



Debt of State-Owned Enterprises from the Perspective of State Financial Law

Reno Efendi¹, Muh. Ali Masnun²

¹² Faculty of Law, Universitas Negeri Surabaya, Indonesia

Corresponding Email: reno.18067@mhs.unesa.ac.id

Abstract

In recent years, the total debt of State-Owned Enterprises (SOEs) in Indonesia has increased significantly, driven by infrastructure projects, financial inefficiencies, and strategic government mandates. This has sparked legal and economic debates concerning the classification and implications of SOEs debt under state financial law. This article examines the legal position of SOEs debt through a normative legal research approach, emphasizing Indonesia's Law No. 17 of 2003 on State Finances and Law No. 19 of 2003 on SOEs. It also analyzes the implications of SOEs debt for national fiscal stability and regulatory oversight. Findings indicate that although SOEs are separate legal entities, the state's role as the principal shareholder and guarantor can blur the boundary between corporate debt and public debt, thereby raising issues of fiscal risk and legal accountability.

Keywords: State-Owned Enterprises, Public Debt, Fiscal Law, Financial Regulation.

INTRODUCTION

Indonesia adheres to the principles of a welfare state, as reflected in the Preamble and the main body of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).¹ To fulfill this state responsibility, State-Owned Enterprises (SOEs) are a crucial instrument in managing wealth and implementing national economic policies. However, in recent years, SOEs debt burdens have increased significantly, raising concerns about national fiscal stability.²

This is due to the close relationship between the government and state-owned enterprises, both in terms of capital ownership and policy implementation. Although state-owned enterprise debt is generally not categorized as state debt under state financial law, under certain circumstances the government can act as guarantor or even bail out state-owned enterprises experiencing financial difficulties. This further reinforces the perception that state-owned enterprise debt is a burden on state finances. State finances, as regulated in Article 1, point 1 of Law No. 17 of 2003 concerning State Finance (UU KN), are considered a burden, "State finances are all the rights and obli-

¹ Dicky Eko Prasetyo Muh. Ali Masnun, "Reconstruction of The Concept of Authority in Administrative Law Related to National Strategic Projects Based on Substantive Justice," *Mimbar Keadilan* 19, no. 2 (2026): 259–281.

² Muh. Ali Masnun, et-al "Financial Reconstruction of State-Owned Enterprises in Indonesia as Special State Finances: Public or Private Law?," *Jurnal Hukum Bisnis Bonum Commune* 9, no. 1 (2026): 44.

gations of the state that can be valued in money, as well as everything in the form of money or goods that can be made state property in connection with the implementation of these rights and obligations".³

In the explanation of the KN Law, it states that the approach used in formulating state finances is from the side of objects, subjects, processes, and objectives. In this case, the objects referred to as state finances include all state rights and obligations that can be valued in money, including policies and activities in the fiscal, monetary and management of separated state assets, as well as everything in the form of money or goods that can be owned by the state in connection with the implementation of these rights and obligations. The subjects referred to as state finances include all subjects who own/control the objects as mentioned above, namely: the central government, regional governments, state/regional companies, and other bodies related to state finances.⁴

The state, as a public legal entity, is also often referred to as a private legal entity, whereby it can simultaneously act as a private legal entity. This has consequences when the state wishes to establish a business entity, such as a limited liability company. The separation of state assets, as outlined in legislation concerning state capital participation (PMN), maintains the state's status as a public legal entity and The legal action is still within the scope of public legal counsel.⁵ Furthermore, when the state places the separated assets into shares that are an integral part of a limited liability company, the legal action taken by the state immediately falls within the scope of civil or private legal counsel. At that point, the state's position is no longer that of a public legal entity, but rather that of an ordinary private legal entity together with other shareholders.

Meanwhile, in Law Number 19 of 2003 (hereinafter referred to as the SOES Law), Article 1 states that:

"State-Owned Enterprises, hereinafter referred to as SOEs, are business entities whose capital is wholly or mostly owned by the state through direct investment originating from separated state assets."

So, based on this article, it also contains the meaning that SOEs is still part of state finances as stated in Article 2 letter g of the KN Law, where state finances also include assets separated from companies, which in this case are SOEs.

