LEGAL IMPLICATIONS OF REGULATIONS CONCERNING LEGAL LIABILITY OF DIRECTORS OF STATE-OWNED ENTERPRISES FOLLOWING THE THIRD AMENDMENT TO LAW NUMBER 19 OF 2003 CONCERNING STATE-OWNED ENTERPRISES

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Abstract

The third amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (SOEs) is a response to the need to strengthen state corporate governance and increase the effectiveness of SOEs' role in the national economy. However, this regulatory change also has legal implications for the construction of the legal accountability of SOE directors, particularly in their position as state corporate organs that carry out fiduciary duties but still face the regime of state financial law and criminal law. This study aims to analyse how these regulatory changes affect the limits of directors' responsibility in making business decisions, as well as assess the relevance of applying the business judgment rule principle as an instrument of legal protection for directors. The research method used is normative juridical with a statutory approach, a conceptual approach, and a case approach. The results show that although the legal changes provide reinforcement to the principles of professionalism and independence of directors, there is still a disharmony of norms between the corporate legal regime and the state administrative law regime and criminal law, particularly regarding the interpretation of the element of "state loss" in corruption crimes. This condition has the potential to create legal uncertainty and over-criminalization of directors' business decisions made in good faith. Therefore, a reconstruction of the legal framework governing SOE directors' accountability is required through legislative harmonization and law enforcement guidelines that consistently position SOEs as private legal entities in their business activities.

Keywords: ***SOE directors, legal accountability, juridical implications, state financial loss, business judgment rule.***

INTRODUCTION

State-Owned Enterprises (SOE/BUMN) as actors in economic activities that have a strategic position were subsequently formed and regulated in Law Number 19 of 2003, which then due to changes in its governance in order to accommodate the strengthening of SOE as managers of strategic state assets, several changes were made, the last of which is the third change regulated in Law Number 1 of 2025 concerning the Third Amendment to the SOE Law. Regarding management, governance, and accountability in the realm of civil law, SOE as a legal entity in the form of a company is bound by the parent regulations of Limited Liability Companies regulated in Law Number 40 of 2007 concerning Limited Liability Companies (Sartika Nanda Lestari 2015: 305). The legal consequences that occur with the enactment of Law Number 40 of 2007 concerning Limited Liability Companies for SOE, then all modern corporate law doctrines that apply to Limited Liability Companies also apply to SOE in the form of a company. Doctrines related to the management and accountability of companies include: piercing the corporate veil, business judgment rule, fiduciary duty, good corporate governance (Try Widiyono 2022: 25). With the revision of the State-Owned Enterprises Law, it resulted in a shift in the responsibility of the directors of State-Owned Enterprises, where previously the wealth (capital included by the state in State-Owned Enterprises) was categorized as state finances, so that losses experienced by State-Owned Enterprises were also state losses, in this context State-Owned Enterprises Directors could be subject to criminal liability contained in the Corruption Crime Law. Meanwhile, after experiencing changes in the definition of State-Owned Enterprises, with the removal of the phrase "originating from

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separated state assets" and also in article 4B which states that losses and profits of State-Owned Enterprises are as losses and profits of the State-Owned Enterprises themselves so that they are not included in state losses.

This creates ambiguity regarding the handling of losses of SOE, where basically SOE is a state instrument to manage vital and strategic resources for the welfare of the people, so that capital participation from the state in the form of shares is a form of state control over SOE in carrying out its activities, so that the imposition of criminal liability (public law field) on the Board of Directors in the event of a violation of the law is a logical consequence in addition to the imposition of liability in the field of private law. In addition to the responsibilities that arise in the field of public law, both in the criminal and state administration realms, it is also necessary to review the responsibilities in the field of private law regarding the civil liability of SOE Directors, whether the inclusion of the business judgment rule doctrine in Article 9F of Law Number 1 of 2025 further strengthens the position and can provide protection for Directors in managing SOEs to avoid liability in the field of public law. Based on the above description, the author wants to conduct research on whether the changes in the definition and strengthening of the business judgment rule doctrine will result in changes or shifts in the legal rights and obligations of SOE Directors in carrying out SOE management/administration activities and how the boundaries of determining criminal, administrative and civil liability that can be imposed on SOE Directors after the revision of the SOE law.

