

Legal Economic Politics in Eradicating Criminal Acts of Corruption in State-Owned Enterprises*

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Abstract:

This paper analyses the function of State-Owned Enterprises (SOEs) in bolstering the national economy and the substantial obstacles they encounter in addressing corporate corruption. State-owned enterprises serve a crucial role as primary agents of national development, especially in infrastructure, energy, and strategic sectors. Their dual role—catering to public and commercial interests—frequently subjects them to governance challenges and corruption vulnerabilities. This research seeks to elucidate the operational dynamics of state-owned enterprises (SOEs) as primary stewards of the national economy, while concurrently examining their involvement in mitigating corporate criminal activities. The study examines the utilisation of the business judgment rule to protect SOE directors from legal accountability concerning sound faith business judgments and the overarching legal-political backdrop influencing anti-corruption initiatives. The study utilises a qualitative research method, incorporating a literature analysis and a legislative approach. It examines diverse statutory rules and legal principles and records instances of corruption related to state-owned enterprises, utilising scholarly articles from the law, governance, and economics disciplines. The findings indicate that while the business judgment rule offers essential protection for corporate decision-makers, inadequate internal controls, political meddling, and unclear legal obligations persist in obstructing efficient governance within state-owned enterprises (SOEs). Moreover, the inconsistent implementation of anti-corruption policies diminishes their efficacy. The report indicates that extensive reform is necessary to enhance legal responsibility, increase transparency, and professionalise the administration of state-owned enterprises. Enhancing institutional control and maintaining regulatory compliance are essential measures to protect the strategic role of state-owned enterprises in fostering sustainable and corruption-free economic development.

Keywords: SOES; Corruption; Business Judgment Rule; Supervision; National Economy

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A. INTRODUCTION

State-Owned Enterprises (SOEs) have a strategic position as an extension of the state in driving national development and providing vital public services. However, in practice, SOEs often face role ambiguity between business entities pursuing profit and public entities responsible for the public interest. This unclear separation of public and private responsibilities creates legal loopholes and governance weaknesses that are vulnerable to abuse, especially corruption. SOEs, as state-owned economic entities, should be at the forefront of achieving sustainable development goals. However, reality shows that many SOEs have become a fiscal burden on the state due to inefficiency, abuse of authority, and structural corruption. This ambiguity is exacerbated by a regulatory framework that has not been able to clearly distinguish the role of SOEs as business actors and as organisers of the state's socio-economic functions. This results in a weak accountability and transparency system in the management of State-Owned Enterprises ([Raharjo, 2020](#)).

The existence of State-Owned Enterprises under pressure from political and business interests also creates a space for compromise between public and private interests, making it difficult to uphold the principles of good corporate governance. In some cases, abuse of power within State-Owned Enterprises is carried out through internal policy channels that are weakly supervised, but have a significant impact on state finances and public trust ([Yusuf, 2019](#)). Therefore, a study of the political law of economics in eradicating corruption in State-Owned Enterprises is important to re-examine the role of the state, regulations, and paradigms of managing publicly owned companies within a fair, effective, and national interest-oriented legal framework.

In Indonesia, State-Owned Enterprises (SOEs) play a dual role that is both complex and multifaceted. They are both a business entity that must be competitive in the market, and they are also an instrument of the state in fulfilling social duties and contributing to the nation's development. In order to encourage state-owned enterprises (SOEs) to develop ideally like private corporations, this paradox presents a significant obstacle. As a result of the connection of state-owned enterprises (SOEs) to Law Number 19 of 2003 addressing SOEs, these entities are subject to structural and operational limits distinct from those of purely private businesses. As a result, their range of manoeuvrability in making business decisions is frequently constrained by bureaucracy and political intervention. The requirements of market efficiency and the mission of public service are separated by this legal connection, which creates a gap between the two goals. Unlike private companies, state-owned enterprises (SOEs) must

adhere to the principles of administrative prudence and public accountability outlined in the SOE Law. These principles include provisions concerning the General Meeting of Shareholders (GMS), directors' appointment, and business cooperation limitations ([Hutapea, 2020](#)). Private companies can choose their business strategies independently. The performance of businesses is genuinely disrupted, and space is created for abuses of power that are difficult to manage transparently when state-owned enterprises (SOES) are inundated with excessive social functions.

