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Separated State Assets in BPI Danantara and Its Relevance with Business Judgment Rules

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Abstract

Despite undergoing four amendments, the newly revised SOE Law ("Law Number 16 Year 2025 on the Third Amendment to Law Number 19 Year 2003 on State-Owned Enterprises") has yet to resolve the normative disharmony surrounding the application of the Business Judgment Rule (BJR) to BPI Danantara. As Indonesia's new sovereign wealth fund, established to enhance national economic performance and promote public welfare, BPI Danantara plays a strategic role, particularly in consolidating SOE dividends and managing state asset investments. This research contends that the very status of BPI Danantara as a public legal entity impedes the effective application of the BJR. Its dual legal character—public in terms of ownership, yet private in its operational structure—raises critical issues concerning asset status, liability, and governance. Moreover, the separated state assets managed by BPI Danantara continue to be classified as state finances. The findings suggest that, for BPI Danantara to operate with the flexibility required in the business sector, a transformation of its legal status is essential. Guided by the state finance transformation theory, this transformation should involve establishing BPI Danantara as a private legal entity, such as a Limited Liability Company (PT), through a deed of establishment rather than by Government Regulation. This asset transformation, involving the reclassification of previously separate state assets, would result in BPI Danantara no longer being fully subject to the state finance regime but instead being governed by the private business regime under the Company Law. Such a shift would align BPI Danantara with international best practices for sovereign wealth funds, exemplified by entities like Temasek and Khazanah.

Keywords: BPI Danantara; Business judgment rule; Finance transformation theory; Separated state assets; Sovereign wealth fund.

1. INTRODUCTION

The third amendment to Indonesia's State-Owned Enterprises Law introduces Daya Anagata Nusantara Sovereign Wealth Fund ("BPI Danantara") as a new institutional mechanism for managing state-derived assets.[1] Designed with an initial capitalization mandate of at least Rp300 trillion and vested with authority to control dividends, equity participation, and asset pledges across major state-owned enterprises (SOEs),[2] BPI Danantara is projected to play a central role

[1] The Law Number 1 Year 2025 on the Third Change of Law Number 19 Year 2003 on State-Owned Enterprise, Article 3(G). ("The Third Amended SOE Law").

[2] Kompas.id, "President Prabowo Promises Transparency in BPI Danantara Management," https://www.kompas.id/artikel/en-prabowo-janjikan-bpi-danantara-dikelola-transparan, accessed 11 May 2025.

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in enhancing national investment capacity and promoting long-term economic welfare as strengthened by the fourth amendment of SOE Law.[3] These authorities position BPI Danantara not only as a sovereign wealth fund but also as a strategic investment holding which focuses on asset management and optimizing investment value, and potential operational holding functions over key national enterprises such as effective managing of SOE operations.[4] Together with the Fourth Amendment of the SOE Law, this new architecture signals an ambition to strengthen the state's investment capacity and promote long-term economic welfare. Yet despite its transformative appearance, the normative coherence of this new framework remains uncertain and requires critical scrutiny.

A central source of legal tension emerges from the amended SOE Law's assertion that state capital placed in SOEs should be treated as separate from state finances. This statutory construction intends to shift SOE governance toward a business-oriented paradigm. However, the broader Indonesian legal order has not adjusted accordingly. The State Finance Law, the Anti-Corruption Law, and the Audit Law continue to classify SOE finances as part of state finances. Moreover, the Constitutional Court, through a consistent line of decisions—including Decisions No. 48/PUU-XI/2013, No. 62/PUU-XI/2013, No. 59/PUU-XVI/2018, and No. 26/PUU-XIX/2021—reaffirms that SOE assets remain within the scope of state finances based on the "source theory."[5] This divergence highlights an unresolved contradiction between the legislative aspiration to redefine the nature of SOE wealth and the entrenched constitutional doctrine that continues to regard such assets as part of the state's financial domain.

The establishment of BPI Danantara intensifies this ambiguity. Although envisioned as a sovereign wealth fund operating under modern investment principles, BPI Danantara is structured as a public legal entity, not a limited liability company. This raises questions about whether the Business Judgment Rule ("BJR")—embedded in the amended SOE Law to protect directors making good-faith business decisions—can function effectively within an entity that still carries strong public-law characteristics. The uncertainty becomes more pronounced given that any financial loss incurred by SOEs or by BPI Danantara itself may still be interpreted as a loss to state finances under the prevailing legal framework. At the same time, the persistent assignment of public benefit functions to profit-driven SOEs creates a structural dilemma: fulfilling public mandates may undermine business efficiency, while pursuing profit may weaken the delivery of public services.[6]

These contradictions pose significant risks to the functional viability of BPI Danantara. Without harmonization between the amended SOE Law and Indonesia's wider financial and accountability regime, the incorporation of BJR risks becoming merely formal. Directors may continue to face exposure to state financial and corruption liability, thereby undermining the intended transition toward a business-oriented governance model consistent with international sovereign wealth fund practices.

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[3] The Law Number 16 Year 2025 on the Fourth Change of Law Number 19 Year 2003 on State-Owned Enterprise, ("The Fourth Amended SOE Law").

[4] Jerry Marmen Simanjuntak and Kevin Naufal Widyadhana, "Danantara, the SOE Superholding, and the Pillar of Indonesia's Economic Future?," International Journal of Economics Development Research (IJEDR) 6, no. 3 (2025): 1781, https://doi.org/10.37385/ijedr.v6i4.8201.

[5] Hukumonline, "3 Guru Besar FH Ini Bongkar 'Konflik' Norma Keuangan Negara," https://www.hukumonline.com/berita/a/3-guru-besar-fh-ini-bongkar-konflik-norma-keuangan-negara-lt68d4fc0c407b5/?page=3, accessed 13 November 2025

[6] A. A. Gede Duwira Hadi Santosa, Korporatisasi BUMN dalam Bentuk Persero (Transformasi Kerta Masa Sebagai Konsep BUMN Ke Depan) (PhD diss., Universitas Gadjah Mada, 2019), 458.

