

RECONSTRUCTION OF STATE-OWNED ENTERPRISE LEGAL REGULATIONS FROM A GOOD CORPORATE GOVERNANCE PERSPECTIVE: NORMATIVE ANALYSIS OF ESTABLISHMENT, OWNERSHIP, AND INSTITUTIONAL TRANSFORMATION BASED ON THE LATEST REGULATIONS FOLLOWING THE JOB CREATION LAW

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Abstract

This study provides a normative analysis of the reconstruction of the legal regulation of State-Owned Enterprises (SOEs) from the perspective of Good Corporate Governance (GCG) after the Job Creation Law, focusing on the establishment of new SOEs through a feasibility study of the SOE Supervisory Board, the ownership of dual-class A and B shares by BPI Danantara, and institutional transformation via super holding companies and the Business Judgment Rule as stipulated in Law No. 1/2025 and Law No. 16/2025, which revolutionise the separation of regulatory and operational functions for transparency, independence, and efficiency. The results of the analysis show the alignment of regulations with GCG principles, although disparities still require harmonisation through independent committees and digital reporting, with positive implications for the global competitiveness of SOEs through strategic holding synergies and optimisation of state budget dividends. The study recommends strengthening criminal sanctions for ESG transformation and integration for sustainable governance, serving as a reference for SOE policy-making. regulations.

Keywords: SOEs, Good Corporate Governance, Job Creation Law, Law No. 1 of 2025, Law No. 16 of 2025, SOE Supervisory Board, BPI Danantara, institutional transformation, dual-class shares, super holding companies

Introduction

State-Owned Enterprises (SOEs) play a strategic role in Indonesia's national economy as an instrument of the state to manage natural resources, provide public infrastructure, and promote economic growth based on social justice, as mandated by Article 33 of the 1945 Constitution, which emphasises a people's economy. However, after the 1998 reform, the performance of BUMN was often hampered by rigid legal regulations, excessive political intervention, and a lack of management independence, which led to operational inefficiencies and state losses amounting to trillions of rupiah due to cases of corruption and mismanagement (Mattiolo, 2023). Therefore, the reconstruction of SOE legal regulations has become imperative to align with the dynamics of economic globalisation and international transparency demands.

Law No. 19 of 2003 on SOEs was initially designed to modernise governance through the separation of the functions of Perjan, Perum, and Persero, along with strengthening the role of the Minister as the sole shareholder representative. However, its implementation has led to disparities between the commercial mandate and the

social function of SOEs, where the dominance of political interests often overshadows the principles of profitability and accountability. This was exacerbated by the COVID-19 pandemic and global economic turmoil, which demanded rapid adaptation, prompting the Job Creation Law (Law No. 11/2020) to emerge as a catalyst for change by altering the substance of SOE regulations to support ease of doing business (Primayogha, 2025).

Following the Job Creation Law, a series of derivative regulations emerged to optimise the efficiency of SOEs, including Law No. 1 of 2025 concerning the Third Amendment to Law No. 19/2003, which introduced the super holding paradigm and the separation of regulatory and operational functions through the SOE Management Agency (BP BUMN). This regulation was followed by Law No. 16 of 2025, which strengthened institutional transformation with the establishment of the Danantara Investment Management Agency (BPI Danantara) to manage state assets worth more than IDR 1,000 trillion. These changes aim to regain the competitiveness of SOEs amid competition with private and foreign companies .

The perspective of Good Corporate Governance (GCG) is the main foundation of this reconstruction, with the principles of transparency, accountability, responsibility, independence, and fairness as stipulated in the SOE GCG Guidelines (PER-01/MBU/2011), which are now reinforced by the Business Judgment Rule (BJR) in Law No. 1/2025. GCG is not only an internal control tool, but also a mechanism to protect the public interest in state assets, reduce conflicts of interest, and increase the value of SOE shares in the capital market (R. Wijaya & Santoso, 2024) . However, the main challenges lie in the establishment of new SOEs, which still require presidential approval, dual-class share ownership, and complex institutional transformation.

The aspect of establishing SOEs after the latest regulation emphasises economic feasibility studies and strategic contributions before state capital participation through Government Regulations, with BP BUMN as the series A shareholder for strategic supervision. The ambiguity of this procedure often hinders new initiatives in the infrastructure and renewable energy sectors, where SOEs are expected to lead the national energy transition. A normative analysis is needed to align the establishment with GCG to avoid wasting the state budget (Ahmadi, 2024) .