LITERATURE REVIEW

Various previous studies have discussed the rights and responsibilities of state-owned enterprise (SOE) directors. One study concerns the criminal liability of State-Owned Enterprises (SOE) in the form of Limited Liability Companies (PT) for corruption crimes that result in state financial losses (Marsalfi Reino Adriyantoro, 2024). This study primarily focuses on the actions of directors that result in losses to the state, which fall within the scope of corruption, thus giving rise to criminal liability. It also examines the ratio decidendi of the panel of judges examining the case in handing down decisions against SOE directors charged with corruption. Another study examines the criminal liability of state-owned enterprises (SOEs) for corruption (Fransiskus Asisi Tyas Jurista Putra, 2023). This study focuses on the accountability of SOEs for corruption by first examining corruption in general. The aim of this research is to provide benefits for SOE governance and management practices, enabling the implementation of Good Corporate Governance. In addition, a study on the accountability of SOE directors for actions that result in state financial losses has also been discussed (Henny Julia, 2016). This study discusses what is meant by state finances in relation to state financial losses in accordance with laws and regulations governing state finances and conducts a study on state financial losses caused by the actions of SOE directors in managing their affairs.

METHOD

Legal research is a series of activities undertaken by an individual aimed at providing answers to problematic topics raised in the legal field, both in academic and practical contexts, aimed at studying legal principles, legal norms, or laws that are empirically manifested in society (Zainuddin Ali 2009: 17). Meanwhile, according to Soerjono Soekanto, legal research is an activity carried out in a structured and systematic manner, based on certain methods, systematics, and thought processes, with the ultimate goal of examining a particular legal phenomenon by analyzing and examining existing legal factors, which serve as solutions to problems that arise in that legal phenomenon (Soerjono Soekanto 1981: 43). In the legal research conducted by the author in this thesis, the aim is to analyze the legal phenomena that emerged after the third revision of the State-Owned Enterprises Law related to the legal liability of SOE directors for legal actions that cause losses to SOEs. The technique used by the author in collecting data is by collecting various kinds of literature in the form of primary, secondary, and tertiary legal materials, followed by analyzing the legal issues raised by the author.

RESULTS AND DISCUSSION

Analysis of the Rights and Obligations of State-Owned Enterprise Directors Prior to the Third Amendment to the State-Owned Enterprise Law

The change in the status of the SOE organ is based on the Draft Academic Paper of the SOE Bill in Chapter V which discusses the scope, direction of regulation, and the scope of the draft law's contents, stating that the background to the change in the law regulating SOE is because the purpose of establishing SOE is to achieve 2 (two) objectives, namely the first objective is to carry out government duties in the form of providing services to the community by guaranteeing the availability of goods and services for the community, and as a source of income that will be used for the benefit of the state. In order to carry out government duties in order to serve the public interest

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and also to guarantee the availability of goods and services for the community, in carrying out its duties, the SOE Board of Directors must carry out management and administration of SOE by prioritizing the principles of effectiveness and efficiency which are realized by managing the company based on the principles of good corporate governance. If referring to the legislation regarding SOE in Law Number 19 of 2003, it is regulated in Article 2 regarding the basic objectives of establishing SOE which can be broadly classified into 2 (two) main objectives, namely public objectives and private objectives. The objectives of SOE as stated in Article 2 paragraph (1) place the objectives in the public legal realm as the main objectives of SOE, namely to contribute and be responsible for the development of the national economy in general and contribute to state revenue in particular, as well as the task of providing services to the community by ensuring that the community's needs for goods and services are met (providing public benefits). In addition to being given obligations related to fulfilling the needs of the community, SOE is also attached to obligations in the private sector or in the commercial business sector in the form of demands to pursue profits (Susanto 2021: 2).