Against this background, the present study investigates whether the legal framework governing BPI Danantara provides a coherent and enforceable basis for separating state assets from state finances and for implementing BJR within the context of SOE governance. The analysis aims to clarify whether the Amended SOE Law constitutes a substantive legal transformation or merely a formal legal recharacterization constrained by inconsistencies across the statutory and constitutional landscape. By addressing these gaps, this study contributes to the broader discourse on state asset management, public-corporate governance, and the future trajectory of Indonesia's sovereign wealth framework.

To understand the terminology used in this research, it is mandatory to comprehend that "state finance" means all the rights and obligations of the State that can be valued in money, as well as everything in the form of money or goods that can be made the property of the State in connection with the implementation of rights and obligations.[7] The following explanation of the Corruption Eradication Law states: State finances refer to all state assets in any form, whether separated or not, including all parts of state assets and all rights and obligations arising from being under the control, management, and responsibility of State-Owned Enterprises/Regional-Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third-party capital based on agreements with the state.

Later, "state assets are mentioned" in Article 2, letter g of the State Finance Law, which defines that "state/regional assets managed independently or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in monetary terms, including assets separated from State-Owned Enterprises/Regional Enterprises". This is because separated state assets should not be seen as separate from state finances.[8] Hence, it indicates that state assets separated in SOEs are state finances. Furthermore, Article 10 paragraph (1) of the Law on State Financial Audit, Management and Accountability emphasizes that "the audit of state financial management and accountability conducted by the BPK covers all elements of state finances as referred to in Article 2 of the State Finance Law". Thus, state funds that are separated and managed by SOEs are included in the scope of the BPK's audit authority and are part of state finances.

Furthermore, Article 1, paragraph 1 of the State Treasury Law states that "State Treasury is the management and accountability of state finances, including investments and separated assets, as stipulated in the State Budget and Regional Budget." Hence, state assets separated in SOEs are included in the definition of state treasury.[9] Article 6 paragraph (1) of the BPK Law states that "the BPK is tasked with auditing the management and accountability of state finances by the Central Government, Regional Governments, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regionally-Owned Enterprises, and other institutions or agencies that manage state finances." Article 10 paragraph (1) states that "the BPK assesses and/or determines the amount of state losses caused by unlawful acts, whether intentional or negligent, committed by treasurers, managers of SOEs/ROEs, and other institutions or

[7] Law No. 17 Year 2003 on State Finance, Article 1 Paragraph 1.

[8] Akadiyan Aliffia Husdanah et al., "Forms of Protection Against Separated State Assets in PT (Persero)," *Journal of Legal, Ethical and Regulatory Issues* 26, no. 2S (2022): 5.

[9] Prabowo Setyo Aji and Hartiwiningsih, "The Affirmation of SOE Finance as State Asset Which Management Is Separately in an Effort to Strengthen Evidence of Criminal Acts in SOEs," *International Journal of Multicultural and Multireligious Understanding* 10, no. 6 (2023): 146, https://doi.org/10.18415/ijmmu.v10i7.4932.

agencies that manage state finances." In short, state finance consists of separated state assets that are outside of the national state budget but managed under the corporate law regime. Hence, separated state assets are equal to state finance. Therefore, two research questions are established in this paper. First, do the separated state assets in BPI Danantara constitute state finance? Second, is the Business Judgment Rule relevant for the management of BPI Danantara? This also constitutes the limitation that analyzes how BJR operates under Danantara as a public legal entity without clarifying the status of separated State assets by the state finance law regime in SOEs.

Previous studies have shown a knowledge gap on the conflict of norms between the newly amended SOE Law, which upholds BJR versus Law Number 17 Year 2003 on State Finance (hereinafter "State Finance Law") that can be simultaneously applied on BPI Danantara's separated State assets status. With its significant potential in improving public welfare BPI Danantara also faces several challenges, such as political intervention and risk of corruption, which later Solihin et al. (2025)[10] recommended the importance of transparency, supervision, and legal responsibility on the management of State financial investment risk losses of BPI Danantara. Yet, the research does not discuss the realm of BJR application. Maula et al. (2025)[11] emphasized that the profit or loss that occurred does not affect State finance regardless of whether the assets managed are indeed state assets without addressing the disharmony of existing norms. Still, the research does not contain a discussion of BPI Danantara's existence as a public entity that manages SOEs. Whilst according to Fajri et al. (2025),[12] disharmony exists between the SOE Law, State Finance Law, and Anti-Corruption law in Indonesia, proven by the state financial losses in banking SOEs related to corruption that requires an investigative examination by the Audit Board. Nonetheless, it does not explore BPI Danantara as a super holding of Indonesian SOEs. Waluyo et al. (2025)[13] also confirms that existing regulations governing the execution of SOE assets in Indonesia lack coherence, evident in the conflicting interpretations of the Constitutional Court Decisions No. 48/PUU-XI/2013 and No. 62/PUU-XI/2013, as well as conflicts among the State Finance Law, State Treasury Law, SOE Law, and Bankruptcy Law. However, it does not spotlight the current development of BPI Danantara as a public entity in which the application of BJR is questioned.

Earlier research also compared the existence of BPI Danantara and other super holding from different States from a few aspects. Lie (2025)[14] found that due to the different development milestone of Indonesia and Singapore, BPI Danantara and Temasek will vary greatly in their structures, goals, and operations. BPI Danantara will function in accordance with statutory law and will be accountable at the highest level of executive authority, namely the President, with the primary objective of consolidating state-owned enterprise (SOE) assets to enhance operational efficiency. In contrast,

[10] Dadang Solihin et al., "Danantara: Pilar Ekonomi Atau Beban Negara?," *Jurnal Ilmiah Manajemen Bisnis Dan Inovasi Universitas Sam Ratulangi (Jmbi Unsrat)* 12, no. 1 (2025): 231.

[11] Putri Ni'matul Maula et al., "Pengawasan Dan Pertanggungjawaban Badan Pengelola Investasi Danantara Dalam Pengelolaan Risiko Kerugian Investasi Keuangan Negara," *Jurnal Hukum Statuta* 4, no. 2 (2025): 139, https://doi.org/10.35586/jhs.v4i2.10832.

[12] Rahmat Fajri et al., "Proof of State Financial Losses in State-Owned Banking Enterprises Related to Corruption Crimes," *International Journal of Law and Society* 2, no. 4 (2025): 94, https://doi.org/10.62951/ijls.v2i4.779.

