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From Corporate Logic to Public Welfare: A *Siyāsah Shar'iyyah* Framework for Understanding Indonesian State-Owned Enterprises

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Abstract

The establishment of BPI Danantara as Indonesia's state-owned enterprise (SOE) super-holding has renewed debates over the balance between state control and market logic in managing strategic public assets. This article examines the normative foundations of SOE governance through the framework of *siyāsah shar'iyyah*, using a normative-conceptual approach grounded in classical and contemporary fiqh literature and constitutional analysis. The study focuses on two dimensions. First, regarding state authority, the post-reform SOE structure—comprising the State-Owned Enterprises Board (BP BUMN), BPI Danantara, and SOE Boards of Directors—corresponds to the doctrines of *wilāyah 'āmmah* and *wilāyah khāṣṣah*, which justify delegated authority while maintaining accountability to the state. Second, regarding public interest, the principle *taṣarruf al-imām manūṭun bi al-maṣlaḥah* establishes public welfare as a condition of policy legitimacy. Drawing on al-Gazālī's classification of *maṣlaḥah mursalah*, the analysis shows that efficiency gains at the *taḥsīniyyāt* level cannot justify weakening state control over interests categorized as *ḍarūriyyāt*. The study concludes that SOE governance must satisfy both constitutional and sharia-based legitimacy by prioritizing the collective public interest.

Abstrak

Pembentukan BPI Danantara sebagai superholding BUMN Indonesia telah memperbarui perdebatan mengenai keseimbangan antara kontrol negara dan logika pasar dalam pengelolaan aset publik strategis. Artikel ini mengkaji landasan normatif tata kelola BUMN melalui kerangka *siyāsah shar'iyyah* dengan pendekatan normatif-konseptual yang bertumpu pada literatur fikih klasik dan kontemporer serta analisis konstitusional. Kajian ini berfokus pada dua dimensi. Pertama, terkait kewenangan negara, struktur BUMN pascareformasi yang terdiri atas BP BUMN, BPI Danantara, dan Direksi BUMN sesuai dengan doktrin *wilāyah 'āmmah* dan *wilāyah khāṣṣah*, yang memberikan dasar normatif bagi pendelegasian kewenangan dengan tetap menjaga akuntabilitas kepada negara. Kedua, terkait kepentingan publik, prinsip *taṣarruf al-imām manūṭun bi al-maṣlaḥah* menempatkan kemaslahatan publik sebagai dasar legitimasi kebijakan. Berdasarkan klasifikasi *maṣlaḥah mursalah* menurut al-Gazālī, analisis menunjukkan bahwa efisiensi pada tingkat *taḥsīniyyāt* tidak dapat dijadikan alasan untuk mengurangi kontrol negara atas kepentingan yang termasuk dalam kategori *ḍarūriyyāt*. Studi ini menyimpulkan bahwa tata kelola BUMN harus memenuhi legitimasi konstitusional sekaligus legitimasi normatif berbasis Syariah dengan tetap memprioritaskan kepentingan publik secara kolektif.

Keywords:
State-Owned enterprises; State authority; *Siyāsah shar'iyyah*

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Introduction

In the global economic landscape, state-owned enterprises (SOEs) occupy a unique position, as they combine two distinct characteristics: market logic and the public responsibilities they bear. As Michaels notes, SOEs are unique entities because they often face inherent tensions arising from their dual roles. In addition to being obligated to perform commercial functions aimed at generating profits, SOEs are often burdened with the duty to fulfill public service responsibilities (Michaels, 2020). This public responsibility is, in fact, consistent with the definition of an SOE as a state-owned business entity. In the 2005 OECD document, SOEs are defined as "*enterprises where the state has significant control, through full majority or significant minority ownership*" (Organisation for Economic Co-operation and Development, 2005). This statement implies significant state control over the governance of SOEs. The dual nature of SOEs entails two key dimensions: the public dimension and the business-entity dimension. The public dimension of SOEs can be seen in: 1) objectives oriented toward the public interest or public purpose, 2) state ownership or public ownership, and 3) public oversight or public control (Ilmar, 2012), while the business-entity dimension positions SOEs as entities that generate revenue for the state.

In recent decades, state-owned enterprises (SOEs) in many countries have undergone significant institutional transformation. This transformation encompasses several aspects, ranging from strengthening governance and restructuring ownership to implementing technological integration. This transformation is increasingly positioning SOEs to compete in the global market. Changes in these areas are also driven by the pressures of globalization, demands for efficiency, and the need for public accountability, which continue to drive fundamental changes in SOE governance compared to previous eras. Thomsen, S., Pedersen, T., et al. (2020) assert that the success of the transformation undertaken by State-Owned Enterprises (SOEs) depends on three key elements: strong governance, technology integration, and the reduction of political interference in SOE governance. According to Thomsen, with the right strategy, SOEs have the potential and a strategic role to serve as primary drivers of sustainable economic development, particularly in the era of globalisation (Thomsen et al., 2020). In addition to Thomsen's study, there are several similar studies conducted by other researchers such as Peter Enderwick, Leonardo Henrique Lima de Pilla, Alketa Peci, and Rodrigo de Oliveira Leite, Gabriel R.G. Benito, who explain and emphasize the importance of strong SOE governance by minimizing political interference so that SOEs can transform effectively (de Pilla et al., 2024; Enderwick, 2022; Rygh & Benito, 2022).