State-Owned Enterprises (SOES) Limited Liability Companies (Persero) are SOESs in the form of limited liability companies whose capital is divided into shares

³ Erman Rajagukguk, "Pengertian Keuangan Negara Dan Kerugian Negara," *Komisi Hukum Nasional Republik Indonesia* (Jakarta, 2006).

⁴ Rukly Mokoginta, "Analisis Hukum Bisnis Tentang Kerugian Keuangan Pada Badan Usaha Milik Negara (SOES)," *Lex Crimen* 4, no. 6 (2015): 49.

⁵ Indah Cahyani & Tatiek Sri Djadmiati, "Demarcation SOES: Between Private Laws and Public Laws," *Yuridika* 35, no. 2 (2019): 311.

of which all or at least 51% (fifty-one percent) of the shares are owned by the State whose main objective is to pursue profits. In essence, the formation of SOE Persero is more oriented towards gaining profits by working in areas that can encourage the development of the private and corporate sectors. In practice, SOE Persero is almost no different from ordinary Limited Liability Companies, except that the government element in it is still the majority ⁶. Based on these provisions, the characteristics or elements of SOES Persero are as follows:

1. the form of business or legal entity is a Limited Liability Company;
2. business capital is wholly or mostly (at least 51%) owned by the state;
3. the main goal is to pursue profit;
4. in this effort, the state carries out direct participation;
5. State capital participation in state-owned enterprises (SOES Persero) originating from the APBN is stipulated by Government Regulation (PP);
6. The investment capital comes from separated state assets.

When it comes to state-owned enterprises (SOEs), many people still lack a deep understanding of them. They still view SOEs not as stand-alone companies but as part of a government/state institution, arguing that SOES are state-owned because the acronym "SOES" (State-Owned) is included. Furthermore, SOES fall under the Ministry of SOES, which is responsible for creating regulations and governing SOES.⁷

In accordance with the KN Law and the SOES Law, the state assets in SOES are limited to capital/shares, which are then managed corporately in accordance with corporate law, no longer managed based on the rules of state assets law. Based on these two laws, considering that the scope of State Finance consists of undivided state assets and separated state assets, two legal rules apply in managing state finances, namely the rules of state finance law and the rules of company law.⁸

The analysis of State-Owned Enterprise bankruptcy, highlighting the limits of state responsibility in the case of PT. Garuda Indonesia's bankruptcy petition. This research is important because it explores the research gap related to the relationship between separated state assets and state responsibility in state-owned enterprise bankruptcy. The purpose of the research is to examine in depth the limits of state responsibility in the context of state-owned enterprise bankruptcy. In this research, it is concluded that losses and risks that occur in state-owned enterprises, including bankruptcy, are not fiscal risks or state losses and state budget risks, but losses to state-owned enterprises and business risks. If a state-owned enterprise is bankrupt (or even insol-

⁶ Munir Fuady, *Hukum Bisnis Dalam Teori Dan Praktek* (Bandung: Citra Aditya Bakti, 1994).

⁷ Susanto, "Fungsi Audit Investigatif Pada SOEs Persero Untuk Menghitung Kerugian Negara Dalam Perspektif Hukum Positif Dan Hukum Islam," *Arena Hukum* 16, no. 1 (2023): 53.

⁸ Z Arifin, "Dilema Penerapan Business Judgment Rule Dalam Pengelolaan Investasi SOES," *Jurnal Padjadjaran Ilmu Hukum* 8, no. 2 (2021): 205-228.

vent), the state's position is limited to being a shareholder, so the state is only responsible for the number of shares paid up and calculated as capital in the state-owned enterprise.

State capital participation sourced from the State Revenue and Expenditure Budget (APBN) which concludes that SOES is a business entity that has assets separate from state assets so that the authority to manage business assets, including the settlement of SOES debts is subject to limited liability company law.⁹ This is the point of privatization of state finances included in state-owned enterprises where the capital is then managed by the business entity with business principles (profit)¹⁰.