The existence of these 2 (two) different objectives for SOE, especially for SOE managers, gives rise to legal consequences related to the status of SOE managers, especially the Board of Directors, who in this case have a vital role related to SOE management. In the field of public law as the state's liaison to organize affairs in fulfilling the livelihoods of many people, the Directors of State-Owned Enterprises have a certain status as state administrators. In the legislation governing State-Owned Enterprises, namely Law Number 19 of 2003, there is no specific regulation regarding the status of the Directors of State-Owned Enterprises in its nomenclature as state administrators. Although not regulated separately in the original legislation, the status of the Directors of State-Owned Enterprises as state administrators can be found in other laws and regulations that specifically regulate "State Administrators".

Based on the provisions of Article 2 in number 7 of Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism, it is stated that there are state administrators in the form of other officials who have the authority granted by law in order to carry out their functions to organize the state. However, in this article it has not been mentioned who has the status of other officials with the authority to organize the state. This is only explained in the explanation of the aquo law, which states that "other officials" are parties who have a high level of vulnerability to criminal acts of corruption, collusion, and nepotism in carrying out their functions as state administrators, one of which is the organs of SOE which include Directors and Commissioners, as well as parties who occupy structural positions in SOE and BUMD.

In addition, in Article 1, General Provisions number (2) of Law Number 25 of 2009 concerning Public Services, which in essence provides a definition of public service providers, namely every agency, corporation, independent, whose formation is carried out through law and the purpose of its formation is to provide public services. With this regulation, the Board of Directors as an organ of a SOE which is attached to the authority to organize public services has the status of "Public service implementer". Regulations regarding the status of the position of SOE organs, namely the Board of Directors in particular, are also regulated in Law Number 30 of 2014 concerning Government Administration.

Analysis of the Rights and Obligations of State-Owned Enterprise Directors After the Third Amendment to the State-Owned Enterprise Law

The change in the status of the SOE Directors, previously classified as "state administrators" to "non-state administrators," has legal consequences in the form of changes in the rights and obligations of SOE Directors, especially when a SOE Director carries out legal acts in the field of public law. As a result of this change, all matters that are obligations and prohibitions attached to SOE Directors as state administrators in the laws and regulations should no longer apply considering that changes in status and position will also result in changes in rights and obligations. For example, as required by Article 5 of Law Number 28 of 2008 concerning Clean and Corruption-Free State Administrators, which requires SOE Directors to report on their assets. Therefore, after the change in status, a SOE Director should no longer be bound by these obligations.

One of the articles governing the legal actions of SOE Directors, both in public and civil law, following the third revision of the SOE Law is the addition of Article 9F of Law Number 1 of 2025. This essentially states that management by the Board of Directors must be carried out with full sincerity, based on the principle of good faith, and that management, including decision-making, must be based on careful consideration and driven by a desire to achieve the SOE's objectives. This provision further clarifies the "Business Judgment Rule" doctrine, which relates to the accountability applicable to SOE Directors. Although Law Number 1 of 2025 concerning the Third Revision of the SOE Law has changed the status of SOE Directors, the legal consequences of this change, particularly in the public legal realm, regarding the rights and obligations of SOE Directors, are not further explained. Meanwhile, in

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the explanatory section of Law Number 1 of 2025 concerning the Third Revision of the SOE Law, Article 9G explains the text of Article 9G, namely:

"This does not mean that non-state officials who become SOE administrators will lose their status as state officials."