[13] Waluyo Waluyo et al., "Aligning State Finance Regulations with SOE Bankruptcy Policy: Evidence from the United States," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (2025): 272, https://doi.org/10.53955/jhcls.v5i1.470.

[14] Luther Lie, Danantara: An SOE Superholding à la Temasek? SSRN (2024): 3. http://dx.doi.org/10.2139/ssrn.5091294

Temasek operates as a privately managed entity, independent of political oversight, with a focus on maximizing profitability. Nonetheless, it does not dive into the loophole of the BJR application towards BPI Danantara as a public entity if compared to Temasek as a private entity. Other foregoing studies mainly focus on applying the principle of BJR in SOEs. Kasma and Andersen (2024)[15] finds that good corporate governance alone cannot determine the implementation of the BJR principle since every case of company loss is a different situation and BJR is not a standard regulation that can automatically release directors from their responsibilities as can be seen in the Supreme Court Decision No. 22/PID.SUS-TPK/2020 and the case of the management of retirement funds (2006–2009) at PT Kereta Api Indonesia (Persero) in the Supreme Court Decision No. 1401 K/Pid.Sus/2014. However, no conclusion is found on how it applies in BPI Danantara, which has a different form as a public legal entity. Darmawangsa (2023)[16] also states that a proper understanding of the limits of discretion in public law and the scope of decision making in private law is important to prevent wrong criminalization of lawful business decisions.

Other literature mentioning BPI Danantara, such as Muttaqin et al. (2025)[17] found that the public legal entity has more structural flaws that may cause moral hazard, concentration of unchecked authority, and exclusion from the state finance regime, compared to Temasek which has more structural independence. Conversely, this research does not discuss its relevance to BJR. Furthermore, Infantry and Tjandra (2025)[18] confirm that the removal of the definition of separated assets in Law No. 1/2025, the introduction of the new term "BUMN assets," and the shift of BUMN losses and profits into an internal domain create legal uncertainty and unclear financial accountability, oversight, and regulatory direction for Danantara. However, it does not clarify the underlying issue of the BJR application mismatch towards a public legal entity form *a quo*, BPI Danantara.

Adhering to the discussion of the State finances status, Ginting et al. (2024)[19] emphasizes that even though the existing legal framework provides a clear basis, several discrepancies are still found between actual financial management practices and the provisions regulated in State Financial Law. Anggriani et al. (2023) also recognize the importance of determining whether the state's separated wealth, included as capital in State-Owned Enterprises (Persero), remains part of state assets or has become the financial property of the enterprise itself.[20] Nonetheless, they neither discussed its relevance with the newly amended SOE Law, nor discussed BPI Danantara as the subject. Hence, as a scientific merit of this research, is essential to address the norm of

[15] Juan Kasma and Christian Andersen, "Business Judgment Rule and Corporate Governance as the Strategic Imperative of Indonesian State-Owned Enterprise," *European Journal of Law and Political Science* 3, no. 4 (2024): 57, https://doi.org/10.24018/ejpolitics.2024.3.4.151.

[16] Williem Darmawangsa, "Interpretasi yang Salah Mengenai *Business Judgment Rule* pada Substansi dan Struktur Hukum di Indonesia," *UNES Law Review* 5, no. 3 (2023): 1366, https://doi.org/10.31933/unesrev.v5i3.451

[17] M Faiz Muttaqin et al., "The Formation of Danantara: Between Efficiency and The Threat of Moral Hazard for State Investments," *Walisongo Law Review (Walrev)* 7, no. 1 (2025): 79, https://doi.org/10.21580/walrev.2024.6.2.26982.

[18] Vina Hardyana Infantri and W. Riawan Tjandra, "A Legal Review of The Regulations on Liability for Losses at Daya Anagata Nusantara and Its Implications," *Audito Comparative Law Journal (ACLJ)* 6, no. 3 (2025): 206, https://doi.org/10.22219/aclj.v6i3.41141.

[19] Kin Isura Ginting et al., "Application of State Financial Law in the Management of State-Owned Enterprises Persero in Indonesia," Atlantis Press, December 24, 2024, 165, https://doi.org/10.2991/978-2-38476-315-3_23.

[20] Reni Anggriani et al., "The Separated State Property in State-Owned Enterprises," *Sociología y Tecnociencia* 13, no. 1 (2023): 41, https://doi.org/10.24197/st.1.2023.26-43.

disharmony directly by answering whether BPI Danantara's separated state assets fall under the public finance regime and whether BJR should be applied for the sake of BPI Danantara's existence as a part of this paper's objective.

Through normative juridical research, this paper examines the newest SOE law, which emphasizes the application of BJR as the object of study. Normative juridical research which has prescriptive characteristics and avoids other elements irrelevant to the law itself[21] is chosen to analyze the complexity of Danantara's existence whereas the existing norm does not solve the problem of the applicability of BJR towards it as a public legal entity. Through a conceptual approach, this research clarifies the financial status in SOEs, especially BPI Danantara as its holding, since it will be difficult to apply BJR in a public legal entity, *in casu*. Furthermore, using the comparative approach, this study explores the framework of separated state assets in a sovereign wealth fund and its relevance with BJR before comparing it with other legal systems such as Temasek in Singapore and Khazanah in Malaysia. With a disharmony of norms relevant to BPI Danantara as the object of research, the output of this study is to harmonize the existing law. Statute approach is conducted, by relying on primary legal research materials[22] such as Law Number 1 Year 2025 on the Third Change of Law Number 19 Year 2003 on State-Owned Enterprises, Law Number 17 Year 2003 on State Finance, Law Number 31 of 1999 on Corruption Eradication, to Government Regulation Number 10 Year 2025 on the Organization and Governance of BPI Danantara ("Government Regulation of BPI Danantara").