Referring to past practices, SOEs were often positioned as instruments of state policy with a primary focus on social objectives such as the provision of public services, rather than merely pursuing profit (profitability) as a source of state revenue. However, recent trends indicate that an increasing number of SOEs are becoming more autonomous and market-oriented. In fact, institutionally, many SOEs are now structured as Limited Liability Companies, which are private legal entities. This transformation has even occurred in China, a socialist country that typically implements a centralized economic system, thereby positioning SOEs as state organs. A study by Ligang Song (2018) indicates that since the onset of economic reforms in 1978, China has been among the countries that have successfully undertaken major transformations of its SOEs. These reforms were carried out as part of the transition from a centralized economy to a market-based economy. These reforms focused on ownership restructuring policies, transforming SOEs into shareholding companies through a mixed-ownership model, thereby enabling private-sector participation. Amid these changes, China maintained the state's role as the strategic controller of SOEs by establishing the SASAC (State-Owned Assets Supervision and Administration Commission), which operates under the State Council. In addition to improving governance and oversight, the reforms also expanded the managerial autonomy of SOEs. Although they have transformed into shareholding corporate entities, the role of SOEs in China is not solely profit-oriented. Instead, the government's functions in maintaining economic and social stability continue to be carried out by SOEs (Song, 2018).

In addition to China, several state-owned enterprises in European countries that were once wholly owned by the state have now begun to be partially or fully privatized. Privatization policies in Europe reflect, at the very least, the government's efforts to balance market efficiency with the protection of national strategic interests. Privatization policies in Europe are driven not only by economic necessity but also by the ideology of capitalism, which advocates a reduced role of the state in the economy. Nevertheless, privatization policies are not without controversy, particularly regarding the importance of state control over strategic sectors, the transparency of the privatization process, and the impact on the workforce. In some privatization cases, governments continue to use the "golden share" mechanism to maintain government control over the governance of privatized companies.

Initially, European nations nationalized large companies as a way out of crises caused by war, economic depression, and energy crises. This step helped address a lack of private investment, build infrastructure, and maintain stability. However, in the 1970s and 1980s, SOEs began to be viewed as a burden because they were considered wasteful in their use of subsidies, inefficient, and lacking in innovation. Under Margaret Thatcher, the UK pioneered privatization to promote market efficiency and expand share ownership; France, Germany, and Italy later adopted this policy for similar reasons: to reduce the fiscal burden and enhance competitiveness. The 2008 financial crisis temporarily reversed this trend: many companies were temporarily nationalized to prevent economic collapse. After the crisis subsided, privatization resumed, this time in the form of re-privatization through stock sales on the stock exchange, to restore fiscal health and re-establishing economic stability (Voszka, 2019).

Privatization policies create opportunities for private sector involvement in ownership and governance of SOEs. In this context, as Bruton et al. argue, state ownership and private ownership essentially represent distinct institutional logics (Inoue et al., 2013). It is this mixed ownership that fundamentally makes SOEs hybrid organizations (Inoue et al., 2013). If managed well, according to Julie Battilana, hybrid organizations can essentially leverage elements that enhance legitimacy from various institutional logics, thereby enabling SOEs to survive and thrive (Battilana & Dorado, 2010).

In Indonesia, state-owned enterprises (SOEs) occupy a strategic position as both economic actors and providers of public services. This position aligns with Article 33, paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, which grants the state a constitutional mandate to control branches of production vital to the nation and those that govern the livelihood of the people, for the greatest prosperity of the people (1945 Constitution of the Republic of Indonesia, n.d.). Therefore, SOEs cannot be understood merely as business entities, but rather as state instruments for realizing social justice and the common good in accordance with the values of Pancasila. However, throughout their historical development, particularly from the New Order era through the post-1997–1998 economic crisis, SOEs have faced various governance issues, including state capture, structural inefficiencies, and the lack of clarity in the division of administrative functions (*bestuursdaad*) and regulatory functions (*regelendaad)*, which ultimately weakened the accountability and effectiveness of SOEs' public role (Expert Body of the Indonesian House of Representatives, 2021).

In response to these issues, the Indonesian government established the superholding company Anagata Nusantara Power Investment Management Agency (Danantara Indonesia-Badan Pengelola Investasi Daya Anagata Nusantara) to restructure SOE governance, making it more professional, integrated, and long-term oriented. Danantara is designed to oversee two main pillars: an investment holding and an operational holding, thereby enabling a clearer separation of functions between corporate management (operator) and policy formulation (regulator). Although idealized as a step toward transforming SOE performance, the presence of Danantara as an entity managing and consolidating SOEs has also raised the perception that the governance of Indonesian SOEs is moving toward a pattern of covert privatization, particularly due to the increasing prominence of modern corporate instruments and investment logic. In global discourse, the strengthening of holding companies, the rise of value-based asset management, and the opening of space for market participation are often understood as characteristics of a state's shift from direct control of strategic sectors to mere shareholder status.

Within the framework of *siyāsah shar'iyyah*, the state's management of public wealth is not determined by formal institutional forms—whether public or private legal entities—but rather by the objectives and orientation toward the public good that are to be achieved. Al-Māwardī, for example, asserts that the ruler's primary duty is *to safeguard the religion and govern worldly affairs* (Al-Māwardī, n.d). In a contemporary context, this includes managing strategic economic resources for the public good through *siyāsah shar'iyyah*, or government strategies aligned with the principles of *maqāṣid al-sharī'ah* (Dwiono et al., 2024). The state is justified in using various administrative and institutional instruments if it maintains substantial control over public resources and ensures the distribution of their benefits to the broader public. Furthermore, the normative legitimacy of Article 33 of the 1945 Constitution and Pancasila also finds strong resonance in the doctrines of *maṣlaḥah mursalah* and *taṣarruf al-imām 'alā al-ra'iyyah manūṭun bi al-maṣlaḥah* (the public interest binds a leader's policy toward his people) (Al-Suyūṭī, 1983; Ibrāhīm & Aḥmad, 2024). The state not only has the authority but also the obligation to manage public wealth to safeguard religion, life, intellect, lineage, and property (the five essentials) (Al-Ghazālī, 1993).