Based on the explanation of Article 9G, it can be further interpreted that even though the wording of Article 9G stipulates that the status of the SOE organs, in this case the Members of the Board of Directors, Board of Commissioners, and the SOE Supervisory Board, are no longer state administrators, however, with this change in status, it does not mean that the SOE organs have completely lost their rights and obligations as state administrators. Based on this, it can be concluded that the rights and obligations of the SOE Directors after the revision of the SOE Law have not changed, especially in the capacity of the SOE Directors in terms of carrying out legal actions within the scope of public law. So that the rights and obligations of the SOE Directors as state administrators remain attached to the SOE Directors and remain subject to the basic rules contained in Law Number 28 of 1999 concerning State Administrators Who Are Clean and Free from Corruption, Collusion and Nepotism. The lack of synchronization between the interpretation of the article contained in Article 9G in the main body, with the interpretation in the explanatory section creates a contradictory situation caused by the conflicting interpretation between Article 9G and the explanatory section of Article 9G. Based on Law Number 12 of 2011 concerning the Formation of Legislation, in Appendix II it is explained that the explanatory section is not permitted to contradict the main material contained in the main body. From these provisions, in Article 9G the basic norms contained in Article 9G apply

Analysis of the Accountability of State-Owned Enterprise Directors

The shift in the status of the SOE Directors, who were initially positioned as state administrators, so that the applicable accountability for state administrators in terms of state financial management has shifted with the third revision of the SOE law. The legal norms attached to the SOE Directors are related to their duties and responsibilities as state financial managers and with their status as state administrators, Law Number 28 of 1999 concerning State Administrators Who Are Clean and Free from Corruption, Collusion, and Nepotism applies regarding the rights and obligations of SOE Directors as explained in the first problem formulation. Related to accountability for state financial management, every SOE Director who carries out management actions that are carried out unlawfully with intent that causes losses to state finances, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption applies. With the third revision of the SOE Law Number 19 of 2003 to become Law Number 1 of 2025, the status of the SOE Directors is no longer classified as state administrators. This has an impact on the rights and obligations of the SOE Directors as well as the accountability of the SOE Directors in terms of carrying out SOE financial management activities.

The difficulties experienced by SOEs in achieving maximum profits are caused by one of the concepts regarding "state finance" with the classification of capital owned by SOEs as part of state finances. Based on the principles of management of state finances, there are significant differences with the principles of corporate financial management which are always required to always move quickly in making long-term business decisions because it is the main source of profit for the company. This difficulty is one of the factors for the legislators to revise the regulations related to the status of the position of SOE capital, so that the management of finances that have become SOE capital can be aligned with the principles of corporate financial management based on the Business Judgment Rule (BJR), no longer to the Government Judgment Rule (GJG). To facilitate business decision-making by the Board of Directors of State-Owned Enterprises (SOE), changes were made to the definition of SOE by removing the phrase "originating from separated state assets." This article uses the theory of state financial transformation, where after the state assets are deposited into the company, a transformation occurs from state finances to corporate finances. This means that in carrying out management using a corporate financial management mechanism. Therefore, management using this corporate mechanism affects criminal liability as well as civil liability. With the shift in state financial status to corporate finance, state losses are also converted into corporate losses or become profits for the SOE itself.

Criminal Liability of State-Owned Enterprise Directors Prior to the Third Amendment to the State-Owned Enterprise Law

The liability of SOE Directors under criminal law is not specifically regulated in Law Number 19 of 2003 concerning SOE, but is regulated in other laws and regulations. Because the regulations regarding the liability of SOE Directors are spread across several laws and regulations, to obtain a holistic picture of the criminal liability of

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SOE Directors in the context of public service provision, a systematic interpretation must be used by reading the articles of one law and linking them to articles in other laws and regulations (Aris Hardinanto 2016: 31).

