**UNIVERSITY OF MISKOLC**

**Deák Ferenc Doctoral School in Law and Political Sciences**

**Hidayatulloh**

# GOVERNANCE LEGAL REFORM OF STATE-OWNED ENTERPRISES: A STUDY OF CONTEMPORARY INDONESIA

PhD Dissertation

Thesis Booklet

Supervisor:

**Dr. Erdős Éva**

**Associate Professor**

**Miskolc**

**-2025-**

**Contents**

## 1. Research Problem, Objectives, Significance, and Hypotheses

### 1.1. Research Problem

Indonesia keeps Law Number 19 of 2003 on State-Owned Enterprises alive without any objective to amend it. In fact, since the administration of President Joko Widodo in 2014-2019 in the first period and 2019-2024 in the second period, State-Owned Enterprises have experienced broader and more sophisticated liberalization and corporatization compared to the previous few years.

Some of the main issues that have become public concern regarding the phenomenon of liberalization and corporatization of State-Owned Enterprises are restructuring in financial aspects, organizational structure, and company objectives. First, in financial aspects, the Indonesian government provides State Capital Participation to many State-Owned Enterprises that are experiencing poor financial conditions due to debt, mismanagement, and infrastructure development tasks from the government. Next, in organizational structure, the government forms State-Owned Holding Companies by merging several State-Owned Enterprises and transferring state ownership shares. Some companies become holding companies, and some become subsidiaries. In addition, the government also burdens State-Owned Enterprises with the task of developing infrastructure projects. National strategic projects that should be government work programs have turned into state-owned enterprise work programs under the pretext of the government's status as the owner of the company. However, they ignore the goals and functions of the corporation.

Instead of revising Law Number 19 of 2003 on State-Owned Enterprises, the government, through the Ministry of State-Owned Enterprises, issued an Omnibus Law in the form of a Regulation of the Minister of State-Owned Enterprises as the legal basis for liberalization and corporatization activities over the past ten years. The government ignored the revision of fundamental legal regulations by taking a shortcut through the Omnibus Law, which is not known in the civil law tradition in Indonesia.

On the other hand, Indonesia has applied to become a member of the Organization of Economic Cooperation and Development in 2023. Therefore, regulations and policies of State-Owned Enterprises need to be adjusted to the norms and values of the OECD as an association of developed countries that manage State-Owned Enterprises well.

## 1.2. Objectives

Indonesia has been carrying out political reforms since 1998 that have encouraged economic democratization, market liberalization, and improved governance of State-Owned Enterprises. However, the new developmentalism policy throughout 2014-2024 has attracted much public attention because there have been changes in the governance of State-Owned Enterprises through restructuring, reorganization, and active involvement of State-Owned Enterprises in strategic government projects.

This study aims to examine and analyze the policies of the Indonesian Government in the last ten years related to the reform of governance of State-Owned Enterprises. Five important aspects that are the research objectives include the influence of the conceptual framework of public finance in the governance of State-Owned Enterprises, transformation of corporate governance, restructuring and emerging legal problems, legal aspects of the Omnibus Law, and governance according to the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

In short, this study aims to clarify:

1) What is the concept of Indonesian public finance and its influence on the governance of State-Owned Enterprises?
2) How has the transformation of legal governance on state-owned enterprises in Indonesia occurred?
3) How has the restructuring of State-Owned Enterprises been carried out during 2014-2024, and what legal problems will arise?
4) Has the Omnibus Law on State-Owned Enterprises supported corporate governance reform?
5) How the governance of Indonesian State-Owned Enterprises from the perspective of the Organization for Economic Cooperation and Development.

## 1.3. Hypotheses

In writing this research, the following are five testable hypotheses, which are tentative statements about what I expect to happen in the study.

1) Every country has a constitution that serves as the main guideline in managing the country, including the economic constitution that regulates public finance. Indonesia has the 1945 Constitution, a constitution that serves as a fundamental framework and is the primary reference for legal policies, including the governance of State-Owned

Enterprises. It can be assumed that every legal product related to the governance policy of State-Owned Enterprises will be influenced by how a country regulates its public financial laws.