Based on the above perspective, efforts to present a *siyāsah shar'iyyah* analytical framework for interpreting the role of state-owned enterprises (SOEs) in Indonesia are both relevant and justified, as they are expected to bridge the constitutional mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia and the values of Pancasila with the demands of modern SOE governance. This framework does not merely position SOEs as economic entities but also as state instruments for realizing the public good and social justice. On this basis, the article holds academic and normative significance in enriching the discourse on the relationship between the state, SOEs, and the public mission they undertake.

Method

This article was compiled using a library research method with a normative-conceptual approach. The analysis was conducted by tracing and examining relevant primary and secondary sources, including applicable laws and regulations, as well as literature presenting theoretical discourse on the development and transformation of SOE governance. In addition, various works of *siyāsah shar'iyyah* fiqh were utilized, drawing on both classical and contemporary texts, including those by al-Māwardī, al-Gazālī, al-Suyūṭī, and others. The analytical approach is descriptive-argumentative: it systematically describes the phenomenon of SOE transformation and situates it within the framework of *siyāsah shar'iyyah*. This method aims to establish a coherent basis for argumentation between the state's constitutional mandate, modern SOE governance practices, and the principles of public interest as found in Islamic doctrine and heritage, thereby producing a conceptual synthesis relevant to the discourse on Islamic law and public policy.

Hybrid SOEs in the Global Discourse

Currently, a growing trend in many countries suggests that SOEs can thrive by continuously adapting and transforming into new organizational forms (Musacchio & Lazzarini, 2014). One form of the SOE institutional model that has recently emerged is the hybrid organization. An organization that combines elements from various institutional logics (Pache & Santos, 2013). A hybrid organization is defined as one grounded in at least two distinct sectoral paradigms, logics, and value systems (Saetre, 2022). The dual nature of SOEs has sparked debate over their legal status—whether they are public or private legal entities. This debate, in essence, also reflects the hybrid characteristics of the SOEs themselves. Theoretically, SOEs are indeed considered to possess elements that could place them in both categories. This is one of the defining characteristics of a hybrid organization—an entity characterised by a blend of distinct and fundamentally conflicting traits. Such a hybrid nature also makes hybrid organisations a frequently debated phenomenon. Supporters of hybrid organizations view them as a middle ground: combining the security of the public sector with the boldness of the private sector. However, critics see it differently. For them, hybridity actually combines the worst aspects of both, creating an organization that is confusing, rife with conflicting interests, difficult to understand, and whose behaviour is hard to predict (Karre, 2020).

Based on these hybrid characteristics, SOEs not only operate at a certain distance from direct political control but also conduct commercial activities on behalf of the government, combined with activities related to the public interest (Karre, 2020). Several researchers, such as Aidan Vining and Claude Laurin, refer to SOEs as hybrid entities, using the terms "public-private hybrid SOEs" or simply "hybrid SOEs." Other researchers, such as Nan Zhou, also use similar terms (Zhou, 2018), Adeyemi Adebayo & Barry Ackers (Adebayo & Ackers, 2023), serta Ilya Okhmatovskiy, Anna Grosman, dan Pei Sun (Okhmatovskiy et al., 2022). Not without criticism, hybrid entity models such as SOEs are considered vulnerable due to internal confusion in navigating the pressures of public bureaucracy and market demands that are perceived as contradictory. This kind of hybridity is most evident when these entities must carry out a public service mission while still being required to be competitive in the market to maximize profits (Karre, 2020).

In Indonesia, both SOEs in the form of Perum and *Persero* are considered hybrid. In the case of Perum, its public elements are reflected in: (a) capital entirely sourced from the state, and (b) Perum's objective, which is oriented toward providing goods and services for the public interest. Meanwhile, the private elements of Perum are found in: (1) corporate governance, and (2) the mechanisms for appointing and dismissing the board of directors. According to Yuli Indrawati, SOEs, whether in the form of Public Enterprises (Perum) or *Persero*, are both hybrid organizations. However, they differ in their concept of hybridity. In SOEs structured as Perum, both public and private elements are balanced. In contrast, in SOEs structured as *Persero*, the private elements are more dominant (Indrawati, 2020).

In Perum, the public and private elements are in a balanced position. The public elements of Perum include its capital and purpose of establishment. In contrast, the private elements are reflected in corporate governance and in the mechanisms for appointing and dismissing the board of directors. In a *Persero*, the public element is found in the SOE's specific objectives, which include a social component. Meanwhile, the private element of a *Persero* is reflected in the company's capital, objectives, governance, and mechanisms for appointing and dismissing the board of directors (Indrawati, 2020). Thus, the private element in a *Persero* is more dominant than the public element. According to Indrawati (2020), the appropriate concept of hybridity to optimize the achievement of SOE objectives must be differentiated based on the company's form. For Public Enterprises (Perum) aimed at public benefit, the proposed concept of hybridity is a balance between public and private elements.