There are two (2) factors that serve as determining benchmarks (indicators) for SOE Directors to be subject to criminal liability. The first is seen from the status of SOE Directors as "state administrators" based on Law Number 28 of 1999 concerning State Administrators Who Are Clean and Free from Corruption, Collusion, and Nepotism. The second can be seen from the status of SOE "capital" which is included in the "state finance" classification as regulated in Law Number 17 of 2003 concerning State Finance. Regarding the criminal liability that can be imposed on the Directors of State-Owned Enterprises for losses of State-Owned Enterprises classified as state financial losses based on Law Number 17 of 2003 concerning State Finances in conjunction with Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it is based on the "Source Theory" which states that all or most of the capital included in State-Owned Enterprises is part of state finances whose sources come from the State Budget, so that based on the opinion of W. Riawan Tjandra, the liability for losses experienced by State-Owned Enterprises must also be based on the accountability mechanism for the use of state finances. So even though the state has made direct capital participation in State-Owned Enterprises, this does not automatically make the status and position of the capital paid by the state subject to being fully owned by the State-Owned Enterprises. Consequently, the regulation regarding the liability for all actions/deeds of State-Owned Enterprises Directors related to the management of State-Owned Enterprises finances/capital is not subject to corporate law regulations, but remains subject to the liability for the management of state finances (Fina Puspita Fitriyanti 2022: 107).

Criminal Liability of State-Owned Enterprise Directors After the Third Amendment to the State-Owned Enterprise Law

After the revision, any losses arising from the management or administration by the Board of Directors must first be analyzed to determine whether the losses are caused by the actions or deeds of the Board of Directors in which there are elements of public law or whether the actions are purely civil law actions that cause losses to the SOE. Therefore, by no longer categorizing the status of SOE assets as "not part of separated state finances" with the removal of the phrase "...originating from separated state assets" in Article 1 number 1 of Law Number 1 of 2025 concerning the Third Revision of SOE, the result is that the liability in the field of criminal law for SOE Directors cannot be directly subject to Article 2 and Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The imposition of Article 2 and Article 3 can only be carried out if the actions of the Directors fulfill 2 requirements, namely firstly there is an element of public law in the actions carried out by the Directors, especially regarding the source of funds used, the qualifications of the actions carried out, and secondly whether the actions of the Directors of the SOE fulfill the elements of a criminal act as regulated in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

The first change relates to the status of the capital position of SOE. The first change relates to the status of the capital position of SOE. In Article 1 number 1 of Law Number 1 of 2025 concerning the Third Revision of Law Number 19 of 2003 concerning SOE, the wording is changed by eliminating the phrase "originating from separated state assets", and expanding the definition of SOE, especially related to its capital sources, which are expanded to originate from the state in the form of direct capital participation as well as SOE in which there are special rights from the state. The second change concerns the status of profits and losses of state-owned enterprises. The previous state-owned enterprise regulations did not specifically address the status of profits and losses of state-owned enterprises. However, these profits and losses were included in the state's profits and losses, as the state's capital, sourced from separated state assets, falls under the category of state finances. However, following the amendments made in Article 4B of Law Number 1 of 2025, the status of profits and losses of state-owned enterprises is clarified as belonging to the state-owned enterprise. The third change is regarding the status of the SOE organs, which is stated in Article 9G which states that SOE organs consisting of Board of Directors, Board of Commissioners, and Supervisory Board are removed from their positions as state administrators. With the removal of the status of SOE organs as state administrators, the legal consequences for SOE organs, namely the Directors and Commissioners, are not obliged to comply with Law Number 28 of 1999 concerning Clean and Corruption-Free State Administrators, Collusion, and Nepotism and other regulations related to state administrators.

Civil Liability of State-Owned Enterprise Directors Prior to the Third Amendment to the State-Owned Enterprise Law

The concept of civil liability contained in the limited liability company law emerged due to the theory of state financial transformation. Based on this theory, all flows of funds sourced from the APBN or APBD that are

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deposited into SOE automatically transform or shift capital that was originally classified as state finances into SOE-owned capital, so that with the change in the status of the capital's position, its management no longer uses the management mechanism for state finances but uses the SOE capital management mechanism using the principles of corporate law, so that the applicable civil liability is also based on the corporate responsibility system. In general, when the Directors of a State-Owned Enterprise perform legal acts in the civil sector, all basic regulations concerning legal relations of agreements apply to them, which include the valid conditions of an agreement as regulated in Article 1320 of the Civil Code, namely: 1. The existence of capacity to act; 2. The existence of consensualism; 3. A specific object; and 4. A lawful cause. The legal principles of agreements regulated in Book III of the Civil Code also apply, as well as basic regulations in accordance with the nature of the agreement made by the Directors of a State-Owned Enterprise, which can be in the form of a sale and purchase agreement or a rental agreement.