2) In the course of history, State-Owned Enterprises will experience changes and reforms based on political, economic, legal, and social situations. Indonesian State-Owned Enterprises are also thought to have experienced a process of governance transformation since Indonesia's independence in 1945 until now. The country's political struggles and legal configurations will influence the model and choices of corporate transformation. The global economic situation and the free market have influenced changes in state policy in managing State-Owned Enterprises.
3) During President Joko Widodo's leadership from 2014-2024, Indonesia adopted a new developmentalism approach that focused on infrastructure development and deregulation to support the investment climate. The restructuring policy of State-Owned Enterprises will change the pattern of corporate governance towards the new corporatization through holding company establishment and state equity participation. However, restructuring will face various legal challenges.
4) One of the efforts to support corporate governance reform, the Minister of State-Owned Enterprises simplified hundreds of regulations into three parent laws using the omnibus law method. From a practical perspective, the omnibus law is a brilliant idea to reduce bureaucratic complexity and overlapping regulations. However, the omnibus law policy originating from ministerial regulations has the potential to be inharmonious with statutory regulations because its preparation is only at the ministerial level, not in parliament.
5) As a candidate member of the OECD, Indonesia has made adjustments to several economic regulations, including the governance of State-Owned Enterprises. Therefore, it is reasonable to assume that the Indonesian Government can follow the formulation and conceptual framework of the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

### 1.4. Significance

Indonesia is a member of the G20 world, and it is one of the developing countries with significant economic valuation and trade influence. Moreover, Indonesia is currently applying to become a member of the Organisation for Economic Cooperation and Development (OECD) and BRICS, which is a forum for cooperation among a group of leading emerging economies. More importantly, Indonesia has bilateral and multilateral trade cooperation with many countries in the world.

Indonesia's economy is strongly supported by State-Owned Enterprises that control the leading trade and service sectors at the national level. In addition, State-Owned Enterprises manage natural resources, which consist of oil and gas, mining, marine, forestry, water, and air sectors.

The concept of ownership of Indonesia's natural resources is based on the interests of the state with the aim of public welfare. Therefore, sectors related to the livelihoods of many people must be under the control and management of the state. In this case, State-Owned Enterprises have many privileges, such as monopolies of specific sectors, distributors of subsidies for people with low incomes, providers of public goods and services, and recipients of State Capital Participation from the State Budget as separated state assets.

Good corporate governance for state-owned enterprises is an absolute principle of concern to the Indonesian government, not only for Indonesian businesspeople themselves but also for the interests of foreign investors and Indonesia's trading partner countries. The corporatization of State-Owned Enterprises that has been running so far needs to receive proper attention in order to realize a fair and open economy.

## 2. Methodology and Structure

### 2.1. Methodology

This study uses a doctrinal research method that focuses on interpreting and analyzing legal texts made by legal authorities in a country by conducting a comprehensive literature search. In addition to official regulations as government policies, this study also examines research results published in scientific journals, books, and institutional reports.

Therefore, this study is a literature review that collects various secondary data at the national and international levels.

In testing and analyzing data, this study uses a historical approach, a statute approach, and a comparative approach. With a historical approach, this study traces written documents that describe legal, political, social, and economic policies in the past. While the statute approach explores and examines laws and regulations, including court decisions, hierarchically, systematically, and comprehensively. In addition, the comparative approach explores the theory and application of law in other countries or global institutions in an effort to find good legal norms as inspiring examples. I take several relevant cases from many countries to this study, not to compare between two countries or among countries in a comprehensive analysis from in-depth to detailed.

In examining regulatory norms using a doctrinal approach, this research also analyzes several Constitutional Court decisions related to the judicial review of Law Number 17 of 2003 on State Finances, Law Number 19 of 2003 on State-Owned Enterprises, and Law Number 15 of 2006 on the Audit Board of Indonesia. Several Constitutional Court decisions related to the governance of State-Owned Enterprises have become legal doctrines that are essential references for the Indonesian rule of law.

Furthermore, in the context of state corporate governance theory, this research examines implementation in Indonesia using the OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024. It is the guidelines that are widely adopted and agreed upon in various member and non-member countries.

This research aims to comprehensively understand State-Owned Enterprises' governance by combining legal inquiry with normative legal analysis. Legal scholarship is a center but also adopts an economic approach to enrich and strengthen perspectives. Therefore, this research does not only examine legal norms in laws and court decisions but also examines public financial references.