2. ANALYSIS AND DISCUSSION

2.1. Separated State Assets in BPI Danantara Constitute State Finances

The unique nature of BPI Danantara, as an entity created to carry out government duties for SOE management, triggers a fundamental legal tension between public law governing State finance and accountability and the private business law regime governing company structure and liability. This duality compromises the clarity of BPI Danantara's financial accountability, forming the central legal-analytical problem this paper addresses. The conflict pivots not on the entity's existence, but on the legal classification and consequence of loss concerning its separated assets. For example, Article 1(3) of the Government Regulation of BPI Danantara, reiterates that BPI Dananara is an entity that carries out government duties to manage SOEs as stipulated in the SOE Law. As an entity with a great role in national economic development,[23] the *lex lata* provides that SOE shall be defined as a business entity that fulfills one of the following criteria: half or the whole of its assets is owned by the Republic of Indonesia (hereinafter "State"), or possesses a special right owned by the State. BPI Danantara fulfilled the criteria as a public legal entity since it was established under the Amended SOE Law and the government regulations.

[21] Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (May 2016): 206, https://doi.org/10.1016/j.sbspro.2016.05.006.

[22] Peter Machmudz Marzuki, "The Essence of Legal Research Is to Resolve Legal Problems," *Yuridika* 37, no. 1 (2022): 56, https://doi.org/10.20473/ydk.v37i1.34597.

[23] Asianto Nugroho and Sapto Hermawan, "Strategi Kebijakan Menyongsong Adaptasi Kebiasaan Baru Dalam Perspektif Hukum Ekonomi," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (2020): 13, https://doi.org/10.24090/volksgeist.v3i2.4001.

2.1.1. The Public Law Paradigm: Assets as State Finance and Strict Accountability

The preponderance of public law provisions strongly supports classifying BPI Danantara's assets as State Finance, subjecting them to rigorous public accountability mechanisms. This interpretation hinges upon the entity's mandate, ownership structure, and its inclusion within the comprehensive state audit framework.

A. State Ownership and Mandate

BPI Danantara satisfies the criteria of a public entity under the Amended SOE Law, possessing capital that is wholly or predominantly State-owned (Government Regulation, Art. 3(G)(2)). Its function—managing assets derived from SOE dividends and investments (Government Regulation, Art. 3(F)(2)(a))—reinforces the public character of these funds, which are fundamentally classified as separated State assets,[24] causing it to be a part of State finances.[25]

B. Statutory Inclusion in State Finance and Treasury

The State Finance Law provides a clear statutory anchor, defining "State Finance" to explicitly include "assets separated from state companies/regional companies."[26] This definition ensures that the separated capital managed by BPI Danantara remains within the legal scope of State finance. Further, the State Treasury Law confirms this public classification by including the management and accountability of State finances, including separated assets, within the definition of the "State Treasury."[27] The law defines it as a whole State assets in any forms that is separated, or not separated, which includes all parts of it and its liabilities to the possession, management and responsibility of State authority or entity on the national and provincial level, or due to the possession, management, and liabilities of SOE, foundation, and legal entity that conducts capital injection for a third party based on an agreement with State.[28]

C. Unified Audit and Loss Jurisdiction

The public law regime extends accountability through the State's oversight bodies. The State Audit, Management, and Financial Responsibility Law confirms that the audit jurisdiction of the State Audit Board (hereinafter "BPK") covers "all elements of State finances as referred to in Article 2 of the State Finance Law.[29] This provision chain confirms that BPI Danantara's separated funds fall under the State's formal audit regime. State Finance is also mentioned in Law Number 31 Year 1999 on the Corruption Eradication. Crucially, this law defines State Finance broadly to include assets "separated or not separated" managed by a State-related legal entity. Hence, this wide definition provides the legal basis to categorize any loss incurred by BPI Danantara as a State financial loss and potentially invoke criminal liability mechanisms.

According to the Amended SOE Law, the primary aim of establishing state-owned enterprises (SOEs) is to contribute to the broader national economy and, more specifically, to state revenue.[30] Consequently, SOEs—functioning as strategic sectors that significantly impact the public and national interest—are not solely

[24] Amended SOE Law, Art. 3F Paragraph (2).
[25] Constitutional Court Decision Number 48/PUU-XI/2013.
[26] Law Number 17 Year 2003 on State Finance, Article 2(G).
[27] Law Number 1 Year 2004 on State Treasury, Art. 1 point 1.
[28] Law Number 31 Year 1999 on the Corruption Eradication, Commentary.
[29] Law Number 15 Year 2004 on The State Audit, Management and Financial Responsibility, Article 10 (1).
[30] Amended SOE Law, Article 2 paragraph (1)(b).

profit-oriented.[31] *Ergo*, the public law framework uniformly treats BPI Danantara's separated funds as an integral component of State Finance, consequently imposing strict public accountability and audit standards that transcend mere corporate governance.

2.1.2. The Private Law Counterpoint: Corporate Personality and Asset Separation

A contrario, a competing interpretation arises from the Company Law and the foundational corporate law principle of separate legal personality, which poses a barrier between the owner (the State) and the entity (BPI Danantara).

A. Corporate Personality and the Ratio Legis *of Separation*

The Company Law's core principle mandates the separation of assets and liability: injected capital becomes the company's capital, legally distinct from the owner's.[32] Applying this *ratio legis* to BPI Danantara suggests the State is merely the shareholder, and the "separated State assets" must be treated as Danantara's distinct corporate assets.[33] This view aligns with the literal definition of SOE in Article 1 of the Amended SOE Law.

B. Classification of Financial Loss as Business Risk

In business management, it is very possible to experience failure or erroneous business decisions that lead to financial loss.[34] Under a strict Company Law application, the entity's primary purpose is profit. Financial losses resulting from business failure (e.g., market fluctuations, management decisions) would be categorized purely as business risk.[35] This approach allows the directors to operate under the protection of BJR, insulating them from liability for losses resulting from good-faith commercial decisions.

C. The Legal Conflict: Accountability vs. Risk

The private law reading creates a direct conflict with the public law framework. If the Company Law principle prevails, a financial loss is a simple business risk. However, if the expansive definition in the State Finance and Corruption Laws is applied, that same business failure is classified as a financial loss to the State, potentially triggering anti-corruption investigations. The core legal tension, therefore, is not the formal existence of separated assets, but the defining consequence of a loss on those assets.