SOE ownership has undergone a significant transformation with the separation of series A shares (supervised by BP BUMN) and series B shares (operated by BPI Danantara), which is intended to minimise political intervention and increase management professionalism. However, this dual ownership practice has the potential to create dualism in supervision if it is not supported by a strong coordination mechanism, as seen in previous holding cases such as Bio Farma and Telkom. Ownership reconstruction must prioritise independence to support full GCG (I. Wijaya, 2023) .

The institutional transformation of SOEs, including mergers, acquisitions, and privatisation, is now coordinated by BP BUMN with supervision from BPK, as stipulated in Law No. 16/2025, which prohibits dual roles between regulators and operators. This

process is crucial for rationalising the 900-odd SOE entities into an efficient super holding company, but it faces internal resistance due to organisational restructuring. The GCG perspective demands transparency in the transformation process to maintain investor confidence (Zulfanmusafa & Wedhatami, 2025) .

The fundamental legal issue is the disharmony between the Job Creation Law and the old regulations, where Article 92 of Law No. 19/2003 on the conversion of Perjan to Persero is still relevant but needs to be adjusted to the holding model. A normative analysis of this disparity is necessary to reconstruct coherent regulations, taking into account the Constitutional Court's decision on the privatisation of state-owned enterprises, which emphasises the protection of public interests. This study fills this gap through a normative legal approach.

Research Method

This research is normative in nature with a statutory and conceptual approach, analysing the hierarchy of regulations after the Job Creation Law until 2025. Data collection techniques involve a literature review of current regulations such as Law No. 1/2025 and related Government Regulations on SOE holding companies. The analysis is conducted using descriptive qualitative methods to reconstruct the regulations (Elijah & Aslan, 2025) ; (Baumeister & Leary, 2020) .

Results and Discussion

Normative Analysis of the Establishment and Ownership of SOEs

The normative regulation of the establishment of State-Owned Enterprises (SOEs) has historically been based on Law No. 19 of 2003, which distinguishes between Perjan, Perum, and Persero forms with procedures for state capital participation through a Presidential Decree following a proposal from the Minister. However, following the Job Creation Law and, in particular, Law No. 1 of 2025 concerning the Third Amendment to the aforementioned Law, the establishment process increasingly emphasises strategic economic feasibility studies that encompass the potential contribution to national economic progress and alignment with the principles of Pancasila economic democracy (R. Wijaya, 2024) .

From a Good Corporate Governance (GCG) perspective, the establishment of state-owned enterprises must comply with the principle of transparency from the outset through the publication of state capital participation plans via Government Regulations that specify the amount of capital, business sector, and performance projections, as reinforced by GCG guidelines for state-owned enterprises that require information disclosure to prevent abuse of state authority in the allocation of public resources (. The inconsistency of the old establishment regulations lies in the lack of an independent feasibility verification mechanism, where the Minister of SOEs has the potential for a conflict of interest as both the proposer and supervisor. Therefore,

normative reconstruction is necessary by involving the SOE Management Agency (BP BUMN) as a new entity responsible for pre-establishment studies to ensure accountability (Retno, 2025).

Law No. 16 of 2025 introduces the separation of supervisory and operational functions in the establishment process, whereby BP BUMN holds the final authority before presidential approval, which is in line with the principle of GCG independence because it separates the role of regulator from that of implementer to avoid political intervention that has often been detrimental to the efficiency of SOEs in the past (Admojo & et al., 2024).

Normative analysis shows that the establishment of SOEs after the latest regulations is still prone to disparities with the State Finance Law, where capital participation must come from the State Budget/Regional Budget with certain limits, so reconstruction is proposed through strengthening the role of the Financial and Development Supervisory Agency (BPKP) in pre-establishment audits to ensure accountability in the use of public funds. State-owned enterprise ownership is normatively regulated through state majority shares, with Law No. 19/2003 jo. Law No. 1/2025 introducing dual-class A shares owned by the state through the State-Owned Enterprise Supervisory Agency (BP BUMN), which grants special rights such as strategic veto and director nomination, thereby strengthening state control without interfering with daily operations (Ministry of State-Owned Enterprises, 2025).