### 2.2. Structure

In the first chapter, I write a conceptual framework about the introduction, research problem, methodology, and theoretical framework as a general understanding to the research.

Then, in the second chapter, I describe the theory of public finance based on the Indonesian legal system and analyze its influence on the concept of governance of State-Owned Enterprises.

In the third chapter, I analyze the transformation process of State-Owned Enterprises since Indonesian independence in 1945 until now. With a historical approach, I divide the transformation period into four: the early period of independence (1945-1958), the nationalization period (1958-1966), the corporatization period (1966-2003), and the corporatization in the reform period (2003-2024).

Next, in the fourth chapter, I examine the policy on restructuring State-Owned Enterprises using financial assistance patterns and company reorganization to the formation of business type clusters and holding companies. In this chapter, I present an analysis of the challenges to efforts to improve governance of State-Owned Enterprises over the past ten years.

In addition, in the fifth chapter, I explore the policy of issuing the Omnibus Law on State-Owned Enterprises, which simplifies dozens of regulations of the Minister of State-Owned Enterprises into three regulations.

Furthermore, in the sixth chapter, I analyze the implementation of governance of State-Owned Enterprises in Indonesia with the OECD Guidelines on Corporate Governance of State-Owned Enterprises. In addition, I explore the current challenges of corporate governance of state-owned enterprises in Indonesia.

Finally, I close this dissertation in the seventh chapter with conclusions and recommendations.

## 3. Conclusion and Recommendations

### 3.1. Indonesian Public Finance influences State-Owned Enterprises

The public financial system in Indonesia places an equal position between the President and other state institutions based on the 1945 Constitution of the Republic of Indonesia. As the holder of executive power, the President, assisted by ministers, heads of government institutions and regional heads, manages state finances through the State Revenue and Expenditure Budget. Every year, the President submits a draft State Revenue

and Expenditure Budget to the House of Representatives, the legislative body, as a check and balance mechanism in managing public finances.

In managing state finances, the Audit Board, one of the highest state institutions, has an essential role in supervising, examining, and auditing the performance of state financial managers, including state-owned enterprises that manage state finances. State finance in the Indonesian public finance concept are not only assets managed by state institutions but also include the assets of State-Owned Enterprises, which originate from the State Revenue and Expenditure Budget, which is allocated as State Capital Participation. The Audit Board plays an external supervisory function for State-Owned Enterprises in addition to the company's internal supervision.

The Audit Board's intervention as an external audit for State-Owned Enterprises embodies the concept of state financial resources entering state companies in the form of Public Companies and Limited Liability Companies. As an adherent of the welfare state concept, the Indonesian Government controls vital economic sectors through State-Owned Enterprises for people's lives so that state wealth creates a prosperous Indonesian society.

State-owned enterprises being part of public finance creates a decisive role for the state as the company's owner. Management of State-Owned Enterprises is obliged to run the company professionally, with integrity and effectively by safeguarding the state's interests as shareholders. As the government representative, the Ministry of State-Owned Enterprises has strong authority to intervene in company policies based on statutory regulations.

### 3.2. Nationalization to Corporatization: The Historical Journey of State-Owned Enterprises

Historically, the transformation of State-Owned Enterprises has been divided into four periods. First, the early period of independence was from 1945 to 1958. Before Indonesia was established as an independent country, the Dutch Colonial Government had established state-owned companies to exploit national natural resources and fill government coffers. The beginning of this period was the process of taking over these companies to the Indonesian Government slowly and diplomatically. However, many Dutch-owned companies still controlled most of the national economy.

Furthermore, the nationalization period in 1958-1966 was the radical takeover of ownership of Dutch-owned companies based on Law Number 86 of 1958. The main trigger was the military and political conflict between the Indonesian Government and the Dutch Government over the territorial area in West Irian. As a result, this nationalization program became the leading cause of the total loss of Dutch economic influence in its former colony. The transfer of ownership of Dutch companies to Indonesia left behind a considerable workload for decades. After the Old Order under President Soekarno's leadership ended, State-Owned Enterprises entered the Corporatization period from 1966-2003. President Soeharto, with his New Order, changed the organizational structure of state-owned enterprises, which were previously directly managed by the state, into a modern corporate model based on corporate legal values. However, the corporatization of State-Owned Enterprises has not run optimally due to government intervention that is not democratic enough. Then, the corporatization period experienced changes after 1998, which began with the fall of the New Order regime. The corporatization strengthened after the ratification of Law Number 19 of 2003 concerning State-Owned Enterprises. Economic democratization and legal reform are the characteristics of the second corporatization period from 2003-2024.