This is crucial to ensure that Perum's objectives are achieved optimally. Conversely, for *Persero*, which has commercial objectives, the public element must be minimized—even restricted. *Persero* must be positioned as a corporation by applying corporate governance principles and eliminating non-corporate interventions, thereby enabling the company to achieve maximum profit (Indrawati, 2020). Hybrid state-owned enterprises have two sides. The benefits include government funding, fiscal incentives, business protection, and access to facilities that strengthen performance and ensure the public receives reliable services. The risks include dependence on the state budget, which limits development; declining service quality without healthy competition; and government incentives that potentially stifle the private sector. Strict public regulations reduce flexibility, while conflicts between social and commercial objectives create dilemmas. A bureaucratic culture weakens management, opens the door to moral hazard, and political or fiscal interventions can erode the professionalism and competitiveness of SOEs (Indrawati, 2020).

Transformation and Reform of SOE Governance

A major transformation in the governance of SOEs in Indonesia occurred with the establishment of the Danantara Investment Management Agency (BPI Danantara) under Law No. 1 of 2025, which was later amended to Law No. 16 of 2025 on SOEs. The creation of this super-holding company was designed as a strategic reform measure to enhance efficiency, professionalism, and economic value-added in the management of state assets. Institutionally, BPI Danantara manages two types of SOE holding companies: investment and operational, with most SOE shares held by Danantara. As a super-holding company, BPI Danantara comprises two types of holding entities: operational holding companies and investment holding companies. The legal entity of the Operational Holding Company is a limited liability company. The Operational Holding is tasked with managing the operations of SOEs and carrying out other duties as determined by the Minister or the Agency (Article 3AK paragraph t (3), Law of the Republic of Indonesia Number 1 of 2025 Concerning the Third Amendment to Law Number 19 of 2003 Concerning State-Owned Enterprises, 2025). Furthermore, with the enactment of Law No. 16 of 2025, the Ministry of SOEs was also abolished, and its institutional structure was transformed into the SOE Regulatory Agency. The Head of the SOE Regulatory Agency, acting as the representative of the Central Government as the regulator, is tasked with establishing policies, regulating, fostering, and supervising the implementation of SOE management policies (Article 3B, Law of the Republic of Indonesia No. 1 of 2025 on the Third Amendment to Law No. 19 of 2003 on State-Owned Enterprises, 2025).

Under the fourth amendment to the SOE Law, Law No. 16 of 2025, BPI Danantara is now the sole shareholder of both the investment and operational holding companies. BPI Danantara will hold 100% of the shares in the holding companies. Meanwhile, regarding the SOE entities, the Republic of Indonesia holds 1% of the Dwiwarna Series A shares, and BPI Danantara holds 99% of the Series B shares. This provision implies that the state effectively retains special control instruments. However, such control now resides at the SOE level rather than at the intermediate holding company level under the BPI Danantara structure. When ownership of the holding company's shares is no longer directly held by the State and is no longer accompanied by the existence of Dwiwarna Series A shares that grant special rights to the State, there is a potential that the holding company no longer meets the qualifications as a state-owned enterprise (BUMN). This stems from the definition of a BUMN, which emphasizes the direct participation of state capital or the existence of special state rights within the ownership structure (Article 1(1), Law of the Republic of Indonesia No. 1 of 2025 on the Third Amendment to Law No. 19 of 2003 on State-Owned Enterprises, 2025). With such a design, the shift in ownership structure is not merely corporate but also carries fundamental implications for the legal status, regulatory regime, and public accountability framework of the holding entity. Under this scheme, the Operational Holding Company—as the entity responsible for managing and administering the assets of SOEs and their subsidiaries—also risks losing its status as a direct shareholder in various SOEs, which could ultimately weaken its ability to manage and administer the assets of SOEs and their subsidiaries, despite these falling within its scope of authority.

In addition to being business entities focused on maximizing revenue, state-owned enterprises (SOEs) also carry out a mission of public benefit or social responsibility. SOEs, including their subsidiaries and affiliates, are required to fulfill their social and environmental responsibilities as part of their business operations. This takes the form of community empowerment programs: guidance, training, and collaboration with small and medium-sized enterprises (SMEs), cooperatives, and other institutions. The primary focus is on supporting communities in the areas surrounding their operations, while also making tangible contributions to social, economic, and environmental sustainability (Law of the Republic of Indonesia No. 16 of 2025 on the Fourth Amendment to Law No. 19 of 2003 on State-Owned Enterprises, 2025).

In Law No. 1 of 2025, the provisions on special assignments for SOEs are set out in Article 87C. The Central Government may assign special mandates to SOEs or their subsidiaries to carry out public benefit functions, research and development, and national innovation (Law of the Republic of Indonesia No. 1 of 2025 on the Third Amendment to Law No. 19 of 2003 on State-Owned Enterprises, 2025). Theoretically, PSO obligations are understood as obligations imposed on market participants (companies) to ensure that all consumers have adequate access to strategic services, which are typically not provided by the market. The design and implementation mechanisms of PSOs vary across countries, though they are commonly found in sectors such as postal services, transportation, energy, and telecommunications (Organisation for Economic Co-operation and Development, 2005). In developing countries, PSOs are often used to support social and economic development, such as providing electricity in rural areas and affordable transportation for people living in poverty. For example, in India, PSOs play a significant role in supporting fuel and electricity subsidy policies (Bhattacharya, 2012). Meanwhile, in the context of modern governance, PSOs are integrated into increasingly market-oriented corporate governance models while maintaining their social mandate. This shift reflects the need to balance financial sustainability on one hand with social responsibility on the other (Bortolotti & Faccio, 2009).