The role of State-Owned Enterprises directors as government-appointed entities, rather than independent stakeholders, renders them susceptible to political interference in corporate operations. This complicates the implementation of sound corporate governance norms and heightens the danger of corruption, as responsibility is more oriented towards political power holders than the public or shareholders ([Wijayanti, 2021](#)). Consequently, the dual role of State-Owned Enterprises necessitates a critical analysis within a political-legal-economic framework to identify a more equitable, efficient, and anti-corruption regulating mechanism. Losses incurred by State-Owned Enterprises are frequently attributable to managerial incompetence or market volatility and are significantly linked to corporate malfeasance, particularly corruption. Corporate losses may signify criminal activities, including abuse of power, cooperation in acquiring products and services, or anomalies in financial transactions. When these losses arise from illegal activities consistently executed by corporate management, State-Owned Enterprises incur financial detriment, forfeit public trust, and undermine corporate governance.

This phenomenon demonstrates that businesses, as legal entities, can perpetrate crimes as delineated in Article 20 of the Corruption Law, further substantiated by numerous Supreme Court rulings acknowledging corporate criminal culpability. The issue becomes particularly intricate within the framework of State-Owned Enterprises since the organisational structure and oversight frequently fail to identify and avert losses resulting from illicit activities efficiently ([Rahman, 2020](#)). This vulnerability is reinforced by the proximity between public authorities and State-Owned Enterprises administrators, creating potential for misconduct through the exertion of authority. Criminal activities resulting in losses to companies, such as directors' abuse of authority or cooperation in national strategic projects, directly affect the misallocation of the state budget, given that the state fundamentally owns state-owned enterprise assets and profits. Consequently, eliminating corruption within State-Owned Enterprises necessitates traditional criminal law measures and a comprehensive political and economic legal framework to destroy the structural and systemic

networks responsible for these losses.

State-owned enterprises play a pivotal role as the primary safeguard in national infrastructure development. The government has regularly designated state-owned enterprises as the primary executors of essential projects, including developing toll highways, ports, airports, power plants, and public transportation infrastructure. This is evident in numerous national initiatives, notably the National Strategic Projects (PSN), most of which are assigned to state-owned enterprises. This function underscores that state-owned enterprises (SOEs) are not merely economic entities, but also instruments of the state for promoting social justice and equitable development ([Fitrawan, 2021](#)). Nonetheless, the role of State-Owned Enterprises (SOEs) as the primary catalyst for development presents significant issues, particularly regarding management susceptible to corrupt practices. Extensive infrastructure projects can entail substantial budgets and administrative intricacies that create opportunities for irregularities, including budget inflation, fraudulent procurement, and collaboration among commercial entities. Numerous significant corruption instances in Indonesia stem from projects undertaken by state-owned enterprises (SOEs), exemplified by the corruption scandals at PT Jiwasraya and PT Asuransi Sosial Angkatan Bersenjata Republik Indonesia (ASABRI), which highlight inadequate internal and external oversight of this governmental body.

The significance of the State-Owned Enterprises' role in development necessitates a progressive economic legal strategy that effectively addresses these vulnerabilities. Regulations that stress economic efficiency, ethics, and good governance are essential. Enhancing control mechanisms, ensuring procurement openness, and implementing accountability-driven governance reform are essential measures to guarantee that State-Owned Enterprises operate effectively as a development tool while mitigating the risk of corruption.

This study aims to rigorously analyse how Indonesian economic law policy might be formulated to enhance the eradication of corruption in state-owned enterprises. As a governmental organisation executing critical roles in the national economy, State-Owned Enterprises are mandated to achieve economic efficiency while adhering to good governance, transparency, and accountability. In reality, numerous state-owned enterprises are ensnared in corrupt practices due to inadequate rules, conflicts of interest, and ambiguity over their social and commercial functions ([Saragih, 2020](#)). The primary aim of this study is to propose a paradigm of economic law policy that effectively harmonises economic development goals via state-owned enterprises and systematically addresses corruption eradication. This study employs an interdisciplinary approach,

integrating law, economics, and public governance to elucidate the structural and normative issues contributing to corruption in State-Owned Enterprises while also proposing a framework for economic legal policy focused on justice and the public interest ([Yustina, 2019](#)). This study intends to promote the reformulation of laws and regulations concerning the role of State-Owned Enterprises, enhance the supervisory function of state institutions, and provide legal instruments to facilitate the oversight of corporate crimes. Consequently, State-Owned Enterprises may fulfil their job with professionalism, devoid of corruption, and catalyse national growth with honesty.