The form of State-Owned Enterprises has changed throughout Indonesian history. At the beginning of independence, the management of State-Owned Enterprises used an operational model that had been running since the Dutch colonial era. The main activities at that time were more about the administrative process of transferring ownership and restructuring its human resources from the hands of the Dutch to native Indonesians. Furthermore, during the nationalization period, the Committee for the Nationalization of Dutch-Owned Enterprises took over the company's assets and wealth and compensated for the takeover. At that time, the Prime Minister of Indonesia appointed the Minister of Finance and the Minister of Justice to lead the nationalization process. At that time, Dutch-owned companies had several different models:

1. State-owned companies to make a profit, with their founding capital being the state treasury in the form of debt.
2. State-owned companies that were oriented towards social and public services.
3. National companies affiliated with the Netherlands.

4. Private companies under Bank Negara Indonesia and Bank Industri Negara include plantation, agricultural, and industrial companies.

The Indonesian government unified the organization of State-Owned Enterprises against the Dutch legacy structure by issuing Government Regulation Number 19 of 1960. By law, the General Management Body is a government representative supervising and regulating State-Owned Enterprises. In addition, with Government Regulation Number 10 of 1958, the Indonesian government established the Central Agency for the Management of Industrial and Mining Companies to control and administer former Dutch-owned companies.

Furthermore, during the first corporatization period, the Indonesian Government introduced the form of State-Owned Enterprises into *Perusahaan Jawatan* (PERJAN; service company), *Perusahaan Umum* (PERUM; public company), and *Perusahaan Persero* (PERSERO; limited liability company). The differences in form affect the state ownership model, separation of state assets, objectives, employee status, and appointment of directors. PERJAN and PERUM state ownership is one hundred percent, while PERSERO is at least fifty-one percent. State finances for PERJAN are inseparable because the company's operations are included in the State Revenue and Expenditure Budget structure. In contrast, state finances for PERUM and PERSERO are separated from the State Revenue and Expenditure Budget structure. Then, based on its objectives, PERJAN does not seek profit because it focuses on public services. At the same time, PERUM is profit and non-profit-oriented, and PERSERO tends to pursue more profit for the company's benefit. As for employment relations, PERJAN employees are civil servants the government pays through the State Revenue and Expenditure Budget, while PERUM and PERSERO employees are company employees subject to employment law. Then, related to management, the Minister, as the government representative, appoints and dismisses the directors of PERJAN and PERUM, while for PERSERO, the appointment and dismissal of directors is by the General Meeting of Shareholders.

The existence of PERJAN ended with the issuance of Law Number 19 of 2003. State-Owned Enterprises are divided into PERUM and PERSERO. The state ownership structure of PERUM is one hundred percent, while that of PERSERO is at least more than fifty-one percent. Both company assets have been separated from state finances. The

difference in objectives between PERUM and PERSERO is a matter of business, where PERUM supplies more primary needs and public services while PERSERO is fully profit oriented. The employee status of both is equally subject to employment regulations. However, in terms of appointing directors, the minister has full authority over PERUM, while in PERSERO, it is the authority of the General Meeting of Shareholders. Uniquely, in the current era, since the issuance of Government Regulation Number 72 of 2016, the Government has established subsidiaries of State-Owned Enterprises and Affiliated Companies of State-Owned Enterprises. Both are not State-Owned Enterprises because their capital does not come from state finances but the assets of State-Owned Enterprises. The model of these two companies is a breakthrough in organizational structure but will cause legal problems in the future.

Following the global trend to improve governance of state-owned enterprises, privatization was only known in the early days of Indonesian independence once it emerged during the corporatization period. In 1988, Indonesia began privatizing State-Owned Enterprises, later strengthened by the legal basis of Law Number 19 of 2003. In principle, Indonesia supports privatization and is oriented toward financial improvement, efficiency, healthy competition, and ownership diversification. The government privatized through initial public offerings, private placements, and employee share purchases. However, privatization was only widely open to some sectors. Many legal regulations now limit privatization in the defense, security, primary livelihood, and natural resource wealth sectors.