The implementation of PSOs in Indonesia is mandated by Article 34, Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, which requires the state to provide adequate health facilities and public services. This provision forms the basis of the government's obligation to provide public services to the community, such as transportation, telecommunications, electricity, road infrastructure, and other sectors. Law No. 25 of 2009 on Public Services was also enacted to implement Article 34, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The purpose of this law is to ensure the availability of adequate public services in accordance with the principles of good governance and applicable legal provisions. This law also provides legal protection and certainty for the public regarding the state's provision of public services.

State Authority and Constitutional Mandate

The framework of a modern rule-of-law state positions state authority over strategic sectors not merely as an exercise of power, but as a constitutional mandate realized through the existence of state-owned entities that are viewed not only as business entities but also as state instruments to achieve equitable welfare, ensure the provision of public services to the public, and contribute to poverty alleviation (Kim, 2020). This mandate is realized through the strategic role of State-Owned Enterprises (SOEs) as state instruments that perform both economic and public service functions, in accordance with the provisions of Article 33, paragraph (2), and (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that the state's control over branches of production vital to the nation and those that govern the livelihood of the people is aimed at achieving the greatest possible prosperity for the people (Constitution of the Republic of Indonesia 1945). Substantively, the provisions in paragraphs (2) and (3) affirm that state control over natural resources and strategic sectors of production is not merely a right but an obligation to ensure collective welfare (Expert Committee of the House of Representatives of the Republic of Indonesia, 2021).

It is important to emphasize that the authority of the state (Fauzani, 2024), including the right to control and manage strategic sectors, essentially derives from the people as the holders of supreme sovereignty. From the perspective of *fiqh al-siyāsah*, the relationship between the people and the head of state is built based on *al-ʻaqd al-ijtimāʻ* (social contract), in which leadership originates from the ummah and the ruler's legitimacy depends on their consent, as al-Māwardī explains that *imāmah* (leadership) is an ʻ*aqd* (contract) between the ummah and the imam carried out through *bayʻah* by a group representing the ummah (al-Māwardī, n.d). In the modern context, the head of state (*ra'īs al-dawlah*) derives the legitimacy of his power from the *ummah*. Therefore, the ummah is understood as both the source of power (*maṣādir al-sulṭah*) and the holder of sovereignty (*ṣāḥibat al-siyādat*). In contrast, the exercise of state power is entirely directed toward realizing *al-maṣlaḥah al-ʻāmmah* (the public interest). This principle is reflected in the concept *of ahl al-ḥall wa al-ʻaqd*, which serves as the ummah's representation in determining leadership. Thus, the state's control over strategic sectors is constitutionally valid and consistent with the principle of popular sovereignty, and is intrinsically tied to the objectives of protecting, maintaining, and enhancing the welfare of the people as the fundamental orientation of state power (al-Siyāsah al-Sharʻiyyah, 1433).

In this context, the concept of *maṣlaḥah mursalah*—the public interest not explicitly commanded or prohibited by the text—serves as the primary foundation allowing rulers to create new institutional instruments for the public good. Al-Gazālī, in al-Mustaṣfā, defines *maṣlaḥah* as anything that safeguards the *al-kulliyyāt al-khams* (the five fundamental objectives of sharia: religion, life, intellect, lineage, and property) (al-Ghazālī, 1993). Al- Ṭūfī, in his more progressive view, even states that *maṣlaḥah* can take precedence over nash in the realm of *mu'āmalah* and public policy when the public interest demands it (al- Ṭūfī, 1965). In the context of state-owned enterprises (SOEs), the establishment of Danantara as a super-holding can be evaluated using the three criteria of *maṣlaḥah mursalah* developed by al-Ghazali, namely: *first*, *al-ḍarūriyyāt* (primary needs)—is Danantara truly necessary to safeguard vital strategic sectors without which society would suffer significant harm? *Second*, *al-ḥājiyyāt* (secondary needs): Does the consolidation of SOEs through Danantara facilitate and improve the management of public assets? *Third, al-taḥsīniyyāt* (tertiary/enhancement needs): Does this institutional innovation significantly improve the quality of governance? If the transformation of SOEs addresses only the *taḥsīniyyāt* level while sacrificing guarantees at the *ḍarūriyyāt* level—for example, by weakening state control over vital sectors—then, from the perspective of *al-siyāsah al-sharʻiyyah*, such a transformation cannot be justified.

This constitutional mandate indicates that the state cannot completely relinquish its intervention in the economy. Therefore, the existence of SOEs is not merely intended to accumulate profits but also serves as a state instrument to fulfill public interests and the basic needs of the people. Article 33 of the 1945 Constitution of the Republic of Indonesia, along with its explanatory notes, explicitly establishes that the state possesses the authority to regulate the production, distribution, and pricing of goods and services of a strategic nature that control the basic needs of the people. Consequently, economic regulations grounded in Article 33 of the Constitution aim to maintain a balance between public interests and market dynamics, while ensuring that the national economy operates in accordance with the principles of social justice and the welfare of the people. In this context, state-owned enterprises (SOEs) serve as the state's instrument in fulfilling the constitutional mandate by prioritizing the values of Pancasila in managing strategic sectors for the common good (Bawazier, 2017, p. 239).