On two cases of state-owned enterprise bankruptcy that received different treatment from the government, namely Garuda Indonesia and Merpati Airline. Garuda Indonesia received financial assistance from State Capital Participation sourced from the State Revenue and Expenditure Budget, while Merpati Airlines was declared bankrupt based on a court decision and did not receive a cash injection in the form of PNM. In this journal, it is concluded that the government, as the majority shareholder, is indirectly responsible for the company's debt even though there has been a separation between state and company assets within the corporate legal framework. Therefore, the debt of state-owned enterprises will remain a burden on the government budget and is at risk of bankruptcy.¹¹

None of the three studies mentioned above specifically examines the legal status of state-owned enterprise debt from a state financial law perspective. Therefore, in this study, the author will examine the legal status of state-owned enterprise debt and its impact on state finances.

RESEARCH METHODS

This research uses a normative legal research method. Normative legal research is legal research that positions law as a building block of a system of norms. Normative legal research refers to legal norms contained in laws and court decisions as well as legal norms that exist in society.¹² In finding answers to legal issues developed in a study, an approach is needed to obtain information from aspects in accordance with the characteristics of the legal issues raised.¹³ There are several approaches used by the author in conducting research, namely the statute approach and the conceptual approach. By analyzing laws and legal doctrines, the author can

⁹ Ahmad Mahyani, "Tanggung Jawab Pidana Direksi SOES Yang Merugi," *Jurnal Hukum Bisnis Bonum Commune* 2, no. 1 (2019): 1.

¹⁰ Muh. Ali Masnun, "Utang Badan Usaha Milik Negara Dalam Perspektif Hukum Keuangan Negara," *Indonesian Journal of Contemporary Law* 1, no. 6 (2025).

¹¹ Madaskolay Viktoris Dahoklory, "Dinamika Pengelolaan Keuangan SOEs Perihal "Dilema" Antara Kerugian Negara Ataupun Kerugian Bisnis," *Jurnal Rechtsvinding* 9, no. 3 (2020): 349-365.

¹² Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2010).

¹³ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada Media Group, Jakarta, 2005).

find answers to the legal problems raised.¹⁴ In research on SOES debt, a statutory approach can be used to examine related legal aspects, namely the regulation of song copyright protection in applicable laws and regulations. This research was conducted by analyzing the provisions in Law Number 17 of 2003 concerning State Finance and Law Number 19 of 2003 concerning State-Owned Enterprises.

ANALYSIS AND DISCUSSION

1. The Position of State-Owned Enterprises' Debt in the State Financial Legal System

State-owned enterprise debt is not state debt in the formal sense. Article 1, number 1 of the State Finance Law states that state finances encompass all state rights and obligations that can be valued in money, including separated state assets (Law No. 17 of 2003). Article 4 paragraph (1) of the State-Owned Enterprises Law emphasizes that state-owned enterprise capital comes from separated state assets. Therefore, the financial management of state-owned enterprises is under the corporate legal regime, no longer under the state budget system.¹⁵

State-owned enterprise debt in Indonesia is regulated by the State-Owned Enterprises Law, which was later amended by Law No. 1 of 2025, as well as related Government Regulations (PP) and Minister of Finance Regulations (PMK). Under state financial law, state-owned enterprise debt is not directly categorized as state debt unless guaranteed by the government (Law No. 17 of 2003). However, under certain circumstances, state-owned enterprise debt can impact the state's fiscal burden if the company experiences financial difficulties.

Then, in terms of state debt as defined in the explanation of Article 9 letter e of the KN Law, it states that:

"The debt referred to in this paragraph is the state's obligation to third parties in the context of procuring goods and services, payment for which is the responsibility of the relevant state ministry/institution as a budget user unit and/or other obligations arising based on laws/court decisions."

In the context of state finance, state-owned enterprise debt is considered part of the state debt, because state-owned enterprises are state-owned enterprises whose purpose is to fulfill the public interest. Therefore, state-owned enterprise debt must be strictly regulated and supervised to ensure that the debt is managed effectively and efficiently. Government Regulation

¹⁴ Maalikatussofa Masnun, Muh. Ali, Prasetyo, Dicky Eko, "Reconstruction of the Normative Legal Research Paradigm in Responding to Global Challenges: An Epistemological Analysis," *Novum: Jurnal Hukum* 12, no. 3 (2025): 372-384.