2.1.3. Reconciling Duality and Affirming Public Accountability

The critical comparative analysis demonstrates that the comprehensive framework of public finance legislation overrides the formal separation established by the Company Law. While the private legal regime governs operational liability, the public legal regime imposes substantive public accountability. Although BPI Danantara's assets are administratively separated for commercial efficiency, they remain substantively part of State Finance. This is evidenced by the State's direct ownership, the public

[31] Muhammad Atha Umry and F.X. Kurniawan Tjakrawala, "Board Diversity, Foreign Ownership, and Audit Quality: Their Influence on Financial Performance in Indonesian State-Owned Enterprises (2020-2024)," *International Journal of Current Science Research and Review* 08, no. 06 (2025): 3114, https://doi.org/10.47191/ijcsrr/V8-i6-48.

[32] Law Number 40 Year 2007 on Company Law, Article 3(1).

[33] Law Number 40 Year 2007 on Company Law, Article 3(1).

[34] Hendry Julian Noor, 2022. *Memahami Kerugian BUMN (Persero): Diskursus Kerugian Keuangan Negara dan Tipikor* (Yogyakarta, Genta Publishing, 20regimes,22), p. 8.

[35] Zuzana Virglerova et al., "Model of Business Risks and Their Impact on Operational Performance of SMEs," *Economic Research-Ekonomska Istraživanja* 35, no. 1 (2021): 4056, https://doi.org/10.1080/1331677X.2021.2010111.

oversight mandate (BPK's jurisdiction), and the classification of financial loss under the Corruption Eradication Law. The public law framework ensures that BPI Danantara's primary objective—to contribute to the national economy—is protected by maintaining the BPK's oversight jurisdiction and the application of public accountability laws to financial mismanagement, effectively neutralizing the legal protection offered by the *ratio legis* of the Company Law concerning the classification of asset loss.

Hence, to clarify the dual legal nature governing BPI Danantara, it is essential to compare the public-law and private-law regimes that simultaneously shape its structure and operations. Such a comparison is analytically meaningful only when anchored in the asset transformation theory and finance transformation theory, which illuminate how state assets are reconceptualized when transferred into an enterprise vehicle. Asset transformation theory explains the legal consequences of converting public assets into corporate assets—particularly whether the transformation produces a substantive separation from state finances or merely a formal reclassification. Meanwhile, finance transformation theory provides a lens for assessing whether financial flows generated by BPI Danantara retain their character as state finances despite being managed through a business-oriented entity. Using these theories not decoratively but substantively, the analysis evaluates how the conflicting norms across the SOE Law, State Finance Law, Anti-Corruption Law, and Constitutional Court jurisprudence affect Danantara's asset status and the scope of accountability attached to it. This highlights the contrasting characteristics of the entity itself, shown through the table below.

Table 1. Comparing Public and Private Law Aspects Applicable to BPI Danantara

Aspects	**Public Finance Regime (Public)**	**SOE Regime (Private)**
Status of SOE Assets	State Treasury & State Finances	Separated State Assets
Source of Funds	State Budget (APBN/ APBD)	Injected Capital Contri-bution
Applied Principle	Government Judgement Rule	Business Judgement Rule
Legal Framework	Administrative Law and Criminal Law	Company Law
Supervision	BPK	Board of Commissioners and General Meetings of Shareholders
State Control	Fully controlled by the State	Controlling through Share Ownership

Source: the author's synthesis based on a comparative reading of Indonesia's SOE, state finance, anti-corruption, and audit legal frameworks, including relevant Constitutional Court decisions.

In this light, the Amended SOE law is intended to govern Danantara under the private SOE Regime; we must also evaluate it under the legal entity theory and finance transformation theory. The change in Article 1(1) which erased the "separated State assets" clause is highly paradoxical to the fact that BPI Danantara's fund is still a separated State asset, and contradicting the State finance law regime. According to Riawan Tjandra, SOEs assets are a part of State finances because of Indonesia's welfare state concept enshrined in the 1945 Constitution.[36] In Article 3(G)(2) of the Amended SOE Law, the initial capital injection may originate from cash, State's assets (*zaak*) and/or State's shares in SOEs. Furthermore, the Constitutional Court reiterates that separated State assets are still a part of State finance.[37] Consequently, there shall be an alteration in the legal status of BPI Danantara's assets as a result of asset separation, which also entails a modification of not only the rights but also obligations related to the control and ownership of funds within a legal entity, thereby transferring the management, accountability, and associated risks to a new legal subject.

There is a contradiction in the management and accountability of public finance and private finance that can be seen in their objectives, namely improving the welfare of society for public finance, and aiming the maximum profit without for private finance.[38] When the State makes a decision to conduct a capital injection in a Limited Liability Company ("LLC"), then the State assets transform into LLC assets which are themselves subject to Company Law. Hence, only separation cannot be constructed as a transfer of ownership, therefore it remains as State assets, and thus the State's authority in the field of supervision still applies. The solution for this, as BPI Danantara is still a public entity, and the need to transform it to a private entity such as through the establishment of an LLC with a notarial deed referring to Article 7 of the Company law, becomes essential.

2.2. The Relevance of Business Judgment Rules for the Management of BPI Danantara

The BJR originated as a corporate-law doctrine designed to shield directors from ex post judicial intervention so long as their decisions were made in good faith, within their mandate, and for legitimate business purposes.[39] Whether—and to what extent—this doctrine can or should apply to BPI Danantara is not self-evident, given that BJR was developed for private-sector entities pursuing profit maximization, while BPI Danantara functions as a public legal entity entrusted with broader public-interest mandates. This tension underscores the need to critically assess the normative appropriateness and practical feasibility of transposing BJR into the governance framework of Indonesia's sovereign wealth institution.

In Indonesian Company Law, BJR serves to prevent managerial paralysis by ensuring that directors are not deterred from pursuing commercially rational strategies due to the threat of personal liability. Yet when applied to a sovereign wealth institution such as BPI Danantara, this protective function becomes far more complex. Granting directors BJR-style insulation raises a fundamental question: can the state rely on directors to

[36] Rizky Novian Hartono et al., "Kerugian Keuangan Negara pada Badan Usaha Milik Negara (BUMN) dalam Perspektif Doktrin Business Judgement Rule," *KELUWIH: Jurnal Sosial dan Humaniora* 2, no. 1 (2021): 28, https://doi.org/10.24123/soshum.v2i1.4392.

[37] Constitutional Court Decision No. 62/PUU-XI/2013 and Constitutional Court Decision No. 48/PUU-XI/2013, p. 226.