As a result of legal actions in the civil field carried out by the Board of Directors, when a dispute arises, there will be 2 (two) consequences of responsibility that arise, namely the Board of Directors commits an unlawful act as regulated in Article 1365 of the Civil Code, or the Board of Directors commits an act of default on the agreement they make, resulting in losses for third parties or for shareholders. In the event that the Board of Directors of a State-Owned Enterprise is sued in court for an unlawful act and the Board of Directors is proven to have committed such an act, then the form of responsibility of the Board of Directors is to pay compensation, both material and immaterial, if it is proven that there is a causal relationship between the actions carried out by the Board of Directors of the State-Owned Enterprise and the losses incurred.

Civil Liability of State-Owned Enterprise Directors After the Third Amendment to the State-Owned Enterprise Law

The accountability of SOE Directors within the scope of civil law is achieved by strengthening the concept of the business judgment rule, a concept that provides legal protection for SOE Directors who perform legal acts by observing and fulfilling all obligations required by laws and regulations, the articles of association and bylaws, and by implementing matters required by corporate law doctrine, such as fiduciary duty and the business judgment rule. The addition of Article 4F to the third revision demonstrates the legislators' desire to shift the concept from the Government Judgment Rule to the Business Judgment Rule. This aligns with the background of the amendment, namely, to enable Directors to make business decisions quickly and accurately without being hindered by lengthy government bureaucracy. Strengthening the business judgment rule doctrine contained in Law Number 1 of 2025 concerning the Third Amendment to the State-Owned Enterprises Law as regulated in Article 9F is a lifeline for State-Owned Enterprises Directors to obtain protection from every business decision they take from liability for losses arising to their assets and to prevent State-Owned Enterprise Directors from being criminalized by Law Enforcement Officials.

The accountability of SOE Directors in the civil sector has been strengthened against the concept of business judgment rule, to provide more legal protection to Directors in carrying out legal actions. As a result of the strengthening of the concept of business judgment rule, in order to be able to impose a Director with civil liability, the test must be proven whether the SOE Directors have carried out actions that have been recommended by the concept of business judgment rule in accordance with what has been regulated in Article 9B of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning SOE which includes whether a Director in carrying out his duties is carried out with good faith and loyalty, in making related decisions has used rational considerations based on valid and measurable data and information, and in making such decisions there is no conflict of interest between himself and the implementation of his duties, and whether the decisions taken by the SOE Directors are in line with the mandate given by the constitution to SOE, namely as a provider of goods and services to the public that have superior quality. As long as these matters are fulfilled, civil liability in the form of revealing the corporate veil to the personal assets of SOE Directors cannot be carried out.

Administrative Accountability of the Board of Directors Prior to the Third Amendment to the State-Owned Enterprises Law

In carrying out their duties, state-owned enterprises (SOEs) serve, among other things, as the implementers of the constitutional mandate to manage state finances allocated for the provision of public services (Public Service Obligations). As representatives of SOEs tasked with administering and administering state finances, SOE directors hold the position of managing the state budget (APBN). Therefore, SOE directors are subject to state administrative law. In carrying out these functions, SOE directors, as government officials, can issue government administrative decisions, also known as state administrative decisions, as explained in Article 1, number 7, and can carry out