¹⁵ M. Subagio, *Hukum Keuangan Negara R.I.* (Jakarta: Rajawali Pers, 1991).

No. 72 of 2016 stipulates that state-owned enterprise debt management must be carried out effectively and efficiently, and must take into account long-term interests and macroeconomic stability . Article 3 paragraph (1) of the Government Regulation states that "State-owned enterprise debt management must be carried out effectively and efficiently." Thus, state-owned enterprise debt is considered part of state finance that must be strictly regulated and supervised to ensure that the debt is managed effectively and efficiently.

In Article 4 paragraph (1) of the State-Owned Enterprises Law, if the capital of a State-Owned Enterprise comes from separated state finances, the explanation is that it is separated from the management of the State Budget. This provision is explained in the definition of a State-Owned Enterprise explained previously, namely that the capital of a State-Owned Enterprise is divided into shares, thus the shares are used as proof of capital participation and the percentage amount depends on how much capital is included.¹⁶ Thus, state ownership of a State-Owned Enterprise is share ownership, not capital ownership, and the legal consequences of share ownership in a limited liability company are contained in Article 3 paragraph (1) of the Limited Liability Company Law which states that the company's shareholders are not personally responsible for the company's losses.

"The Company's shareholders are not personally liable for any agreements made on behalf of the Company and are not liable for any losses of the Company in excess of the shares they own."

State liability is also limited to the number of shares owned. Therefore, if a state-owned enterprise (SOES) experiences losses, these losses are theoretically the losses of the legal entity, not the capital owner. In practice, on April 22, 2022, the government made a State Capital Injection (PMN) of IDR 7.5 trillion to Garuda Indonesia due to its bankruptcy status, which was declared by the court due to its inability to fulfill its obligations (debts) to creditors. Shows that the State in this case as one of the shareholders bears extra responsibility.¹⁷ This shows that the expansion of the meaning of State finance which includes state assets separated in SOES causes the concept of State responsibility for the bankruptcy of SOES Persero to be biased and broad. Whereas in an economic perspective, the transformation of the function and

¹⁶ U Hasan, "Implikasi Doktrin Fiduciary Duty Terhadap Batas Tanggung Jawab Direksi SOES," *Jurnal Mimbar Hukum* 34, no. 2 (2022): 245-68.

¹⁷ Faizal Kurniawan, "Kriminalisasi Keputusan Direksi SOES: Tinjauan Dogmatik Hukum Perseroan Dan Hukum Pidana Keuangan Negara," *Jurnal Hukum IUS QUIA IUSTUM* 30, no. 1 (2023): 89-110.

legal status of public money into private money, as occurs in the separation of state assets in SOES will create additional economic value that is useful for obtaining company profits even though it is not free from risk. So from this explanation, SOES debt can be categorized as state debt if the state in this case the ministry/institution becomes the guarantor (debtor) either because of its obligations or on the basis of laws/court decisions. The state still has a structural role in managing state-owned enterprise debt. The state sometimes acts as a debt guarantor or provides State Capital Participation (PMN) to SOES experiencing financial difficulties. This creates the potential for contingent liabilities for the state budget.

2. The impact of state-owned enterprise debt from the perspective of state financial law

Article 1, number 1 of the State Finance Law explains that state finances encompass all state rights and obligations that can be valued in monetary terms. This means that when a state-owned enterprise (SOES) incurs debt and the state acts as a guarantor, or when the SOES receives state capital investment, this debt can indirectly impact state finances.

(a) The Emergence of State Contingent Liabilities

Contingent liabilities are potential obligations that are not yet certain to occur but may arise in the future if certain conditions are met, such as a state-owned enterprise defaulting on its debt. When the government guarantees a state-owned enterprise's debt either explicitly (in writing) or implicitly (through policy intervention) it creates a potential burden on the state budget.