The imperative of this research stems from the strategic role of State-Owned Enterprises within the national economic framework and the significant susceptibility of this sector to corruption. State-Owned Enterprises administers substantial state resources and budgets as the primary executor of several national strategic initiatives encompassing infrastructure, energy, and public services. The Corruption Eradication Commission (KPK) assessment indicates that State-Owned Enterprises are a central hub for corporate corruption, encompassing procurement of products and services, abuse of authority, and conflicts of interest ([KPK, 2020](#)). This underscores the necessity for a legal framework that is not merely punitive, but also structural and preventative in addressing the issue of corruption inside state-owned enterprises. This research is crucial due to the current ambiguity in legislative rules governing State-Owned Enterprises, which categorise them simultaneously as commercial enterprises and agents of social development. This ambiguous status creates opportunities for political interference, conflicts of interest, and a deterioration of public accountability ([Rachman, 2021](#)). Consequently, a robust and forward-thinking design of economic legal policy is essential, establishing the values of integrity and fairness as the cornerstone of State-Owned Enterprises governance.

By examining the legal and political-economic construction in the management of State-Owned Enterprises, this study is expected to provide theoretical and practical contributions to formulating policies integrating economic development and eradicating corruption. In addition, this study will enrich academic discourse in economic law and corporate law in Indonesia.

This study's originality resides in its interdisciplinary methodology, integrating economic law research and legal politics to address corruption in State-Owned Enterprises. Research on corruption within state-owned enterprises has predominantly concentrated on criminal law enforcement, with less examination of the structural relationship among the design of state economic law, the strategic role of State-Owned Enterprises, and the possibility for

corporate crime. This paper presents a novel analytical paradigm that characterises corruption as an individual offence and a systemic indicator of deficient state economic governance ([Nuraini, 2020](#)). The paper also emphasises the critique of the ambiguous function of State-Owned Enterprises as both a private corporation and a governmental instrument in development. This ambiguity engenders a normative void that complicates public oversight and accountability. This study aims to reform economic legal politics by establishing honesty and justice as the foundational principles of State-Owned Enterprises management. The law is perceived not merely as a repressive mechanism but also as a means of institutional reconstruction ([Hutagalung, 2021](#)). Thus, this research provides theoretical contributions to the discourse on corporate law reform and state economic policy and practical contributions to preparing national regulations and strategies for eradicating corruption in the country's strategic sectors.

From the background above, the author focuses the research on several questions: How can the position of State-Owned Enterprises become the main guard in maintaining the national economy? What is the role of State-Owned Enterprises in overcoming corporate crime? How does implementing the Business Judgment Rule protect corporate directors from corporate crime? What are the challenges of State-Owned Enterprises in maintaining the national economy from corporate crime?

B. METHODS

This study used a qualitative research method with a literature study approach (library research) and a case study approach. This method was chosen to explore in depth the dynamics of legal politics and normative construction in the management of State-Owned Enterprises and to identify legal loopholes that allow corruption to occur by state-owned corporations. The literature approach examines theoretical thoughts developed in economic law, legal politics, and state corporate theory. The analysis was based on primary and secondary sources such as academic books, scientific journal articles, previous research results, and official state documents. This approach aims to build a strong theoretical framework in understanding the interaction between law, economics, and state power in eradicating corruption ([Soemitro, 1990](#); [Salim & Nurbani, 2020](#)).

Meanwhile, the legislative approach examines the positive legal structure that regulates the existence and operation of State-Owned Enterprises, Law Number 31 of 1999, in conjunction with Law Number 20 of 2001 concerning

the Eradication of Corruption, and related sector regulations. This approach examines the consistency, emptiness, or overlapping of norms that perpetrators can exploit to commit acts of corruption through institutional loopholes ([Marzuki, 2005](#)). With the combination of these two approaches, this study is not only normative-descriptive, but also analytical-critical of the reality of national economic law and policy, especially in the context of State-Owned Enterprises governance reform.

C. RESULTS AND DISCUSSION

1. Position of State-Owned Enterprises as the Main Guard of the National Economy

State-owned enterprises have a strategic position in the Indonesian national economic system. As an extension of the state, State-Owned Enterprises function not only as profit-seeking business entities, but also as development agents and providers of vital public services. In this context, State-Owned Enterprises are positioned as the main guard in maintaining national economic stability, growth, and independence ([Putra, 2021](#)). This dual function is the basis of the existential philosophy of State-Owned Enterprises in the Indonesian legal and economic system, which refers to Article 33 of the 1945 Constitution, that branches of production that are important to the state and that control the livelihoods of many people must be controlled by the state.