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government administrative actions. The definition of state administrative decisions as stipulated in the State Administration Law is referred to as government administrative decisions, as provided in Article 1, number 7 of Law Number 30 of 2014, which states that state administrative decisions are written stipulations and legal products issued by government agencies or officials in carrying out their duties in governing the state. In issuing a state administrative decision (government administration decision) so that the decision has legal force, there are 3 (three) valid requirements for a state administrative decision, which are regulated in Article 8 of Law Number 30 of 2014 concerning Government Administration which include: 1. requirements for the subject issuing the decision, namely must be a legal subject included in the classification of "government officials"; 2. The existence of authority to issue the decision granted by statutory regulations and the General Principles of Good Governance (AUPB); and 3. The existence of a prohibition on abusing authority. It can be concluded that if the accountability of the SOE Directors falls within the scope of state administrative law, then they are subject to Law Number 30 of 2014 concerning Government Apparatus. This administrative accountability arises because of the status of the SOE Directors as "state administrators" and the status of the SOE's capital assets which are included in the category of "state finance" where both of these are contained in Law Number 19 of 2003 and other related laws and regulations such as Law Number 28 of 1999, and Law Number 17 of 2003.

Administrative Accountability of State-Owned Enterprise Boards After the Third Amendment to the State-Owned Enterprise Law

After the third amendment to Law Number 19 of 2003 to Law Number 1 of 2025 with the removal of the phrase "originating from separated state assets" in Article 1 number 1 of Law Number 19 of 2003, capital directly contributed by the state to SOE is no longer classified as part of state finances. Furthermore, with the affirmation of the status of SOE Directors in Article 9G as "not state administrators", where changes in these two aspects result in a shift in the scope of applicability of related laws and regulations that will affect administrative accountability. With the amendment that the Directors of SOE are no longer state administrators as referred to in Article 2 number 7 of Law Number 28 of 1999 concerning State Administrators, the aquo law becomes invalid. In relation to regulations related to accountability in administrative law, namely in Article 1 number 3 of Law Number 30 of 2014 concerning Government Administration, which regulates the definition of Government Agencies and/or Officials, namely as legal subjects who have the task of carrying out government functions, which are carried out both within the scope of the government and other state administrators, with the definition given, the Directors of SOE who are not state administrators cannot be classified into the criteria for carrying out government functions as regulated in Article 1 number 3 of the Law on Government Administration. With the non-applicability of Law Number 30 of 2014 concerning Government Administration for SOE Directors, there is no legal regulation regarding administrative accountability. Because the status of SOE Directors is not that of state administrators, and capital directly contributed to SOE by the state in the third revision is not classified as state finances, what the legislators want is a SOE financial management mechanism that is carried out based on pure corporate law. Therefore, if SOE Directors carry out legal actions in the context of management that cause losses to SOE, then this is purely a business decision and does not fall under administrative error, so that accountability for management and administration by SOE Directors is accountability with a civil (corporate) legal mechanism.

CONCLUSION

In the criminal realm, the third revision of Law Number 19 of 2003 was carried out, so that criminal liability can no longer be automatically applied to Directors who manage SOE. Criminal liability is used as a last alternative and must be met with the fulfillment of several indicators, namely in the losses that arise there is a link with public law seen from the capital aspect and from the type of legal action carried out by the Directors, the failure of the SOE Directors to prove that their actions have been based on the principles of the Business Judgment Rule, and whether the actions fulfill the elements of a criminal act as regulated in Article 2 and Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. In the civil realm, following the third revision of Law Number 19 of 2003, the Business Judgment Rule principle has been strengthened. Therefore, the primary basis for whether a SOE Director can be subject to civil liability must be based on the parameters of the principles of good faith and loyalty, rational decision-making, avoidance of conflicts of interest, and actions carried out in line with the mandate given by law, namely as a public interest organizer. Civil liability can only be imposed if one of the aspects required by the Business Judgment Rule doctrine is not met, particularly if the SOE Director has a conflict of interest between his personal interests and the professionalism of carrying out his duties. In the administrative realm, a shift in state administrative accountability emerged after the change that SOEs were no longer state administrators.

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Consequently, Law Number 30 of 2014 became invalid, and state administrative accountability in the form of administrative sanctions shifted to corporate-based activity management (Good Corporate Governance), thus placing greater responsibility on corporate accountability.

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