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STATE LEGAL LIABILITY REGARDING LOSSES INCURRED BY STATE-OWNED ENTERPRISES UNDER ARTICLE 4B OF LAW NUMBER 1 OF 2025, IN RELATION TO ARTICLE 2G OF LAW NUMBER 17 OF 2003 CONCERNING STATE FINANCES.

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Abstract

The amendment to the legal framework governing State-Owned Enterprises (SOEs) through Article 4B of Law Number 1 of 2025 has raised legal issues regarding the status of separated state assets and the State's legal liability for losses incurred in SOE management. Meanwhile, Article 2 letter (g) of Law Number 17 of 2003 on State Finance continues to classify separated state assets as part of state finances. This regulatory inconsistency creates legal uncertainty in determining whether SOE losses constitute state losses and in defining the State's legal liability. This study aims to analyze the State's legal liability under Article 4B of Law Number 1 of 2025 in relation to Article 2 letter (g) of Law Number 17 of 2003 and to formulate recommendations for regulatory harmonization. This research employs a normative legal method using statutory and conceptual approaches. Primary, secondary, and tertiary legal materials were collected through library research and analyzed qualitatively using a descriptive-analytical approach. The findings reveal that Law Number 17 of 2003 treats separated state assets as state finances, whereas Law Number 1 of 2025 emphasizes corporate governance principles and the corporate legal status of SOEs. This divergence may create uncertainty regarding the classification of SOE losses and the limits of the State's legal liability. The State should only be held legally liable for losses resulting from abuse of authority, unlawful acts, negligence, or violations of state financial management and good corporate governance principles.

INTRODUCTION

State-Owned Enterprises (SOEs) are business entities owned by the State and established not only to generate dividends from corporate profits but also to perform governmental functions, including promoting national economic development, supporting infrastructure development, and providing public services to achieve public welfare. In carrying out their business activities, SOEs grant several rights to the State as the shareholder, including the right to receive dividends, voting rights in the General Meeting of Shareholders (GMS), and the right to supervise the management of SOEs. These rights arise from the legal relationship between the State and SOEs through the mechanism of State Capital Participation (Penyertaan Modal Negara/PMN), which is provided because the objectives of SOEs are aligned with the objectives of the State. State Capital Participation is based on the principle of economic democracy as stipulated in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "the national economy shall be organized as a common endeavor based upon the principle of familyhood." Considering that SOEs are not solely profit-oriented but also carry public service obligations and perform state functions, State Capital Participation constitutes a strategic instrument for supporting national development and strengthening the national economy.

State Capital Participation in SOEs also places the State under the responsibility to protect state assets managed by other parties. The State's involvement in SOE management is reflected in Article 2 letter (g) of Law Number 17 of 2003 concerning State Finance. This provision grants the State authority to participate in the management of SOEs, implying that both profits and losses generated by SOEs may have consequences for the State. Such a provision gives rise to the interpretation that, due to State Capital Participation, all profits and losses experienced by SOEs directly affect the State because state assets have been integrated into SOEs. This interpretation, however, contradicts the principles of corporate law, which recognize the separation of assets between shareholders and the company. Once shareholders contribute their assets as capital, those assets become the property of the company (Yahya, 2016). Furthermore, the State's supervisory role over SOEs has created concerns that directors may become reluctant to make business decisions due to the fear of criminal sanctions whenever SOEs incur losses, as such losses may be interpreted as state losses.

The legal status of SOEs in conducting business activities has generated differing perspectives regarding the legal regime governing them, namely whether SOEs should be regulated under corporate law principles or remain subject to the state finance regime. Article 4B of Law Number 1 of 2025, which provides that "profits or losses incurred by SOEs shall constitute the profits or losses of the SOEs," reinforces the application of corporate law principles, particularly the principles of asset separation and limited shareholder liability in corporate governance. This provision is consistent with Article 3 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, which stipulates that "shareholders shall not be personally liable for agreements entered into on behalf of the company and shall not be liable for the company's losses beyond the value of the shares they own." These provisions demonstrate that a corporation is established based on the separation of assets between the company and its shareholders, accompanied by the principle of limited shareholder liability for corporate losses.