According to Government Regulation Number 71 of 2010 concerning Government Accounting Standards, contingent liabilities are defined as potential liabilities arising from past events and whose existence will be confirmed by the occurrence or non-occurrence of one or more uncertain future events that are not entirely within the government's control. In other words, liabilities that are not certain to occur, but if they do occur will be a burden on the state. Some important regulations that govern the government's contingent liabilities for debt include:

1. Law Number 17 of 2003 concerning State Finances Article 1 Paragraph (2) Affirming that state finances include rights and obligations that can be valued in money, including contingent liabilities and Article 13 which states that the Minister of

Finance is responsible for fiscal management including fiscal risks from contingent liabilities.

2. Law Number 1 of 2004 concerning State Treasury Article 48 states that the Government can provide guarantees for the debts of SOES/D or other legal entities with the approval of the DPR. This guarantee creates a contingent liability, because if the SOES fails to pay, the state is obliged to take over the payment.
3. Government Regulation Number 45 of 2003 concerning Procedures for Implementing the State Budget regulates the provision of government guarantees for loans and categorizes the fiscal risks that may arise from such guarantees.
4. Minister of Finance Regulation No. 180/PMK.08/2015 which regulates fiscal risk management which includes contingent liabilities including government guarantees and other implicit liabilities.

As written in Article 14 paragraph (1) of Law No. 17 of 2003, the central government can provide guarantees for the financial obligations of SOES after obtaining approval from the DPR. and Article 1 number 1 of the State Finance Law which states that state obligations are included in the scope of state finances, including contingent obligations. In the recent case of PT Garuda Indonesia, the government once provided guarantees or fiscal support in the form of PNM for debt which then burdened the state when restructuring or default occurred ¹⁸.

(b) Fiscal Distortion and State Budget Burden

When a state-owned enterprise (SOES) faces problematic or unproductive debt, the government is forced to allocate funds through State Capital Participation (PMN) to cover losses or improve the company's financial structure. This creates a distortion in the allocation of the state budget, which should be used for public service functions. This is regulated in Government Regulation No. 72 of 2016, which regulates how the state can add capital to SOES. Despite a clear legal basis, this still has negative impacts and results in inefficient state spending, as it is diverted to improve the health of SOES that are struggling due to poor debt management .

Using the state budget to cover losses from state-owned enterprise debt contradicts the basic principles of state financial management,

¹⁸ H. F. Sjawie, "Direksi SOES Dan Pertanggungjawaban Pidana Korporasi," *Jurnal Hukum Bisnis Bonum Commune* 3, no. 1 (2020): 45–62.

such as efficiency, transparency, and accountability. As stipulated in Article 3 of Law No. 17 of 2003, state finances must be managed in an orderly manner, in accordance with laws and regulations, efficiently, economically, effectively, transparently, and responsibly.¹⁹ The impact of state-owned enterprise debt on state finances is not only financial, but also has legal and governance dimensions. The state must have a robust oversight system for SOES debt management to prevent potential waste of public funds and a fiscal crisis.²⁰ A clear demarcation between corporate debt and state finances must be maintained to avoid an unfair burden on the state budget.

CONCLUSION

The position of state-owned enterprise debt in the state financial legal system indicates a dualism between the private (corporate) legal regime and the public (state financial) legal regime. Normatively, Article 4 paragraph (1) of Law Number 19 of 2003 concerning State-owned Enterprises states that separated state assets belong to State-owned Enterprises, so that State-owned Enterprises are independently responsible for their debts. However, Article 2 letter g of Law Number 17 of 2003 concerning State Finances still classifies separated state assets as part of the scope of state finances. This creates legal ambiguity, especially when the state provides guarantees or bails out State-owned enterprise debt, which can give rise to contingent liabilities for state finances.

Owned enterprise debt on state finances is very significant in the context of the emergence of state contingent liabilities as well as fiscal distortions and increasing burdens on the state budget because the state often acts as a risk bearer by providing guarantees, bailouts, or State Capital Participation (PMN) to state-owned enterprises experiencing financial failure.