The principle of fairness in GCG is reflected in the ownership of Series B shares managed by the Daya Anagata Nusantara Investment Management Agency (BPI Danantara) for investment optimisation, where the agency's capital comes from state participation and SOE dividends, enabling portfolio diversification while maintaining a balance between the interests of the state and minority shareholders (Santoso, 2025).

The transformation of ownership after Law No. 16/2025 prohibits SOE organs from concurrently holding the positions of minister or deputy minister, which normatively reduces conflicts of interest and supports the independence of the board of commissioners, as the GCG principle demands professionalism to increase company value. The normative weakness of ownership lies in the potential dualism between BP BUMN and BPI Danantara in share decision-making, so the analysis suggests harmonisation through an inter-agency MoU that prioritises transparency in annual ownership reports to the House of Representatives (Sukarmo, 2025).

The establishment and ownership of SOEs must be reconstructed by integrating sustainable and environmentally-friendly principles as stipulated in Article 3E of Law No. 1/2025, whereby the establishment review includes ESG impacts to ensure SOEs contribute to national SDGs without sacrificing profitability. Financial audits by the Supreme Audit Agency (BPK) exclusively on SOEs after the new regulation strengthens ownership accountability, as financial reports must reflect the use of separated state

assets, in line with GCG which emphasises independent audits for stakeholder trust (Zelo Japan Legal Team, 2025).

A normative reconstruction is proposed in the form of establishing a pre-establishment independent committee under the SOE Supervisory Board (BP BUMN) involving economic and legal experts to evaluate alignment with the national medium-term development plan, so that the establishment of SOEs is no longer ad hoc. The implication of dual-class share ownership on GCG is increased supervisory efficiency, whereby the privileges of Class A shares ensure that the state's strategic policies are protected, while Class B shares encourage operational innovation, although this requires stronger sanctions for violations of minority rights (China, 2024).

Overall, the normative analysis concludes that the latest regulations have revolutionised the establishment and ownership of SOEs towards a modern GCG model through the SOE Supervisory Board and BPI Danantara, but further reconstruction is needed to close regulatory hierarchy gaps and ensure full implementation of good governance principles.

Normative Analysis of SOE Institutional Transformation

The institutional transformation of State-Owned Enterprises (SOEs) is normatively regulated in Article 92 of Law Number 19 of 2003, which allows the conversion of Perjan into Perum or Persero through a Presidential Decree upon the recommendation of the Minister after a feasibility study. However, following the Job Creation Law and, in particular, Law No. 1 of 2025, this process has been revitalised with the involvement of the SOE Management Agency (BP BUMN) as the main coordinator for holding restructuring and entity mergers to improve operational efficiency and global competitiveness (Pradana, 2024).

From a Good Corporate Governance (GCG) perspective, institutional transformation must prioritise the principle of transparency through the publication of restructuring plans at least 30 days prior to implementation, as reinforced by GCG guidelines that require the involvement of stakeholders, including labour unions and minority shareholders, to prevent internal resistance that often hinders SOE mergers, such as in the case of Garuda-Indonesia (Sukarmo & Aswadi, 2025).

Law No. 16 of 2025 introduces the Daya Anagata Nusantara Investment Management Agency (BPI Danantara) as the manager of SOE operational assets with assets above Rp1,000 trillion, which normatively separates the investment function from the strategic supervision of SOE holding companies, thereby aligning with GCG independence which prohibits dual positions between holding company directors and subsidiaries.

A normative analysis reveals disparities between old regulations and transformation needs, where the dissolution or merger of SOEs requires DPR approval for significant assets, but Law No. 1/2025 accelerates the process through the Business

Judgment Rule (BJR), which protects directors from lawsuits as long as decisions are rational and well-documented. The principle of accountability in transformation is upheld through independent audits by the Supreme Audit Agency (BPK), which are exclusive to SOEs, where post-transformation reports must include the impact on separated state assets, ensuring that the partial privatisation of shares does not reduce state control over strategic sectors such as food and energy (Retno Meilani, 2025).