On the other hand, the State continues to bear responsibility for managing state assets invested in SOEs through the State Capital Participation mechanism. This responsibility is reflected in Article 2 letter (g) of Law Number 17 of 2003 concerning State Finance, which provides that state or regional assets managed directly or by other parties, including separated assets invested in state-owned or regional-owned enterprises, constitute part of state finances. Accordingly, these provisions illustrate the coexistence of two distinct legal regimes governing SOEs: the corporate law regime, which emphasizes the separation of assets and limited shareholder liability, and the state finance regime, which regards separated state assets as part of state finances and therefore remains within the scope of state protection and management.

The inconsistency between the State Finance Law and the SOE Law has resulted in practical difficulties in the supervision and operation of SOEs. On one hand, the State, as the manager of state assets, bears responsibility for providing State Capital Participation in accordance with the principles of economic democracy. On the other hand, SOEs are required to comply with corporate law principles that protect shareholders' assets and uphold the doctrine of limited liability in corporate management. Therefore, harmonization between these two laws is necessary to ensure their effective implementation and to prevent public misunderstanding regarding the distinction between SOE losses and state losses.

LITERATURE REVIEW

The Concept of State-Owned Enterprises (SOEs)

The primary objective of economic development is fundamentally to improve public welfare and prosperity in a sustainable manner. Economic development is not merely interpreted as an increase in economic growth but also encompasses improvements in the quality of life, equitable income distribution, and the expansion of employment opportunities. Accordingly, the State, through the government, plays a crucial role in directing the process of economic development to ensure that it is implemented effectively and provides the greatest possible benefit to society.

State-Owned Enterprises (SOEs) were established as a manifestation of the State’s obligation to promote public welfare. Building a strong economic structure through healthy and ethical business practices is regarded as one of the principal means of achieving this objective. Since the State cannot directly engage in commercial activities, SOEs serve as an appropriate institutional mechanism through which the government can fulfill its responsibility to enhance public welfare. The existence of SOEs in Indonesia originated from the nationalization of Dutch-owned enterprises, which was intended to improve Indonesia’s economic conditions during a period of economic decline. Consequently, the 1945 Constitution of the Republic of Indonesia recognizes SOEs as one of the national economic actors. This nationalization process marked the end of Dutch economic dominance and became the foundation for the establishment of Indonesian SOEs.

According to the Decree of the Minister of Finance of the Republic of Indonesia Number 740/KMK.00/1989, an SOE is defined as a business entity whose entire capital is owned by the State (Article 1 paragraph 2(a)), or a business entity whose shares are not entirely owned by the State but whose legal status is equivalent to that of an SOE (Article 1 paragraph 2(b)). This category includes: (1) joint ventures between the central government and regional governments; (2) joint ventures between the government and other SOEs; and (3) joint ventures between the government and domestic or foreign private entities in which the State holds at least 51% of the shares.

Similarly, Law Number 9 of 1969 concerning the Forms of State Enterprises defines SOEs as all forms of state enterprises whose capital is wholly or partially owned by the State or the government and separated from state assets. This definition is further reinforced by Article 1 of Law Number 19 of 2003 concerning State-Owned Enterprises, which provides that an SOE is a business entity whose capital is wholly or predominantly owned by the State through direct capital participation derived from separated state assets (Akbar Baitullah & Cahyani, 2021). Based on these definitions, a State-Owned Enterprise may be understood as a business entity whose capital originates wholly or partially from separated state assets and is established to promote public welfare.

The role of SOEs is closely associated with the objectives assigned to them under Government Regulation Number 3 of 1983 concerning Procedures for the Guidance and Supervision of Public Service Enterprises (Perjan), Public Enterprises (Perum), and Limited Liability State-Owned Companies (Persero). This regulation stipulates that the objectives of SOEs include: (1) contributing to national economic development and state revenue; (2) generating profits and income; (3) providing public benefits through the supply of quality goods and services necessary to meet the needs of society; (4) pioneering business activities that cannot yet be undertaken by the private sector or cooperatives; (5) complementing private and cooperative business activities by providing goods and services required by the public while ensuring high-quality public services; (6) actively providing guidance to the private sector, particularly economically disadvantaged entrepreneurs and cooperatives; and (7) supporting the implementation of government policies and programs in the fields of economic development and national development (Firmansyah et al., 2024).