In addition, the transformation of State-Owned Enterprises is also related to the ownership model. The Minister of Finance is the government's representative as the owner of shares in State-Owned Enterprises who acts as a supervisor and strategic policy maker. Then, the Ministry of State-Owned Enterprises became the government's representative from 1998 to the present. This ministry was originally the Directorate of Public Companies and Financial Management of State-Owned Enterprises under the Ministry of Finance. Based on Law Number 19 of 2003, the authority of the Ministry of Finance over State-Owned Enterprises was transferred to the Ministry of State-Owned Enterprises. The centralization of power lies entirely with the Minister of State-Owned Enterprises, who has the authority to supervise, appoint, and dismiss directors and boards of

commissioners/supervisory boards in State-Owned Enterprises. As a direct subordinate of the President, the Minister of State-Owned Enterprises holds significant power over the operations and governance of State-Owned Enterprises.

Finally, corporatization is an effort by the Indonesian Government to transform State-Owned Enterprises to be more dynamic, professional, and globally competitive. However, it does not stop there. Corporate transformation must strengthen good corporate governance so that corporatization is not just a formal change in the form of the company but substantively also changes for the better.

### 3.3. The Steep Road of Restructuring for Governance Reform

The Indonesian government uses the restructuring method as one of its efforts to reform the governance of State-Owned Enterprises. Throughout the two terms of President Joko Widodo's administration from 2014 to 2024, these efforts have been apparent and have become the main focus of several fundamental change agendas such as State Equity Participation for State-Owned Enterprises experiencing poor financial conditions, the establishment of a State-Owned Enterprise holding, the arrangement of business clusters based on business sectors, and the establishment of the National Asset Management Company as a company tasked with restructuring and revitalizing unhealthy State-Owned Enterprises. Moreover, the government has also dissolved several State-Owned Enterprises that are at a loss, bankrupt, and uncompetitive because they cannot be saved despite receiving assistance from the National Asset Management Company in the restructuring and revitalization program.

The governance reform policy with the restructuring program is stated in various legal policies through laws and regulations. Although the government and the House of Representatives did not amend Law Number 19 of 2003 concerning State-Owned Enterprises, the government issued government regulations, presidential decrees, and ministerial regulations as legal instruments for several new policies related to governance reform of State-Owned Enterprises. The government prefers to interpret and formulate micro-governance policies of State-Owned Enterprises in technical regulations rather than changing legal rules that are more than twenty years old.

However, the ten-year journey of governance reform with the State-Owned Enterprise restructuring policy has raised several legal problems. *First*, the government still uses State Equity Participation as a way out of the failure of governance of a State-Owned Enterprise. Several state-owned enterprises that received state equity participation could not improve their financial condition, but they suffered losses until some were dissolved. The policy of continuous capital injection in the last ten years has caused a heavy increase in the financial burden for the State Budget. As the company's owner, the state should receive benefits through dividends. However, the state's financial burden continues to inject funds into several State-Owned Enterprises. The State Budget, which should be able to be maximally effective for public welfare such as education, health, and public facilities, has had its budget allocation reduced because State Equity Participation burdens the state's finances.

*Second*, the government creates a holding company for State-Owned Enterprises. Law Number 19 of 2003 on State-Owned Enterprises does not mention or regulate a holding company. There is a legal vacuum related to the legal framework for a holding company. Therefore, the government issued a legal instrument in Government Regulation Number 72 of 2016 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies. Uniquely, the title of this regulation and its contents do not explicitly mention the formation of a holding company but regulate the transfer of share ownership of a State-Owned Enterprise to another State-Owned Enterprise. The government determines which State-Owned Enterprise will become the holding company and which other State-Owned Enterprises will become subsidiaries. The formation model is a holding-operating company. The State-Owned Enterprise that becomes the holding has a control function over its subsidiaries but continues to carry out its business activities and does not act as a purely parent company for its subsidiaries.