As participants in many vital sectors, state-owned enterprises, including energy, infrastructure, transportation, and finance, significantly contribute to Gross Domestic Product (GDP), employment generation, and equitable national development ([Santoso, 2020](#)). While the private sector prioritises profit and selectively invests, state-owned enterprises continue operating in commercially unviable industries while possessing significant social value. This underscores the function of state-owned enterprises as stabilisers within the national economy and as a governmental tool for market intervention to promote social fairness and public welfare.

This strategic role is not without obstacles, particularly regarding a responsible and corruption-free government. Corruption instances associated with several state-owned enterprises demonstrate that this strategic position is susceptible to exploitation by management personnel who exploit institutional deficiencies and inadequate governmental oversight ([Widodo & Rahmawati, 2022](#)). Consequently, enhancing legal and economic policies to eliminate corruption within State-Owned Enterprises is crucial for reinstating their dignity

as guardians of public interests and the cornerstone of the nation's economic sovereignty.

Adequate supervision, transparency, and commitment to law enforcement must be key elements in ensuring that State-Owned Enterprises continue to function optimally and with integrity as the main guard of the national economy.

2. The Role of State-Owned Enterprises in Combating Corporate Crime

State-owned enterprises (SOEs) play a crucial role in the national economic framework, serving economic functions and addressing corporate malfeasance, including corruption. As such, state-owned and managed enterprises are responsible for ensuring their operations are financially productive while adhering to the ideals of transparency, accountability, and integrity. Corporate crime, particularly corruption, poses a significant threat to the reputation and operations of state-owned enterprises within the national economy ([Putra, 2021](#)).

The function of State-Owned Enterprises in addressing corporate crime commences with the implementation of sound corporate governance (GCG) standards. The implementation of Good Corporate Governance (GCG) within state-owned enterprises serves as an effective mechanism to mitigate corruption, collusion, and nepotism in their operations. Effective corporate governance encompasses transparency in decision-making, rigorous oversight, and a precise reporting system ([Santoso, 2020](#)). Furthermore, State-Owned Enterprises must establish an internal system that guarantees effective monitoring of all business transactions and decisions, ensuring compliance with relevant legislation.

Moreover, State-Owned Enterprises contribute to fostering an anti-corruption culture by educating and training all personnel and leaders to comprehend the ramifications of corporate malfeasance and the significance of integrity in executing their responsibilities. Furthermore, State-Owned Enterprises must collaborate with legal and regulatory bodies, including the Corruption Eradication Commission (KPK) and the Audit Board of Indonesia (BPK), to guarantee independent audits and ongoing oversight of State-Owned Enterprises' operations ([Widodo & Rahmawati, 2022](#)).

However, the biggest challenge in overcoming corporate crime in State-Owned Enterprises is the weakness in internal supervision and weak law enforcement against individuals who commit crimes. Therefore, improving the capacity of supervision and law enforcement in State-Owned Enterprises is important by implementing a stricter sanction system and stronger policies to

prevent corruption. Thus, the role of State-Owned Enterprises in combating corporate crime is vital as part of efforts to maintain credibility and public trust and ensure that state resources managed by State-Owned Enterprises can provide maximum benefits for national development.

3. Implementation of the Business Judgment Rule in Protecting Corporate Directors from Corporate Crimes

Applying the business judgment rule (BJR) principle is important in protecting corporate directors, including in State-Owned Enterprises, from corporate crimes, especially those related to alleged law violations or corruption. This principle provides legal protection to directors who make business decisions based on sound judgment and in good faith, and without any elements of fraud, conflict of interest, or abuse of authority ([Wang, 2020](#)).

In the context of State-Owned Enterprises, the application of the business judgment rule is very relevant because State-Owned Enterprises operate in a very strategic sector, where business decisions taken by the board of directors can have a direct impact on the country's economy and public interest. Therefore, if the directors of State-Owned Enterprises can prove that their decisions are based on rational considerations and are based on adequate information, then they can be protected from accusations of corporate crimes, such as corruption ([Suryanto, 2021](#)).

Adopting the business judgment rule does not absolve the directors of State-Owned Enterprises from accountability if their judgments are demonstrated to be unlawful or harmful to the state. The business judgment rule offers protection provided the decisions are grounded on genuine analysis, comply with legal standards, and do not adversely affect the public interest. Consequently, rigorous governmental oversight and the implementation of sound corporate governance (GCG) standards are essential to prevent the business judgment rule from being exploited as a defence for unethical or illegal conduct ([Prasetyo, 2019](#)).