According to Hamid and Anto, as cited in Akadun (2007), SOEs are designed to achieve specific objectives, including creating employment opportunities, promoting regional development, pioneering business sectors not yet entered by private enterprises, and providing semi-public facilities. In essence, SOEs aim to maximize public welfare while simultaneously achieving particular policy objectives, including the possibility of generating maximum profits (Fasya et al., 2024). Likewise, Article 2 of Law Number 19 of 2003 concerning State-Owned Enterprises provides that the purposes and objectives of SOEs are: (a) to contribute to national economic development and state revenue; (b) to generate profits; (c) to provide public benefits through the provision of high-quality goods and services to meet public needs; (d) to pioneer business activities that cannot yet be carried out by the private sector or cooperatives; and (e) to actively provide guidance and assistance to economically disadvantaged entrepreneurs, cooperatives, and the community.

In addition to these objectives, Government Regulation Number 3 of 1983 further emphasizes that SOEs are intended to: (a) contribute to national economic development and state revenue; (b) operate efficiently while generating profits and providing public benefits, particularly in fulfilling the essential needs of society; (c) undertake business activities that cannot yet be performed by the private sector and cooperatives while complementing their activities by supplying goods and services required by the wider community; (d) actively provide guidance to economically disadvantaged business groups and cooperatives; and (e) support the implementation of government policies aimed at equitable economic development. Based on these perspectives, it can be concluded that the primary role of SOEs is to serve as a driving force for the national economy by contributing to state revenue and maintaining long-term national economic stability. Fundamentally, the establishment of SOEs is intended to improve public welfare and prosperity. Achieving these objectives depends upon the effective performance of SOEs themselves. Therefore, an SOE may be considered successful when it enhances public welfare through improved corporate performance while simultaneously fulfilling its strategic role as a driver of Indonesia's national economy.

The Concept of State Finance under Law Number 17 of 2003 concerning State Finance

The concept of state finance under Law Number 17 of 2003 concerning State Finance has a broad scope and serves as a fundamental basis for the administration of government in Indonesia. Article 1 of Law Number 17 of 2003 defines state finance as all rights and obligations of the State that can be valued in monetary terms, as well as all assets, whether in the form of money or goods, that may become state property in connection with the implementation of those rights and obligations. This definition emphasizes that state finance is not limited to the State Treasury but also encompasses all state assets and obligations related to the interests and functions of the State.

The scope of state finance, as regulated under Article 2 of Law Number 17 of 2003, covers various aspects, including the State's authority to levy taxes, issue and circulate currency, and obtain loans. In addition, state finance includes the State's obligations to provide public services, settle liabilities to third parties, and manage all state revenues and expenditures at both the central and regional levels. Furthermore, state assets managed either directly by the government or by other parties, including separated state assets invested in state-owned or regional-owned enterprises, are also classified as part of state finance (LZ, 2021).

According to Arifin P. Soeria Atmadja, the concept of state finance in public finance law can be understood from two perspectives: the broad sense and the narrow sense. In its broad sense, state finance encompasses all state assets under the control of the government, including those derived from the State Budget (APBN), Regional Budgets (APBD), as well as separated state assets managed by State-Owned Enterprises (SOEs) or other state business entities. Under this interpretation, state finance extends beyond funds explicitly allocated within the state budget and includes all state assets administered by entities that maintain legal and institutional relationships with the State (Alrasid, 1995).

Conversely, the concept of state finance in its narrow sense refers exclusively to financial resources originating from the State Budget (APBN). From this perspective, state finance is limited to all state revenues and expenditures formally incorporated into the annual state budget. Accordingly, the distinction between the broad and narrow concepts of state finance lies in their respective scopes. The broad interpretation includes all state assets, including separated assets invested in state-owned enterprises, whereas the narrow interpretation is confined solely to financial resources explicitly recorded in the State Budget (Alrasid, 1995).

RESEARCH METHOD

This study employs a normative legal research method, an approach aimed at examining statutory provisions, legal principles, and doctrinal views to serve as the basis for addressing the legal issues under analysis. Two types of approaches are utilized: the statutory approach and the conceptual approach. The analysis technique employed is normative in nature, specifically a prescriptive analysis. A prescriptive approach involves constructing arguments based on research findings; through such argumentation, the researcher evaluates the validity of a given situation and determines the appropriate legal application encompassing norms, axioms, principles, doctrines, and legal theories when confronted with the specific facts or legal events under investigation.