From the perspective of *fiqh al-siyāsah*, the state's constitutional mandate to regulate and control these strategic sectors is strongly grounded in the concepts of *wilāyah* and state authority. Abū Yaʿlā al-Farrāʾ divides state authority (*wilāyah*) into various levels based on its object and scope, including *'āmmah al-wilāyah* (general authority held by the caliph or head of state) and *khāṣṣah al-wilāyah* (special authority delegated to specific officials or institutions) (Al-Farrā, 2000). This concept is highly relevant to SOEs: the establishment and oversight of SOEs constitute the state's exercise of authority over strategic economic sectors, while the operational management of SOEs represents a form of *khāṣṣah wilāyah* delegated to the SOE's board of directors and management. Furthermore, al-Māwardī in *al-Aḥkām al-Sulṭāniyyah* explains that state authority (*wilāyah*) includes, among others, *wilāyat al-maẓālim* (the authority to resolve injustices), *al-ḥisbah* (the authority to oversee the market and the public economy), and *al-khirāj* (the authority to manage public revenue and wealth) (al-Māwardī, n.d). These three dimensions of *wilāyah* can be directly mapped to the functions of the SOE Board of Commissioners as a regulator, the SOE as an operator, and BPI Danantara as the asset management entity, each with a normative counterpart in political jurisprudence.

Regarding the state as a public legal entity (*al-ashkhāṣ al-i'tibāriyyah al-'āmmah*), there is no disagreement among the *fuqahā'* regarding the establishment of the state's *wilāyah* (authority), nor that the state has the authority to delegate (*istinābah*) in matters deemed necessary (Mudawwanat Aḥkām al-Waqf al-Fiqhiyyah, n.d). According to Nabil Ibrāhīm Sa'd, legal entities (*al-syakhṣiyyah al-i'tibāriyyah*) are divided into several types, including: Public legal entities (*al-ashkhāṣ al-qānūn al-'āmmah*), which include the state; Regional public legal entities, such as public institutions, administrative authorities, or city governments; and Public service legal entities *(mukhtashah/marfiqiyyah*), such as social insurance institutions. This reaffirms that the state, both normatively and conceptually, is a public legal entity; thus, its authority and the delegation thereof to state instruments, including state-owned enterprises operate within a clear and measurable legal framework of legitimacy (Sa'd, 2010).

Imām al-Ḥaramayn al-Juwaynī states that delegation by the *imam* (supreme leader) is an absolute necessity that cannot be dispensed with, for the imam cannot possibly manage all matters and handle everything directly. His perspective cannot encompass all strategic matters and major responsibilities. This constitutes a rational necessity unquestioned by the rational mind, ensuring that all affairs remain under his orderly control, protected by his oversight, bound by his wisdom, and that his oversight extends broadly over the land and its people. He manages them as if he were seeing them directly, even though the distance is great and the regions are far apart (al-Juwaynī, 1401). This view affirms that the delegation of authority by the state, including through state-owned enterprises (SOEs), is a logical implementation of the constitutional mandate to regulate and control strategic sectors in the public interest.

The logic of this delegation of authority aligns with the constitutional mandate of Article 33 of the 1945 Constitution, which affirms that the state has the right and obligation to control vital branches of production as well as sectors that dominate the necessities of life for the people. Article 33 of the 1945 Constitution regulates the forms of business in Indonesia, including the role of State-Owned Enterprises (SOEs). The Constitution also states that "……*branches of production that are vital to the state and that control the livelihood of the people must be controlled by the state*……" Without this provision, control over production could potentially fall into the hands of powerful individuals, thereby potentially harming the people. The core principle is that "*individuals may manage only businesses unrelated to the public's basic needs.*" The term "*control*" implies that business ownership must remain under state control, not in the hands of private individuals (Ilmar, 2012). This foundation is also consistent with a Constitutional Court ruling stating that the existence of state-owned enterprises (SOEs) is not merely an extension of the state in implementing the principle of state control over branches of production that are vital to the nation and that affect the livelihood of the people, nor is it an extension of the state in implementing the principle of state control over land, water, and all the wealth contained therein. Furthermore, SOEs also act as economic actors within the national economy, with the ultimate goal of achieving the people's prosperity (Ilmar, 2012).

In Indonesia, policies governing state-owned enterprises (SOEs) have undergone four revisions, reflecting changes in both economic strategy and governance principles. Similarly, there has been a shift from a state-controlled approach to a more commercially oriented approach, with an emphasis on profitability and cost recovery (Yakup, 2018). However, this focus on profitability and efficiency does not inherently disregard the social responsibility mandate entrusted to SOEs. As mandated by Article 33 of the 1945 Constitution, SOEs continue to play a strategic role in ensuring public access and welfare. The mandate carried by SOEs as state-owned entities also reflects the underlying ideology. In a socialist regime, the paradigm of state or collective ownership is more strongly supported, whereas in a capitalist system, private ownership is advocated. State intervention in the economy is often driven by an ideology aimed at how the state can produce, accumulate, and maintain its socio-economic structure. This motivation is closely tied to the political and economic ideologies adopted by each country (Jones, 1981). Within the framework of the Pancasila Rule of Law ideology, SOEs are envisioned to serve as instruments of economic democracy that prioritize public welfare without sacrificing competitiveness. This contrasts with the capitalist economic system, which tends to create inequality due to market dominance. Similarly, the socialist system is mired in bureaucratic inefficiency (Expert Committee of the Indonesian House of Representatives, 2021). The ideology of Pancasila, as the foundation of Indonesia's economic system, is viewed as a middle ground for managing SOEs. SOEs are required to be productive and competitive while remaining under state control for the people's benefit. This is why Arifin P. Soeria Atmadja describes SOEs as entities possessing a multidimensional character that simultaneously involves economic, social, and legal factors (Rusli, 2019). Within the framework of Pancasila and the constitution, SOEs serve as the "visible hand" of the government in realizing collective welfare (Disyon & Sibarani, 2023). It is this ideological legitimacy that distinguishes SOEs from private enterprises, as their management is rooted in the pursuit of the public good and aligns with the values of justice, humanity, and solidarity—the very spirit of Pancasila.