[38] Debby Debby, "Status Hukum Keuangan Perseroan Terbatas (Persero) Berdasarkan Teori Badan Hukum Dan Teori Transformasi Keuangan," *Justitia et Pax* 37, no. 2 (2021): 203, https://doi.org/10.24002/jep.v37i2.4183.

[39] Leonardi Ryan Andika et al., "Relevance of Good Corporate Governance Towards the Principle of Business Judgement Rule for State-Owned Enterprises' Corruption Cases: A Legal Perspective," *Asia Pacific Fraud Journal* 6, no. 1 (2021): 106, https://doi.org/10.21532/apfjournal.v6i1.197.

consistently act in the public interest when their decisions are shielded from ex post scrutiny? Without clear safeguards and accountability mechanisms, such protection risks opening space for mismanagement or the manipulation of state-derived assets under the broad justification of "commercial discretion." This concern reinforces the need to assess whether the BJR's private-sector rationale can be normatively and institutionally reconciled with BPI Danantara's hybrid character as both a public legal entity and a strategic investment arm of the state.

The extension of this doctrine to State-Owned Enterprises (SOEs) through the Amended SOE Law—particularly in relation to BPI Danantara, which manages assets ultimately sourced from the state treasury—thus creates a normative paradox. While BPI Danantara is expected to operate under private-law business logic, the assets entrusted to it remain tethered to public accountability obligations inherent in the management of state resources. This structural tension between private autonomy and public responsibility forms the core analytical dilemma surrounding BJR's relevance to BPI Danantara.

Under private-law logic, BJR promotes managerial discretion by insulating directors from liability when taking business risks. This orientation is reflected in Article 97(5) of the Company Law and further echoed in Articles 3Y, 9F, 71, and 72 of the Amended SOE Law, which collectively elevate commercial judgment as the primary evaluative standard. These provisions articulate exculpatory elements—integrity, due care, absence of conflicts of interest, and reasonable preventive steps—that signal a legislative shift toward business-oriented governance. For private corporations, such protection enhances operational efficiency and supports the normative goal of enterprise value maximization.

Yet when applied to BPI Danantara, this private-law framework risks undermining the public responsibilities constitutionally attached to state-derived assets. Although Articles 4(B) and 4(A)(5) of the Amended SOE Law attempt to recharacterize SOEs as private legal entities distinct from the state, the Constitutional Court—through decisions No. 48/PUU-XI/2013, 62/PUU-XI/2013, 59/PUU-XVI/2018, and 26/PUU-XIX/2021—has consistently held that SOE finances constitute state finances based on the source-of-funds doctrine. Under this framework, transferring assets into an SOE does not extinguish its public character. Consequently, the unmodified application of BJR may unintentionally shield directors from scrutiny even when their decisions affect resources that remain substantively public. Article 9G(1) exemplifies this risk by elevating BJR as the dominant liability standard while simultaneously excluding SOE organs from the definition of "state officials," thereby narrowing the Anti-Corruption Law's jurisdiction and widening the space for unreviewable managerial discretion. This produces what may be termed an accountability deficit.

Thus, the issue is not whether BJR is inherently irrelevant to BPI Danantara, but whether the doctrine—designed for private entities—can be transposed without eroding the public-law accountability inherent in managing state assets. The earlier contradiction between declaring BJR irrelevant yet necessary is resolved by adopting a more precise position: BJR remains normatively important to preserve managerial flexibility, but its application must be recalibrated to reflect the public nature of BPI Danantara's financial resources.

Table 2. The Tendency of Business Judgment Rule Application Governing BPI Danantara

Law	Article	Analysis
Amended SOE Law	4(B) and 4(A)(5)	These provisions reaffirm SOEs as private legal entities distinct from the state, thereby strengthening the premise that directors' decisions must be evaluated under corporate business standards rather than public-law controls; as a result, they structurally reinforce the applicability and legitimacy of the BJR.
	9G(1)	While positioning BJR as the dominant evaluative standard expands directors' discretion, it also heightens moral-hazard risks, as directors may justify imprudent decisions as "business risks," especially given that BPI Danantara manages state-sourced assets and its directors are not treated as state officials under anticorruption law. These concerns suggest that such flexibility could enable abuses of power. Rather than negating BJR's relevance, this tension indicates that the doctrine can function properly only within an institutional form grounded in private-law governance, such as a limited liability company. In contrast, applying BJR to a public legal entity like BPI Danantara creates a structural mismatch, implying that BJR will remain ineffective unless its institutional design aligns with a genuinely private corporate framework.
	3(Y) and 9F	By articulating exculpatory criteria parallel to classical BJR elements—integrity, due care, absence of conflicts of interest, and reasonable risk-mitigation—these articles normatively embed fiduciary corporate governance principles within SOE management, thereby strengthening the doctrinal and practical foundations of BJR in the SOE context.
	71 and 72	These provisions mandate a professional business approach and detach directors' liability assessments from a "state finances" paradigm, making the application of BJR more straightforward and underscoring a shift toward private-law, business-oriented evaluation of SOE decision-making.
Company Law	97(5)	This article constitutes the operational backbone of BJR in Indonesian corporate law, providing a complete set of exculpatory elements and aligning SOE directors' liability standards with those applicable to private corporations, thereby consolidating BJR as a normative benchmark across legal regimes.

The articles listed in Table 2 illuminate a broader regulatory trend. Collectively, these provisions indicate that the Amended SOE Law increasingly privileges private-law autonomy at the expense of public-law accountability. This asymmetry becomes problematic in sectors, such as BPI Danantara, where state-finance principles remain constitutionally entrenched. Because the State Finance Law, Anti-Corruption Law, and Audit Law still impose public oversight obligations, BJR cannot operate as a pure corporate-law doctrine. Its application must therefore be recalibrated to prevent misuse as a shield against legitimate public scrutiny.

This structural conflict directly justifies the reform proposals advanced in this study. Legislative clarification is required not as a policy preference but as a doctrinal necessity to harmonize conflicting legal regimes governing state assets. Enhanced oversight mechanisms—whether through refined audit authority or hybrid accountability models—respond precisely to the accountability gap generated by unmodified BJR application. In this sense, the reform recommendations constitute not merely policy suggestions but analytically grounded solutions to the normative tension identified at the outset.