RESULTS AND DISCUSSION

The Position of the State as a Shareholder in State-Owned Enterprises (SOEs)

The State is an entity that possesses the highest sovereignty within a particular territory and holds the authority to regulate, formulate policies, and administer government in order to achieve the objectives of the State. In Indonesia, the exercise of such authority is founded upon the 1945 Constitution of the Republic of Indonesia, which serves as the supreme law of the land. Within the framework of national development, the Constitution authorizes the Government, as the representative of the State, to manage the national economy through various policies aimed at improving public welfare.

One manifestation of this authority is the State's investment in State-Owned Enterprises (SOEs). Such investment is based on the strategic role of SOEs, which are not solely profit-oriented entities established to generate dividends for the State, but also serve public service functions and support the implementation of governmental responsibilities, including national economic development, infrastructure development, and the provision of essential public services. State investment in SOEs is carried out through the mechanism of State Capital Participation (Penyertaan Modal Negara/PMN) in accordance with the objectives underlying the establishment of SOEs. Through such capital participation, the State acquires the legal status of a shareholder and consequently obtains corporate rights arising from the transfer of separated state assets into the capital structure of the SOE.

As business entities established with state capital, SOEs recognize the State as a shareholder whose investment supports the continuity of the company's commercial activities, including the procurement of goods and services intended to generate profit. The State's status as a shareholder provides a tangible contribution to the governance and management of SOEs in pursuing their business objectives. Such shareholder status is not derived merely from the association of the company with the State, but rather from the existence of State Capital Participation (PMN). Accordingly, the State acquires shareholder status because it contributes capital to the company. Nevertheless, PMN only establishes the State as a shareholder and does not render the State the owner of the company's assets. This is because the State is subject to the principles of corporate law, under which capital contributed through PMN no longer constitutes state assets but is transformed into the assets of the company itself.

The State's position as a shareholder in an SOE therefore constitutes a legal consequence of the State's decision to inject capital derived from separated state assets. As a shareholder, the State possesses various corporate rights, including the right to receive dividends, attend and exercise voting rights at the General Meeting of Shareholders (GMS), appoint and dismiss members of the board of directors and the board of commissioners in accordance with applicable laws and regulations, and oversee corporate management through corporate governance mechanisms. This legal relationship demonstrates that the relationship between the State and an SOE is no longer based on direct ownership or control over state assets, but rather on the legal relationship between a shareholder and a separate legal entity possessing its own rights, obligations, and liabilities.

The distinctive characteristic of the State's position as a shareholder in an SOE lies in the purpose underlying its capital participation. State Capital Participation (PMN) is not merely intended to generate economic returns but also constitutes an implementation of the State's constitutional function in supporting national development, providing goods and services for the public, and promoting public welfare, as mandated under Article 33 of the 1945 Constitution of the Republic of Indonesia. Accordingly, the State's investment in SOEs simultaneously serves two fundamental objectives: increasing the company's economic value and ensuring the fulfillment of public service obligations. These dual functions require the State to maintain an appropriate balance between business-oriented objectives and public service responsibilities, thereby ensuring that SOEs operate professionally while continuing to prioritize the interests of society.

The legal position of the State as a shareholder is further governed by Law Number 40 of 2007 concerning Limited Liability Companies, which provides that shareholders are not personally liable for the obligations of the company beyond the value of the shares they own. This principle is commonly referred to as the limited liability principle (Palindria et al., 2025). Consequently, regardless of the amount of capital invested by the State through PMN, such capital becomes part of the company's assets rather than remaining the property of the State. Therefore, the State's legal relationship with an SOE is governed by corporate law rather than public ownership over the company's assets.

Within this legal framework, the State exercises both supervisory and regulatory functions. As a shareholder, the State is responsible for ensuring that SOEs utilize State Capital Participation in accordance with the objectives for which the investment was made. This supervisory function is intended to prevent the misuse of corporate resources for the personal interests of directors or particular groups and to ensure that corporate decisions remain aligned with the purposes of establishing the SOE. In addition, the State performs its role as a regulator by formulating policies, enacting regulations, and supervising the overall implementation of SOE activities. However, both supervisory and regulatory functions must be exercised consistently with the principles of corporate law through the exercise of corporate rights rather than through direct intervention in the day-to-day management of the company.

