). Legally, this model leads to the establishment of a hybrid accountability system that is in line with the welfare state. Institutionally, it encourages the emergence of adaptive and proportional oversight synergies. Culturally, it fosters a new awareness that the Board of Directors is not merely a business administrator, but also the executor of the state's constitutional mandate. With the integration of these three dimensions, this researcher's dissertation asserts that the development of Indonesian economic law must be directed not only towards enforcing rules, but also towards protecting people and fostering sustainable social justice.

CONCLUSION

Civil liability of SOE directors for special assignments in the perspective of the Limited Liability Companies Act and BJR

Civil liability of the Board of Directors = corporation (PT Law). The Board of Directors is liable to the company (not automatically to the state) for losses incurred by the company if proven to be wrongful/negligent (Articles 92 & 97 of the PT Law). Form: civil compensation (jointly/severally) to the company.

Safe harbour – BJR (Article 97 of the PT Law & Article 9F of Law 1/2025). Directors cannot be held personally liable for losses if the four BJR conditions are met: not due to fault/negligence; *good faith and prudent*; no conflict of interest; preventive/mitigation measures were taken.

Asset status and profit/loss (Articles 4A(5) & 4B). State capital paid in becomes the assets of state-owned enterprises and profits/losses belong to state-owned enterprises. This confirms that *business loss ≠ automatic state loss*.

Lex specialis (Article 94A(b)) vs State Finance Law. For cases involving the status of state-owned enterprise assets/profits and losses, Law 1/2025 applies as lex specialis. "*State losses*" according to Article 2 letter g of the 2003 State Finance Law are only relevant if public funds are directly affected or if there is PMH/fraud/bribery/COI. Without this, it falls under corporate civil law, not criminal law.

*The civil liability of SOE directors for special assignments is corporate and **fault-based** with **BJR** as a safeguard, while the label "state losses" only applies if there is direct damage to **public money** or **unlawful acts**.*

The ideal form and limits of civil liability and a regulatory model in line with GCG

The ideal limit = *fault-based*, not *outcome-based*. Directors are only personally liable if they are at fault/negligent; losses due to reasonable business risks decided on process (BJR) are not grounds for personal liability.

2-gate test (operational). Gate-1: BJR (four conditions). Gate-2: *Public-money* test, only if there is a state budget/state-owned enterprise/assignment compensation/government guarantee that is directly harmed or there is PMH/fraud/bribery/COI, then it crosses over to criminal/corruption. If not, settle it in corporate civil court.

A hybrid model in line with GCG.

- Corporate-private layer: PT Law + BJR (Article 9F) as *the standard of review*.
- Public-administrative layer: 87C–87D (Presidential Decree, separate accounting, funding), GCG as *policy oversight* of state shareholders.

This design protects decisions made in good faith while ensuring public accountability.

Regulatory harmonisation. Align the 2003 State Finance Law with Articles 4A(5), 4B, 94A(b) of the 2025 State-Owned Enterprises Law and

the Limited Liability Companies Law so that *business losses* are not automatically treated as *state losses*; law enforcement guidelines emphasise BJR-first before criminal approaches.

The ideal form and limits of civil liability for directors is *fault-based with BJR fencing*, operationalised through *a 2-gate test* and *a hybrid model* (corporate + assignment) that is aligned with *GCG*, thereby protecting decisions made in good faith without sacrificing public accountability.

RECOMMENDATIONS

For the common good. Harmonisation of Regulations and Enforcement Guidelines ("*BJR-first, Public-Money test*")

Align the State Finance Law with Law No. 1/2025 so that *business losses* ***do not*** *automatically* ***equate to*** *state losses*: clarify that "*state losses*" in state-owned enterprise cases only arise when public funds (state budget/state capital/assignment compensation/government guarantees) are directly harmed or when there is *PMH/fraud/conflict of* interest/bribery. Incorporate this into enforcement guidelines (Attorney General's Office/KPK/BPK/BPKP) in the form of the "*BJR-first, Public-Money test second*" principle:

- Step 1 (*BJR-first*): test the four prerequisites of Article 9F; if met, the case will be resolved in corporate civil court.
- Step 2 (*Public-Money test*): only if public funds are affected and there is PMH, then it is relevant to criminal/corruption cases.

This reduces *over-criminalisation*, ensures that the civil liability of directors is fault-based, and still allows for firm action to be taken against actual misconduct.

Internalisation of BJR and Two-Gate Test into SOE SOPs (Hybrid Model + GCG)

Require every SOE to adopt BJR and the Two-Gate Test as SOPs for decision-making and assignment:

- Standard BJR documentation (*minutes/board pack, risk memo, legal* and *fairness opinions, COI disclosure/recusal*, mitigation and *stop-loss* plans).
- Assignment compliance package (Articles 87C–87D of the 2025 SOE Law): Presidential Decree, separate accounting, government funding scheme if unfeasible; include *readiness file* in the Annual Work Plan/Long-Term Plan.
- BJR statement in *the AGM/Board Charter (BJR compliance statement)* and centralised *Conflict of Interest* registry.
- Civil dispute resolution forum (arbitration/corporate mediation) for *business loss* disputes, so that the personal liability of the Board of Directors only arises when the BJR fails (error/negligence, *conflict of interest*, abuse of authority).

This step makes the hybrid model (PT Law + Chapter IXA + GCG) work in practice, strengthening legal certainty and encouraging the courage of directors who are acting in good faith.

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