The liability of the BOD for losses incurred by state-owned enterprises arises only when they fail to demonstrate the absence of fault or negligence. In this context, the amended SOE Law incorporates the BJR by allowing directors to avoid personal liability where they can show that decisions were made within the boundaries of their managerial authority and in accordance with the principles of good faith, due care, and loyalty.[40]This statutory integration represents an extension of BJR from general company law to SOE governance, thereby reinforcing corporate autonomy even in enterprises managing state-derived assets.

The practical question, however, is how this protection operates in the case of BPI Danantara, whose losses may carry implications beyond ordinary corporate risk. Whether a loss resulting from a good-faith business judgment should be treated as a "state financial loss" remains legally ambiguous. Under the SOE Law, Danantara is placed under a civil-law corporate regime, suggesting that BJR-protected losses cannot be classified as state losses. Yet under the State Finance Law, assets originating from the state treasury retain their public-finance character. This unresolved overlap creates hesitation among Danantara's directors and commissioners, as commercially reasonable decisions may still expose them to allegations of causing state financial losses and, consequently, to corruption charges. Although BJR is intended to protect entrepreneurial discretion, the lack of clear statutory demarcation undermines its stabilizing function.[41]

These concerns are amplified when viewed through the lens of political influence. While the amended SOE Law formally insulates Danantara's directors, the absence of structural checks and independent oversight may weaken the credibility of such protection.

The arbitration between Elliott Associates and the Republic of Korea illustrates the risks: although the tribunal ultimately rejected Elliott's claims, the dispute revealed how perceived governmental interference in a state-controlled financial institution can trigger major legal challenges and substantial reputational damage.[42] This experience is

[40] Mellisa K. Seenacherry, "Liability of Company Directors: The Business Judgment Rule as Developed in the US and Adopted by Germany Compared to the Netherlands' Approach," *Amsterdam Law Forum* 12, no. 2 (2020): 6, https://doi.org/10.37974/ALF.345.

[41] Bohumil Havel and Kateřina Ronovská, "Business Judgement Rule in Foundation Governance," *Trusts & Trustees* 31, no. 4 (2025): 143, https://doi.org/10.1093/tandt/ttaf015.

[42] Elliott Associates, L.P. v. the Republic of Korea, PCA Case 2018-51, Award (20 June 2023), §§ 617, 676, §§ 995. See also, Daniel Nicholas Putra Pakpahan, "Attributing Commercial Acts of Public Pension Funds to the Sovereign: A Comment on Elliott Associates v. Korea," EJIL: Talk!, March 25, 2024, https://www.ejiltalk.org/attributing-commercial-acts-of-public-pension-funds-to-the-sovereign-a-comment-on-elliott-associates-v-korea/.

highly relevant to Indonesia, where BPI Danantara's CEO concurrently serves as the Minister of Investment and the interim chair of its Board of Supervisors is the Minister of SOEs, thereby increasing the appearance—and risk—of political intervention.[43]

The broader implication for sovereign wealth governance is that legal protections such as BJR cannot function effectively without complementary safeguards.[44] Even the perception of state influence may deter investors, constrain decision-making, and expose the institution to contentious disputes.[45] Hence, despite benefitting from BJR protection, BPI Danantara faces heightened governance risks unless supported by robust transparency standards, independent oversight, and institutional separation from executive control.

After identifying the characteristics of BPI Danantara as an Indonesian SWF and evaluating whether it is in accordance with the theory of financial transformation, we may compare it with the establishment goal, legal basis, and its asset status with Temasek Holdings from Singapore and Khazanah from Malaysia. BPI Danantara was established to consolidate and manage government assets in a professional and integrated manner, to improve the efficiency and effectiveness of state investment management. Danantara was formed based on the revision of Law No. 19 of 2003 concerning SOEs and Government Regulation No. 10 of 2025 concerning the organization and governance of the investment management agency Daya Anagata Nusantara. Assets managed by Danantara are state assets that are outside the state national budget ("APBN") but are still part of state finances.

A contrasting perspective can be found in the other two. Formed in 1974 to manage assets previously held directly by the Government of Singapore, Temasek aims to grow the value of these assets and support national economic development.[46] Temasek is not a legislative product like BPI Danantara,[47] in other words, Temasek's existence is not caused by the birth of any regulation.[48] Temasek was incorporated under the Singapore Companies Act[49] as a State-Owned Private Limited, and it manages assets that are wholly owned by the Government of Singapore, but it operates independently and professionally.[50] Temasek's sole shareholder is the Singapore Ministry of Finance, which may file lawsuits and be sued in its own name as stipulated in the Singapore Ministry of Finance Act 1959.[51]

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43 Hamit Tantio Lumban Gaol et al., "Analisis Hukum Peran dan Kedudukan Daya Anagata Nusantara (Danantara) Sebagai Badan Sovereign Wealth Fund (SWF) Dalam Mengelola Investasi Masa Depan Bangsa," *Recht Studiosum Law Review* 4, no. 1 (2025): 33, https://doi.org/10.32734/rslr.v4i1.20530.

44 Glanfranco Glanfrate and Enrico Merlin, "Who Is the Sovereign among Sovereign Wealth Funds? A Network Analysis of Co-Investments," *The Journal of Private Equity* 19, no. 4 (2016): 7–18.

45 Ahmad Swaiss, "Beyond Borders, Beyond Certainty: A Critical Analysis of Legal Frameworks for Sovereign Wealth Fund Investments," SSRN Scholarly Paper no. 4761291 (Social Science Research Network, March 16, 2024), https://doi.org/10.2139/ssrn.4761291.

46 João Paiva-Silva, "Understanding the Singaporean Approach to State Ownership: 'Commercially Viable Strategic Alignment' in Historical Perspective," *Structural Change and Economic Dynamics* 61 (June 2022): 45, https://doi.org/10.1016/j.strueco.2021.10.014.

47 Nidia Yustisia Kartika et al., "A Comparative Study of Indonesia's Danantara, Singapore's Temasek Holdings, And Malaysia's 1MDB," *Rewang Rencang: Jurnal Hukum Lex Generalis.* 6, no. 8 (2025): 8, https://doi.org/10.56370/jhlg.v6i8.1584.