The application of corporate law principles enables SOEs to operate more independently and flexibly in managing their business affairs while maintaining sound legal relationships that support corporate performance. At the same time, these principles establish clear limitations on the authority of shareholders, preventing excessive interference in corporate management because operational decisions fall within the responsibility of the board of directors, who possess the expertise to manage the company in accordance with the principles of good corporate governance (GCG) (Hiayati, 2016). Furthermore, these principles provide legal protection for directors against criminal liability arising solely from business losses (*business loss*), thereby preventing the improper conflation of corporate management responsibilities between the board of directors and shareholders.

Fundamentally, the State's position in a State-Owned Enterprise (SOE) is that of a shareholder who acquires corporate rights as a consequence of State Capital Participation (Penyertaan Modal Negara/PMN) in the establishment and development of the enterprise. As a shareholder, the State is entitled to receive dividends, exercise voting rights at the

General Meeting of Shareholders (GMS), and supervise both the management and financial administration of the SOE. Nevertheless, these powers are not absolute, as they are limited by the principles of corporate law and the provisions of Law Number 40 of 2007 concerning Limited Liability Companies.

Once State Capital Participation has been transferred to an SOE, the contributed capital is legally transformed into the assets of the company, which are separate from the assets of the State. Consequently, the assets contributed through PMN no longer constitute state property in the direct sense but instead become the property of the SOE as an independent legal entity. Within this legal framework, the State continues to perform its supervisory function as a shareholder while refraining from direct intervention in the company's day-to-day operational activities. Such limitations on state intervention provide the board of directors with the necessary autonomy to manage the company independently in accordance with the principles of good corporate governance.

This legal construction is expressly reflected in Article 4B of Law Number 1 of 2025 concerning State-Owned Enterprises, which stipulates that any profit or loss incurred by an SOE constitutes the profit or loss of the SOE itself rather than that of the State. Accordingly, as a corporate legal entity, an SOE is subject to the principles of corporate law established under Law Number 40 of 2007 concerning Limited Liability Companies, particularly the principles of separate legal entity and limited liability. Under these principles, the company possesses legal personality distinct from its shareholders, while shareholders are liable only to the extent of the capital they have invested (Palindria et al., 2025).

The application of these principles confirms that the State's legal relationship with an SOE is based on its status as a shareholder rather than as the direct owner of the company's assets. Consequently, although the State remains responsible for supervising the management of SOEs through the exercise of its corporate rights, such supervision must be carried out within the limits established by corporate law and without interfering in the authority of the board of directors to conduct the company's business affairs. This approach not only preserves the autonomy of SOEs in managing their commercial activities but also provides legal certainty regarding the separation between state assets and corporate assets following the transfer of State Capital Participation.

Ultimately, the State's position as a shareholder reflects a dual legal function. On the one hand, the State seeks to enhance the economic value and financial performance of SOEs through its investment. On the other hand, the State remains responsible for ensuring that SOEs fulfill their constitutional role in supporting national economic development and providing public services. Therefore, although the State retains supervisory authority as a shareholder, the management of SOEs must continue to adhere to the principles of corporate governance, legal independence, and accountability, thereby ensuring that the objectives of State Capital Participation are achieved while maintaining legal certainty in accordance with Indonesian corporate law.

Legal Implications of the Disharmony between Law Number 1 of 2025 concerning State-Owned Enterprises and Law Number 17 of 2003 concerning State Finance

The enactment of legislation governing State-Owned Enterprises (SOEs) is intended to establish a legal framework that ensures the effective, accountable, and legally certain management of SOEs in conducting their business activities. The legal regulation of SOEs has undergone two significant stages of development, beginning with Law

Number 19 of 2003 concerning State-Owned Enterprises, which was subsequently amended by Law Number 1 of 2025 concerning State-Owned Enterprises. The amendment was introduced to improve corporate governance and strengthen legal certainty in the administration and management of SOEs, thereby enabling them to operate more effectively in fulfilling the objectives for which they were established.

Nevertheless, the enactment of Law Number 1 of 2025 concerning State-Owned Enterprises has given rise to a legal issue in the form of a potential conflict of norms with Law Number 17 of 2003 concerning State Finance. This conflict arises from Article 4B of Law Number 1 of 2025, which provides that any profit or loss incurred by an SOE constitutes the profit or loss of the SOE itself. In contrast, Article 2(g) of Law Number 17 of 2003 concerning State Finance stipulates that state or regional assets managed either directly by the government or by other parties, including separated state assets invested in state-owned or regional-owned enterprises, remain part of state finances.