In addition to optimising protection for directors of State-Owned Enterprises, a transparent and accountable reporting system is also needed, allowing all directors' decisions to be audited and supervised by the authorities. If this mechanism works well, implementing the business judgment rule will function as it should to protect directors from baseless lawsuits, but still guarantee that every decision taken has a legitimate basis and is made by applicable legal and ethical principles.

4. Challenges of State-Owned Enterprises in Protecting the National Economy from Corporate Crime

State-owned enterprises play a crucial role in sustaining the stability and advancement of the national economy. As entities managing state-owned assets and resources, they catalyse development, particularly in infrastructure, energy, and transportation sectors. Nonetheless, State-Owned Enterprises encounter numerous problems within this crucial function, particularly preventing their operations from succumbing to corporate crimes, including corruption, power abuse, and cash misappropriation.

One of the main challenges State-Owned Enterprises face is the uncertainty in internal and external supervision that can open up opportunities for unlawful actions. Although regulations and supervisory mechanisms are in place, such as audits by the Audit Board of Indonesia (BPK) and supervision by the Board of Commissioners, this supervision often does not run optimally. This is due to various factors, such as a lack of transparency, weak implementation of good corporate governance (GCG) principles, and politicisation that can influence business decisions of State-Owned Enterprises ([Widodo, 2020](#)). In addition, state-owned enterprises are hampered by rigid and bureaucratic regulations, making it difficult for them to operate with the flexibility of private companies. For example, State-Owned Enterprises must comply with various laws and regulations that require them to follow lengthy procedures in decision-making or investment. This sometimes hinders operational efficiency and increases the possibility of irregularities leading to corporate crimes ([Kurniawan, 2021](#)).

Besides internal challenges, state-owned enterprises encounter external difficulties related to corrupt behaviours in substantial projects. Their reliance on extensive and intricate government projects frequently creates opportunities for the misuse of authority and unscrupulous activities. In acquiring products and services or substantial contracts, certain parties frequently exploit their positions for illicit personal benefit, resulting in financial losses for the state ([Setiawan, 2019](#)).

Consequently, State-Owned Enterprises must enhance integrity and transparent internal oversight mechanisms, while reforming existing regulations to run more efficiently and responsively to the nation's economic demands. Moreover, enhancing human resource capability regarding company law and ethics is crucial for preventing corporate crimes detrimental to the nation.

D. CONCLUSION

This study examines the role of State-Owned Enterprises in maintaining the national economy and the challenges faced in overcoming corporate crime. Based on the results of the analysis, several main conclusions can be drawn, namely:

First, the position of State-Owned Enterprises as the main guard in maintaining the national economy is critical because State-Owned Enterprises manage vital sectors that support the country's infrastructure and economic stability. State-owned enterprises are responsible for supporting sustainable and equitable economic development as a state-owned entity. Healthy and efficient State-Owned Enterprises enable the country to overcome various economic challenges, such as inflation, energy price instability, and dependence on imports.

Second, the role of State-Owned Enterprises in combating corporate crime is crucial. State-Owned Enterprises, by their nature as state-managed business entities, must ensure that their operations are free from corruption and abuse of authority. Therefore, strict good corporate governance (GCG) principles, transparent internal supervision, and intensive external monitoring are needed to prevent corporate crime, such as bribery and embezzlement. State-Owned Enterprises must strengthen their control and audit systems to ensure integrity and accountability in every project.

Third, applying the business judgment rule is one way to protect corporate directors, including in State-Owned Enterprises, from unfair lawsuits. This principle protects directors if they make sound business decisions based on rational considerations and adequate information. With the application of the business judgment rule, directors can work calmly and focus on the company's sustainability without fear of facing legal sanctions for decisions taken, as long as the decisions are made in good faith and the company's best interests.

Fourth, the challenges faced by State-Owned Enterprises in protecting the national economy from corporate crime are complex. State-owned enterprises are often trapped in political and bureaucratic practices that can influence business decision-making. In addition, rigid regulations and dependence on large government projects, which are prone to potential abuse, can add to the challenges. State-Owned Enterprises must overcome internal challenges, such as the lack of clarity between state duties and business demands, as well as external challenges, such as dependence on regulations that often do not support operational efficiency.

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