REFERENCES

- Ade Irawan Taufik. "Keputusan Direksi Badan Usaha Milik Negara (SOES) Sebagai Keputusan Tata Usaha Negara." *Jurnal Rechtsvinding* 9, no. 3 (2020): 337.
- Ahmad Mahyani. "Tanggung Jawab Pidana Direksi SOES Yang Merugi." *Jurnal Hukum Bisnis Bonum Commune* 2, no. 1 (2019): 1.
- Ali, Zainuddin. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2010.
- Arifin, Z. "Dilema Penerapan Business Judgment Rule Dalam Pengelolaan Investasi SOES." *Jurnal Padjadjaran Ilmu Hukum* 8, no. 2 (2021): 205-228.
- Erman Rajagukguk. "Pengertian Keuangan Negara Dan Kerugian Negara." *Komisi*

¹⁹ Ade Irawan Taufik, "Keputusan Direksi Badan Usaha Milik Negara (SOES) Sebagai Keputusan Tata Usaha Negara," *Jurnal Rechtsvinding* 9, no. 3 (2020): 337.

²⁰ Muklis Al'anam, *Pemerintah, SOES, Dan Hukum Administrasi: Uji Tuntas SOES Sebagai Badan Hukum Publik Atau Privat* (Surabaya: Airlangga University Press, 2025).

- Hukum Nasional Republik Indonesia*. Jakarta, 2006.
- Faizal Kurniawan. "Kriminalisasi Keputusan Direksi SOES: Tinjauan Dogmatik Hukum Perseroan Dan Hukum Pidana Keuangan Negara." *Jurnal Hukum IUS QUIA IUSTUM* 30, no. 1 (2023): 89-110.
- Hasan, U. "Implikasi Doktrin Fiduciary Duty Terhadap Batas Tanggung Jawab Direksi SOES." *Jurnal Mimbar Hukum* 34, no. 2 (2022): 245-268.
- Indah Cahyani & Tatiek Sri Djadmiati. "Demarcation SOES: Between Private Laws and Public Laws." *Yuridika* 35, no. 2 (2019): 311.
- M. Subagio. *Hukum Keuangan Negara R.I.* Jakarta: Rajawali Pers, 1991.
- Madaskolay Viktoris Dahoklory. "Dinamika Pengelolaan Keuangan SOEs Perihal "Dilema" Antara Kerugian Negara Ataupun Kerugian Bisnis." *Jurnal Rechtsvinding* 9, no. 3 (2020): 349-365.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Kencana Prenada Media Group, Jakarta, 2005.
- Masnun, Muh. Ali, Prasetyo, Dicky Eko, Maalikatussofa. "Reconstruction of the Normative Legal Research Paradigm in Responding to Global Challenges: An Epistemological Analysis." *Novum: Jurnal Hukum* 12, no. 3 (2025): 372-384.
- Muh. Ali Masnun. "Utang Badan Usaha Milik Negara Dalam Perspektif Hukum Keuangan Negara." *Indonesian Journal of Contemporary Law* 1, no. 6 (2025).
- Muh. Ali Masnun, Dicky Eko Prasetyo. "Reconstruction of The Concept of Authority in Administrative Law Related to National Strategic Projects Based on Substantive Justice." *Mimbar Keadilan* 19, no. 2 (2026): 259-281.
- Muh. Ali Masnun, et-al. "Financial Reconstruction of State-Owned Enterprises in Indonesia as Special State Finances: Public or Private Law?" *Jurnal Hukum Bisnis Bonum Commune* 9, no. 1 (2026): 44.
- Muklis Al'anam. *Pemerintah, SOES, Dan Hukum Administrasi: Uji Tuntas SOES Sebagai Badan Hukum Publik Atau Privat*. Surabaya: Airlangga University Press, 2025.
- Munir Fuady. *Hukum Bisnis Dalam Teori Dan Praktek*. Bandung: Citra Aditya Bakti, 1994.
- Rukly Mokoginta. "Analisis Hukum Bisnis Tentang Kerugian Keuangan Pada Badan Usaha Milik Negara (SOES)." *Lex Crimen* 4, no. 6 (2015): 49.
- Sjawie, H. F. "Direksi SOES Dan Pertanggungjawaban Pidana Korporasi." *Jurnal Hukum Bisnis Bonum Commune* 3, no. 1 (2020): 45-62.
- Susanto. "Fungsi Audit Investigatif Pada SOEs Persero Untuk Menghitung Kerugian Negara Dalam Perspektif Hukum Positif Dan Hukum Islam." *Arena Hukum* 16, no. 1 (2023): 53.