The inconsistency between these two statutory provisions creates normative disharmony that has the potential to generate legal uncertainty regarding the legal status of losses incurred by SOEs. On the one hand, Article 4B of Law Number 1 of 2025 establishes that losses sustained by an SOE constitute losses of the company itself as an independent legal entity. On the other hand, Article 2(g) of Law Number 17 of 2003 may be interpreted to mean that losses suffered by an SOE also constitute state losses because the capital managed by the SOE originates from State Capital Participation (Penyertaan Modal Negara/PMN), which, under the State Finance Law, continues to be classified as part of state finances.

The contradictory nature of these provisions gives rise to differing interpretations regarding the allocation of legal responsibility for losses incurred by SOEs. From the perspective of corporate law, once the State injects capital through State Capital Participation (PMN), the contributed assets are transformed into the property of the company, separate from the assets of its shareholders. Accordingly, any financial loss subsequently incurred should, in principle, constitute the responsibility of the SOE as an independent legal entity. However, the continued existence of Article 2(g) of Law Number 17 of 2003 leaves room for the interpretation that, because SOE assets are still categorized as separated state assets within the scope of state finances, losses incurred by SOEs may likewise be regarded as state losses. These differing legal constructions ultimately create uncertainty regarding both the legal status of SOE losses and the extent of the State's legal responsibility for assets that have been separated through the mechanism of State Capital Participation.

The concurrent application of these two statutory provisions reduces the effectiveness of both legal regimes and creates uncertainty in their interpretation and implementation. Ideally, Article 4B of Law Number 1 of 2025 functions to safeguard the corporate management of SOEs by recognizing the autonomy of the company as a separate legal entity, whereas Article 2(g) of Law Number 17 of 2003 is intended to protect state finances. However, because these provisions regulate the same subject matter from different legal perspectives without adequate harmonization, they create normative inconsistency rather than legal coherence. As a result, this disharmony produces several legal implications that affect both the State and SOEs, which will be discussed in the following section.

The normative inconsistency between Law Number 1 of 2025 concerning State-Owned Enterprises and Law Number 17 of 2003 concerning State Finance gives rise to several legal implications affecting both the State and SOEs. These implications extend beyond theoretical legal interpretation and have practical consequences for the governance, accountability, and operational management of SOEs.

First, the disharmony creates inconsistency with the principles established under Law Number 40 of 2007 concerning Limited Liability Companies. The continued application of Article 2(g) of Law Number 17 of 2003 to the management of SOEs implies that SOEs do not fully operate in accordance with the principles of corporate law applicable to other limited liability companies. Consequently, SOEs may be perceived as operating under a distinct legal regime that departs from the general framework governing corporate entities. Such a situation undermines the expectation that SOEs should serve as examples of compliance with corporate law and may negatively affect public perception regarding their adherence to established corporate governance principles.

Second, the conflicting legal framework may hinder the effective management of SOEs. The interpretation that losses incurred by SOEs could simultaneously constitute state losses may cause directors to exercise excessive caution when making strategic business decisions. As a result, opportunities that could generate commercial benefits for the company may be abandoned due to concerns that unsuccessful business decisions could subsequently be interpreted as causing financial losses to the State. In addition, the classification of SOE assets as part of state finances may reduce the flexibility of SOEs in undertaking corporate legal actions, even though, under corporate law, the assets contributed through State Capital Participation (PMN) have already become corporate assets belonging to the SOE itself. This situation has the potential to impede efficient corporate decision-making and reduce the competitiveness of SOEs in conducting business activities.

Third, the normative conflict creates legal uncertainty regarding the interpretation of losses incurred by SOEs. The inconsistency between Law Number 1 of 2025 and Law Number 17 of 2003 leaves unresolved the question of whether losses suffered by SOEs should be regarded solely as corporate losses or simultaneously as state losses. In principle, the assets of an SOE constitute the property of the company itself following the transfer of State Capital Participation. Nevertheless, the continued classification of separated state assets as part of state finances under the State Finance Law creates ambiguity regarding the legal consequences of corporate losses. This uncertainty may discourage directors from exercising sound business judgment because of concerns that business losses could expose them to criminal liability on the basis that such losses are interpreted as reducing state assets.