The Public Mission of SOEs within the Framework of *Siyāsah Shar'iyyah*

Indonesia adheres to Pancasila as the state ideology that serves as the foundation for all dimensions of national life—political, social, and cultural (Hermawan et al., 2023). As a result of these two major ideological currents, the Pancasila ideology—as the foundation of Indonesia's economic system—is viewed as a middle path for managing SOEs. This aligns with Indonesia's economic system, namely the Democratic Economic System, which is grounded in the values of Pancasila as its ideological foundation and the 1945 Constitution of the Republic of Indonesia as its constitutional basis. Consequently, both societal and state economic activities must adhere to the principles of economic democracy. This system emphasizes equity, justice, public participation, as well as the principles of kinship and cooperation. Thus, the economy does not rely solely on market mechanisms but also maintains a balance between individual and collective interests for the common good, in accordance with the constitutional mandate (Expert Committee of the Indonesian House of Representatives, 2021).

The public mission of SOEs is a concrete articulation of the state's presence in the economic sphere, affirming that the management of strategic sectors is not driven solely by market logic but by a constitutional responsibility to ensure welfare, social justice, and the greatest possible benefit for the people; therefore, SOEs are positioned not only as business entities focused on revenue optimization, but also as state instruments that inherently carry out a mission of public benefit and social responsibility (Law of the Republic of Indonesia No. 16 of 2025 on the Fourth Amendment to Law No. 19 of 2003 on State-Owned Enterprises, 2025).

As a comparison to the legal practices of other countries that also place state-owned enterprises within the framework of public interest, the Egyptian State-Owned Enterprises Sector Law also affirms the special status of *Amlāk al-sharikāt* (corporate assets) for companies subject to this provision, including *sharikāt al-qābidhah* (parent companies) and *sharikāt al-tābi'ah* (subsidiary companies). In this case, all the company's assets are treated as *amwāl 'āmmah* (public assets) and are therefore subject to the legal protections applicable to state assets. Furthermore, this article also emphasizes that managers (*al-qā'imūn 'alā idāratihā*) and their employees (*al-'āmilūn fīhā*) are positioned on an equal footing with civil servants (*muwaẓẓafūn 'āmūn*) in the context of implementing the provisions of Chapters Three and Four of Book Two of the Criminal Code (Qānūn Sharikāt Qiṭāʿ al-Aʿmāl al-ʿĀmm Raqam 203 Li-Sanah 1991 Wa Ta'dīl 185 Li-Sanah 2020, 1991). This regulation strengthens the argument that the control and management of state-owned companies are not understood as ordinary commercial activities but rather as an extension of the state's function to maintain and protect public interests under a strict public law regime.

In line with this, within the framework of Islamic jurisprudence, there is a fundamental principle that is directly relevant to the issue of state-owned enterprises, namely *taṣarruf al-imām 'alā al-ra'iyyah manūṭun bi al-maṣlaḥah*, the main principle of a leader over his people (public interest), is bound to the public interest (Al-Suyūṭī, 1983). This rule has much deeper epistemic and normative implications than utilitarian principles alone. This principle shows that public interest is not the expected result, but rather a condition for the legitimacy of the policy itself. In other words, from the perspective of Islamic jurisprudence, a policy on state-owned enterprises that cannot be proven to increase the public interest is a policy that is flawed in its legitimacy from the start, even though it formally and procedurally fulfills the requirements of positive law. This dual standard of legitimacy distinguishes the Islamic perspective from a mere assessment of formal legality within the framework of state administrative law.

From the beginning, the Islamic heritage has also recognized the concept of public or collective ownership (*al-milkiyyah al-'āmmah or al-jamā'iyyah*), namely the ownership of vital resources that affect the livelihoods of many people, so that these resources are not monopolized by individuals or private interests. In this shared ownership, all members of the community have rights to these resources without any special privileges, either because their benefits far exceed the effort and expense incurred to acquire them, or because their existence is so essential to the entire community that life cannot be lived without them (al-Islāmiyyah, 2011). This form of collective ownership encompasses various public facilities, such as rivers, roads, traffic lanes, pastures, and forests. The Islamic legal basis for this matter is the saying of the Prophet Muhammad (peace be upon him), which states: "*Muslims are partners in three things: water, pasture, and fire*" (al-Sijistānī, n.d; ibn Ḥanbal, 2001). This hadith emphasizes the importance of the principle of participation and shared ownership of resources, which is fundamental to the life of the community.

In line with the principle of common ownership, which emphasizes that vital resources must be managed and utilized for the benefit of the entire community, the concept of *ḥimā* land (*arḍ al-ḥimā*) is recognized in Islamic law. *Ḥimā* refers to land designated by a guardian (*wali al-amr*) for the collective benefit of the Muslims, thus becoming public property and non-transferable to private ownership. In Islamic historical practice, the Prophet Muhammad designated the *al-Naqī* area around Medina as a *ḥimā* designated for the maintenance of horses by the Muslims. Similarly, Caliph Umar ibn al-Khaṭṭāb designated the *al-Rabāḍah* area, located between Mecca and Medina, as a protected area so that its pastures could be used by the poor to graze their livestock. In addition to ḥimā, there is also a category of open agricultural land resulting from conquest (*al-arāḍī al-zirāʻiyyah al-maftūḥah*). Scholars differ on the management mechanism. The Shāfiʻiyah school of thought holds that the land was distributed to the conquerors. The Mālikiyah school holds that the land has *fai*ʻ status and is managed by the state for the benefit of the people, especially the poor, orphans, and the needy. Meanwhile, the majority of scholars, including those from the Hanafi and Hanbali schools of thought, assert that the guardian of al-amr has discretionary authority to determine whether the land is distributed or remains managed as public property as long as the policy is aimed at realizing the *maṣlaḥah al-muslimīn* (al-Samālūṭī, 1998).