The proposed transformation reconstruction involves strengthening the role of the independent Board of Commissioners in the super holding company, as stipulated in Article 3E of Law No. 1/2025, which requires an audit and nomination committee to maintain management accountability to stakeholders, particularly in the context of rationalising 900 state-owned enterprises into a streamlined holding structure. Normative inconsistencies are evident in privatisation procedures that still depend on the Financial Services Authority (OJK) and the Indonesia Stock Exchange (BEI), where the transformation of SOEs into TBIG requires a limited public offering with series A priority rights (), but needs to be harmonised with the Capital Market Law to ensure fairness for retail investors (Abdullah, 2025).

Institutional transformation following the new regulations supports the GCG fairness pillar through an independent asset valuation mechanism by public consultants prior to the merger, which prevents the undervaluation of state assets as in previous cases, and requires fair compensation for employees affected by relocation or early retirement. The separation of functions between BP BUMN as regulator and BPI Danantara as operator revolutionises supervision, with BP BUMN authorised to carry out strategic restructuring while BPI focuses on dividends and portfolios, in line with the principle of separation of powers to reduce corruption, collusion and nepotism at the holding company level (Purwanto, 2025).

The analysis highlights gaps in sanctions for illegal transformations, necessitating normative reconstruction in the form of criminal penalties for directors who violate procedures, with imprisonment of up to 5 years and state fines, to enforce legal discipline in SOE GCG. ESG integration in transformation has become mandatory after Law No. 1/2025, in which institutional studies cover environmental and social impacts such as the green energy transition at Pertamina holding, ensuring sustainability as an intrinsic part of GCG for attracting foreign investors (Setiawan, 2025).

The implications of the transformation on SOE performance are positive in normative terms, with holding models such as MIND ID for minerals increasing synergies between entities, but requiring strengthened coordination with the Ministry of Finance for the allocation of dividends to the state budget without disrupting reinvestment. Reconstruction is proposed through the formation of a Transformation Task Force under BP BUMN involving the Constitutional Court, the Corruption Eradication Commission, and academics for monitoring, with a target of completing rationalisation

within two years as mandated by the Prabowo administration, ensuring real-time transparency via the digital portal (Melo, 2025).

The principle of GCG responsibility is fulfilled through periodic reporting on the transformation to the House of Representatives and the public, where success indicators include an increase in ROE of at least 15% post-merger, with sanctions in the form of reduced allowances for directors who fail to achieve performance targets. The normative challenge is the adaptation of transitional laws for existing SOEs, where automatic conversion to a holding company requires adjustments to the articles of association within one year, in line with Law No. 16/2025 to avoid legal limbo that could harm the operations of .

Overall, the normative analysis states that the latest regulations have established a strong foundation for SOE institutional transformation based on GCG through BP BUMN and BPI Danantara, although further reconstruction of harmonisation of derivatives is needed for optimal implementation and maximum contribution to the national economy.

Conclusion

A normative analysis of the latest regulations following the Job Creation Law, particularly Law No. 1 of 2025 and Law No. 16 of 2025, shows that the reconstruction of SOE legal regulations has successfully harmonised aspects of establishment, ownership, and institutional transformation with the principles of Good Corporate Governance (GCG), where the establishment of new SOEs through feasibility studies by BP BUMN ensures transparency in state capital participation, the ownership of dual-class A and B shares by BPI Danantara strengthens the independence of operational oversight, and institutional transformation via super holding companies and the Business Judgment Rule (BJR) increases the accountability and operational efficiency of SOEs as a whole.

Although significant progress has been made in implementing GCG transparency, accountability, responsibility, independence, and fairness, there are still normative disparities that require harmonisation of derivative regulations, such as Government Regulations on the coordination mechanism between BP BUMN and BPI Danantara, as well as strengthening criminal sanctions for violations of the transformation procedure. so that the reconstruction of legal regulations must be continued with the formation of an independent pre-establishment committee and real-time digital reporting to close conflicts of interest and ensure the protection of state assets amid the rationalisation of 900 SOE entities.

Overall, the post-Job Creation Law regulations have revolutionised SOE governance towards a world-class corporation model that is globally competitive, with positive implications for the state budget contribution through optimal dividends and strategic holding synergies. Therefore, this study recommends the full implementation

of ESG-based GCG for sustainable transformation and further empirical studies to measure the impact of post-normative reconstruction performance.

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