Fourth, the inconsistency between the two statutes weakens the application of the fundamental corporate law principles of separate legal entity and limited liability. These principles constitute the legal foundation of corporate governance by recognizing that a company possesses legal personality separate from its shareholders and that shareholders' liability is limited to the amount of capital contributed. They also establish clear boundaries regarding the respective roles of shareholders and the board of directors in corporate management. Once capital has been invested in a company, it becomes part of the company's assets and is managed independently by the corporation. Likewise, where insolvency or corporate losses occur, shareholders remain protected because the company bears responsibility as an independent legal entity. However, interpreting SOE assets as continuing to form part of state finances blurs this separation and weakens the legal protection afforded by the principles of separate legal entity and limited liability, thereby creating uncertainty regarding corporate responsibility and shareholder liability.

The legal implications arising from the simultaneous application of these two statutes create a dilemma in their practical implementation. This condition has the potential to hinder SOEs in conducting their business activities, particularly in applying the corporate law principles of separate legal entity and limited liability, which emphasize the separation between corporate assets and shareholders' assets and limit shareholder liability to the amount of capital contributed. Conversely, the provisions of the State Finance Law, which continue to classify separated state assets as part of state finances, create uncertainty regarding the legal status of SOE assets and the allocation of responsibility for losses arising from their management.

Accordingly, harmonization between Law Number 1 of 2025 concerning State-Owned Enterprises and Law Number 17 of 2003 concerning State Finance is necessary to establish coherence within the legal framework governing SOEs. Such harmonization is consistent with the principles governing the formation of legislation as stipulated in Article 6 letters (i) and (j) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, which emphasize the importance of legal certainty, order, and harmony within the national legal system. Through harmonized regulation, both statutes are expected to function optimally in supporting SOE governance that is consistent with corporate law principles while simultaneously ensuring protection of state assets utilized to support national economic development.

From this perspective, the core issue is not whether the State should relinquish supervision over SOEs, but rather how the legal framework should clearly distinguish between the State's role as a shareholder and the company's position as an independent legal entity. Clear harmonization would enable SOEs to operate professionally under corporate law principles, provide legal certainty regarding the classification of SOE losses, and maintain accountability in the management of state assets invested through State Capital Participation (PMN). Therefore, harmonization between the two statutes constitutes an essential step toward creating a legal system that is coherent, effective, and capable of balancing the protection of state finances with the operational autonomy of SOEs.

State Legal Responsibility for Losses Incurred by State-Owned Enterprises under Article 4B of Law Number 1 of 2025 concerning State-Owned Enterprises in Relation to Article 2(g) of Law Number 17 of 2003 concerning State Finance

State assets constitute one of the most important resources utilized in managing the national economy. These assets are administered and accounted for by the State because their management is closely related to the fulfillment of public interests and the welfare of society. State assets include money, securities, valuable goods, and other forms of property that possess economic value. In relation to State Capital Participation (Penyertaan Modal Negara/PMN) in State-Owned Enterprises (SOEs), the State allocates a portion of its assets to support the establishment and continuity of SOEs' business activities. Consequently, the State retains responsibility for supervising the management of SOEs because the capital invested originates from state assets intended to promote national economic development.

The transfer of State Capital Participation (PMN) to an SOE gives rise to the application of Article 2(g) of Law Number 17 of 2003 concerning State Finance, which classifies separated state assets invested in state-owned enterprises as part of state finances (Mamduh, 2022). However, this provision appears to conflict with the fundamental principles of corporate law, particularly the principles of separate legal entity and limited liability, both of which require an SOE, as a corporate legal entity, to be governed by the same legal principles applicable to other limited liability companies.

As a state governed by the rule of law, Indonesia is required to ensure the consistent and effective implementation of corporate law. Accordingly, SOEs, despite being established through State Capital Participation, should remain subject to the same corporate law principles applicable to private companies. Conversely, the State Finance Law primarily serves to regulate and protect state finances utilized in supporting national development and public administration. The simultaneous application of these two legal regimes without adequate harmonization therefore creates normative inconsistency and legal uncertainty regarding the governance of SOEs.