Islam places the management of wealth and resources on the principle of balance between individual rights and collective interests, recognizing both private and public/state ownership within the limits established by Sharia. Individual ownership is justified in principle, but not absolute, as it is limited by the obligation to safeguard the public interest and the prohibition against causing harm to others. Therefore, legitimate authorities (*wali al-amr*) are empowered to regulate, limit, or adjust ownership when there is a greater public interest (al-Zuḥaylī, 2011). This is not an act of arbitrariness, but rather an effort to protect society's fundamental rights, prevent injustice, and ensure that the use of wealth aligns with the objectives of sharia *(maqāṣid al-sharīʻah).*

Conclusion

This article builds the argument that the position and reform of BUMN governance in Indonesia—including the formation of the BPI Danantara superholding—cannot be reduced to mere technical corporatization discourse, but must be read within the framework of the constitutional mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia as well as within the normative perspective of *siyāsah shar'iyyah*. The two main findings of this article can be formulated as follows. *First*, regarding state authority and its delegation, *siyāsah shar'iyyah* provides a solid normative basis for the legitimacy of the state's control and management of strategic production sectors. Referring to the concept of *wilāyah* as explained by Abū Yaʿlā al-Farrāʾ, state authority is divided between *wilāyah āmmah, which is attached to the head of state and wilāyah khāṣṣah,* which can be delegated to certain institutions or officials. This construction finds its direct equivalent in the post-reform BUMN institutional architecture: BP BUMN as regulator is an expression of *wilāyah 'āmmah*, while BPI Danantara as asset manager and BUMN Directors as operators are manifestations of delegative *wilāyah khāṣṣah*. The legitimacy of this delegation is strengthened by the principle of delegation by the highest leader, which is a rational necessity, because a priest can't handle all strategic state affairs directly. Thus, the formation of Danantara superholding does not conflict with the principles of *siyāsah shar'iyyah*, as long as the chain of authority delegation remains accountable and linked to state authority. The state's substantive control over strategic sectors is not diluted by institutional engineering that releases the bonds of public accountability. However, changes to the ownership structure in Law no. 16 of 2025—where the state is no longer a direct shareholder at the holding level—raise a serious normative question: does the *wilāyah khāṣṣah* delegated to Danantara still have sufficient murāqa-bah (supervision) mechanisms to guarantee its accountability to the state *wilāyah 'āmmah*?

Second, in the aspect of benefit (*maṣlaḥah*), *al-siyāsah al-shar'iyyah* emphasized that the legitimacy of state policy is not determined solely by formal-procedural aspects, but rather by the extent to which the policy is oriented towards *maṣlaḥah al-'āmmah*. The rule of *taṣarruf al-imām 'alā al-ra'iyyah manūṭun bi al-maṣlaḥah* places benefit not as an expected result, but as a condition for the validity of the ruler's own actions. In this context, BUMN—as an expression of the concept of *milkiyyah 'āmmah in Islam*, namely collective ownership of vital resources that individuals cannot monopolize—must be managed within the framework of *maqāṣid al-sharī'ah*, in particular the protection of property (*ḥifẓ al-māl*), souls (*ḥifẓ al-nafs*), and the collective mind of the people. Examination of BUMN reform through the three levels of *maṣlaḥah murlah* al-Ghazālī—*ḍarūriyyāt, ḥājiyyāt, and taḥsīniyyāt*—shows that institutional transformation only touches the level of perfection (*taḥsīniyyāt)*; however, it has the potential to weaken state control over vital sectors (*ḍarūriyyāt*), which cannot be justified normatively. The profitability and efficiency orientation promoted by Danantara is valid and even necessary, but only as long as it does not displace the function of the public service obligation (PSO) and does not shift the position of BUMN from a benefit instrument to just a profit-seeking entity.

The synthesis of these two aspects results in the understanding that BUMN is a hybrid entity which, apart from carrying out economic functions and public functions simultaneously, must also be accountable for two standards of legitimacy at once: constitutional legitimacy based on Article 33 of the 1945 Constitution of the Republic of Indonesia and the values of Pancasila, as well as normative legitimacy based on the principles of *maṣlaḥah* and *wilāyah* in *al-siyāsah al-shar'iyyah*. Academically, the *siyāsah shar'iyyah* analytical framework offered by this article provides a theoretical contribution in the form of a BUMN policy evaluation instrument that goes beyond formal-legal logic by positioning *maṣlaḥah* as a constitutive variable and *wilāyah* as an operationalizable institutional construct. This contribution is relevant to Islamic legal discourse and to the study of state administrative law and public policy, especially in assessing the extent to which Indonesian BUMN reform remains true to its public mission amid the pressures of modern governance and global economic dynamics. Further empirical-comparative research is needed to test how these normative principles can be concretely institutionalized within Danantara and BUMN governance mechanisms.

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