48 Fabian Jonathan et al., "Comparative Legal Analysis on The Competence of The Indonesia's Financial Services Authority and Monetary Authority of Singapore on The Enforcement of Insider Trading Laws," *Journal of Central Banking Law and Institutions* 2, no. 2 (2023): 294, https://doi.org/10.21098/jcli.v2i2.24.

49 Singapore Companies Act 42 of 1967.

50 Tebello Thabane, "Rebooting State-Owned Companies in South Africa: Exploring the Viability of Singapore's State Holding Company (Temasek) Model of Ownership and Control," *Potchefstroom Electronic Law Journal* 27 (October 2024): 8, https://doi.org/10.17159/1727-3781/2024/v27i0a17022.

51 Singapore Minister of Finance (Incorporation) Act 1959, Article 2 paragraph (1).

Whilst Malaysia's Khazanah Nasional Berhad was established in 1993 to manage and optimize the value of Malaysia's government-owned assets and act as a strategic investor in key sectors of the economy.[52] Khazanah is incorporated as a limited company under the Malaysian Companies Act, and its assets are state-owned,[53] like Danantara, they are outside the national budget while still part of public finance. Furthermore, Khazanah was established as a public company limited by shares and is held by the Minister of Finance (Incorporated) (MOF Inc.), with an additional share owned by the Federal Lands Commissioner (Incorporated), enabling it to operate across various markets, asset categories, industries, and regions.[54] Khazanah exemplifies a Shadow Investors model that combines private-sector practices with government oversight, offering flexibility while supporting national economic goals.[55]

A comparative perspective further highlights these structural deficits. Unlike Temasek Holdings in Singapore or Khazanah Nasional in Malaysia—both incorporated as ordinary companies under their respective companies acts and operating with clearly delineated asset classifications and governance structures—BPI Danantara manages state assets situated outside the national budget yet still recognized as part of public finance. This hybrid status, combined with its statutory mandate to consolidate and manage state assets, intensifies the ambiguity surrounding its accountability framework. However, adopting a super holding model like Temasek Holdings is not a quick fix, but a long-term transformation that demands careful planning, legal adjustments, and cultural change within the organization.[56]

To address the normative tension identified earlier, this paper proposes two core reforms. First, there must be legislative clarification regarding the classification of separated state assets. Specifically, amendments to the State Finance Law and the current SOE Law should clearly state whether assets managed by BPI Danantara fall within the definition of public finance or are governed solely by corporate law. This will minimize overlapping supervision by public financial bodies and avoid criminalization of legitimate business losses. Second, the establishment of codified governance standards is crucial. This includes the formation of an independent oversight board, separate from executive influence, to evaluate strategic decisions.[57] Periodic public reporting obligations on portfolio performance, risk exposure, and governance practices are also needed. Furthermore, integration of transparency provisions into BPI Danantara's

[52] Jayant Menon and Thiam Hee Ng, "Do State-Owned Enterprises Crowd Out Private Investment? Firm Level Evidence from Malaysia," *Journal of Southeast Asian Economies* 34, no. 3 (2017): 512.

[53] Ronald Rwakigumba et al., "An Analysis of the Implementation of Governance Guidelines by Sovereign Wealth Funds in Southeast Asia," SSRN Scholarly Paper no. 5266037 (Social Science Research Network, November 4, 2024), 15, https://doi.org/10.2139/ssrn.5266037.

[54] Aidonna Jan Ayub, *Navigating Governance: The Role of State-Owned Enterprises (SOEs) in Promoting Green Initiatives*, Project Paper No. 18, *Integrated Policy Strategies and Regional Policy Coordination for Resilient, Green and Transformative Development: Supporting Selected Asian BRI Partner Countries to Achieve 2030 Sustainable Development Agenda* (Khazanah Research Institute), accessed November 15, 2025, https://unctad.org/system/files/information-document/unda2030d18-malaysia-green-industrialisation_en.pdf.

[55] Raden Gerald Setiawan Grisanto et al., "Key Drivers for Successful Integration of Indonesian State-Owned Holding: A Soft Systems Methodology Approach," *Cogent Business & Management* 12, no. 1 (2025): 3, https://doi.org/10.1080/23311975.2025.2483378.

[56] Catherine Ayunia Zoerien Pellokila et al., "Legal Implications of The Danantara Superholding Model on Public Accountability in State-Owned Bank Asset Management in Indonesia," *Journal of Law, Politic and Humanities* 5, no. 5 (2025): 3726, https://doi.org/10.38035/jlph.v5i5.1916.

[57] Suwinto Johan, "Corporate Governance Principles in Sovereign Wealth Fund: The Case of Indonesia Sovereign Wealth Fund," *The Winners* 23, no. 1 (2022): 67, https://doi.org/10.21512/tw.v23i1.7293.

founding regulation, all these modeled on global best practices such as Temasek.[58] These measures can offer BPI Danantara's directors the confidence to exercise business judgment under BJR while simultaneously upholding the fiduciary duty expected in public asset management. Ultimately, harmonizing public accountability with private governance standards is not just a legal obligation—but a prerequisite for long-term success and legitimacy of Indonesia's sovereign wealth governance framework.

3. CONCLUSION

BPI Danantara's fund and assets are qualified as part of the State assets. Any management actions will be subject to the principles of prudence and public accountability as stipulated in the public law regime of State finances, making the application of BJR irrelevant. For BPI Danantara to operate flexibly in the business realm, it is necessary to transform its legal status under the State finance transformation theory, namely through the establishment of a private legal entity, such as a Limited Liability Company (PT), based on a deed of establishment instead of a Government Regulation, followed by a legal reform towards the current SOE Law. This meaningful measure is inspired from the best practices of Sovereign Wealth Funds like Temasek and Khazanah, which are consistently operating within the private legal regime. An asset transformation involving separated State assets is needed to make BPI Danantara no longer fully subject to the State finance regime, but to the private business regime as regulated in the Company Law. Without this transformation, BPI Danantara's functions must be limited to mere public service obligations instead of business activities. *Ergo*, regulatory harmonization is not just a legal necessity but a strategic imperative. Indonesia must ensure that Danantara's legal foundation upholds both public accountability and business viability.

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