For this reason, harmonization between the legal framework governing SOEs and the State Finance regime is essential to ensure effective implementation of both statutes and to prevent conflicting legal interpretations. The State bears the responsibility to provide legal certainty concerning the management of SOEs and the administration of state finances so that SOEs are able to operate efficiently and achieve the objectives underlying both their establishment and the provision of State Capital Participation (PMN).

In this context, the State's legal responsibility extends beyond merely providing capital to SOEs. It also encompasses the responsibility to establish a coherent legal framework that clearly defines the respective roles of the State as a shareholder and the board of directors as the corporate organ responsible for managing the company. Such legal certainty enables directors to make business decisions effectively while remaining accountable under the principles of corporate law. Consequently, the State's responsibility lies not in assuming direct liability for every corporate loss incurred by an SOE, but in ensuring that the governance of SOEs operates within a legal framework that is consistent, predictable, and capable of achieving the objectives of State Capital Participation while maintaining compliance with the principles of corporate law.

State assets constitute one of the most important resources utilized to support the management of the national economy. These assets are administered and accounted for by the state because they are closely related to the fulfillment of public interests. State assets include money, securities, valuable goods, and other forms of property that can be valued in monetary terms. In relation to State Capital Participation (Penyertaan Modal Negara/PMN) provided to State-Owned Enterprises (SOEs) for their establishment and business operations, the state bears the responsibility to supervise SOE activities because state assets are involved in financing and supporting the enterprises' operations.

The provision of PMN to SOEs consequently brings the application of Article 2(g) of Law Number 17 of 2003 on State Finance into the management of SOEs, as the provision classifies separated state assets invested in state enterprises as part of state finance (Mamduh, 2022). However, this provision appears to conflict with the fundamental principles of corporate law, particularly the doctrines of separate legal entity and limited liability, which require SOEs to be treated as independent legal entities distinct from their shareholders. As a state governed by the rule of law, Indonesia should consistently apply corporate law principles, meaning that SOEs, despite state ownership, should operate under the same legal framework applicable to other corporations. Conversely, the State Finance Law primarily regulates and safeguards state finances utilized for national economic development rather than governing the internal legal status of corporations.

The simultaneous application of these two legal regimes therefore necessitates legislative harmonization to eliminate inconsistencies and ensure effective implementation. Such harmonization is essential to prevent conflicting interpretations regarding the legal status of SOE assets and liabilities. In this regard, the state has the responsibility to provide legal certainty concerning both SOE governance and state financial management, thereby enabling SOEs to conduct their business effectively and fulfill the objectives underlying their establishment and the provision of PMN. State responsibility also extends to clearly defining the respective roles of the government and SOE directors in corporate governance. Such legal certainty would allow directors to make effective business decisions while remaining compliant with corporate law principles and ensuring that SOEs achieve their intended economic and public service objectives.

CONCLUSION

The distinction between SOE losses and state losses remains a recurring legal issue in Indonesia. This uncertainty arises from the differing interpretations of Article 4B of Law Number 1 of 2025 on State-Owned Enterprises (SOEs), which stipulates that *the profits or losses incurred by SOEs constitute the profits or losses of the SOEs themselves*, and Article 2(g) of Law Number 17 of 2003 on State Finance, which provides that *state or regional assets managed directly by the government or by other parties—including money, securities, receivables, goods, and other rights that can be valued in monetary terms, as well as separated state assets invested in state-owned or regional-owned enterprises—remain part of state finance*. Consequently, losses incurred by SOEs may also be interpreted as state losses.

Although the two statutory provisions regulate different legal matters, the state's position as a shareholder through State Capital Participation (Penyertaan Modal Negara/PMN) has created the assumption that the capital invested in SOEs continues to constitute state assets subject to state financial management. This situation gives rise to legal uncertainty regarding the status of SOE assets and the legal responsibility for losses incurred by SOEs.

Accordingly, harmonization between the two legal frameworks is necessary. One possible approach is to amend Article 2(g) of Law Number 17 of 2003 on State Finance in accordance with the legislative harmonization principle embodied in Article 6 paragraph (1) letter (j) of Law Number 12 of 2011 on the Formation of Laws and Regulations. Such harmonization is required because SOEs, as corporate entities, are subject to the principles of corporate law, particularly those concerning the separation of corporate assets from shareholders' assets and the limitation of shareholders' authority over corporate management. Through such harmonization, both legal regimes can operate effectively and consistently in governing SOEs while simultaneously ensuring proper management of state finances.

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