The legal problem in forming a holding company is the loss of the State Budget mechanism in transferring share ownership between State-Owned Enterprises, which also automatically ignores the House of Representatives supervisory function in transferring State-Owned Enterprises' assets. The government argues that forming a holding company differs from privatization, which sells state shares to the private sector. Although the Supreme Court has strengthened the government's legal policy by rejecting a lawsuit by a

group of people for a material review of Government Regulation Number 72 of 2016, the issue of transferring state shares between State-Owned Enterprises without external government supervision such as the House of Representatives raises concerns about abuse of power. The process of transferring state shares in the formation of a holding company that ignores the State Budget mechanism can cause a reduction in state assets in the form of shares in State-Owned Enterprises if the principle of balance and the principle of checks and balances between the executive power (government) and the legislative function (House of Representatives) are not fulfilled.

Another legal problem that emerged after the establishment of the holding company was the relationship between the holding company and its subsidiaries in the context of state finance. The Supreme Court and the Constitutional Court have different views on whether a subsidiary is still a State-Owned Enterprise. The Supreme Court stated that a subsidiary is included in a State-Owned Enterprise. Therefore, the provisions related to establishing a subsidiary with the State Budget mechanism apply: the subsidiary's assets are state assets, the Audit Board supervises the subsidiary, and bankruptcy follows the state finance mechanism. The Constitutional Court has the opposite opinion on separating the holding company's assets and its subsidiaries, transferring state assets into company shares, and appointing the board of directors and board of commissioners through the limited liability company mechanism. Only now has the legal debate between the two judicial institutions, the Supreme Court and the Constitutional Court, not ended, nor has it shown any common ground.

*Third*, the government established the National Asset Management Company with a legal instrument in Government Regulation Number 10 of 2004 on establishing a Limited Liability Company (Persero) in the Asset Management Sector. The company is PT Perusahaan Pengelola Aset (PPA), which is tasked with restructuring and revitalizing state-owned enterprises experiencing financial, governance, and management problems. PPA has three functions: deposit management, management of non-performing loans in banking, and special situations funds. The Minister of State-Owned Enterprises and the Minister of Finance have a very strategic role as policymakers for the restructuring and revitalization of State-Owned Enterprises, while PPA is the executor. After several years, PPA changed its status to become a subsidiary of PT Danareksa, a holding company in the investment and

financial management sector, based on Government Regulation Number 7 of 2022 on the Addition of State Capital Participation of the Republic of Indonesia into the Share Capital of the Limited Liability Company (Persero) PT Danareksa.

The restructuring and revitalization program of State-Owned Enterprises is only sometimes successful. After undergoing restructuring and revitalization, several State-Owned Enterprises could not escape the trap of large debts, business losses, bankruptcy, operational failure, or mismanagement. Finally, the government dissolved several State-Owned Enterprises, including PT Pembangunan Armada Niaga Nasional, PT Industri Gelas, PT Kertas Kraft Aceh, PT Industri Sandang Nusantara, PT Istaka Karya, PT Kertas Leces, PT Merpati Nusantara Airlines. The dissolution of the company shows that the efforts to improve several State-Owned Enterprises have yet to be able to save state wealth in the form of state assets or shares in the State-Owned Enterprises. After the dissolution decision, the bankruptcy process takes a long time and causes the loss or reduction of state wealth valued in the company's assets and shares.

While efforts to reform the governance of State-Owned Enterprises still face many obstacles and challenges, the government has given a heavy burden to several State-Owned Enterprises to work on National Strategic Projects. Seventeen State-Owned Enterprises and three subsidiaries have worked on 81 projects since 2016, worth more than 711 trillion rupiah.

The government's assignment to several State-Owned Enterprises to work on National Strategic Projects has caused a heavy financial burden for State-Owned Enterprises. The massive increase in foreign debt in the last ten years proves that this assignment burdens the finances of State-Owned Enterprises because they are working on projects that exceed their capabilities.

For instance, PT Adhi Karya, PT Hutama Karya, PT Pembangunan Perumahan, PT Waskita Karya, and PT Wijaya Karya are five State-Owned Enterprises in the infrastructure sector that are experiencing poor financial conditions because the amount of their liabilities, both current liabilities and non-current liabilities, exceeds the amount of their equity. Finally, the government is required to restructure and revitalize by burdening state finances in the form of State Equity Participation.

Finally, State-Owned Enterprises do not carry out their vision of generating profits for state revenues; instead, State-Owned Enterprises carry out tasks given by the government even though they are detrimental to the company's finances. The government as a shareholder becomes the principal, and State-Owned Enterprises as companies become agents.

Therefore, government policies that burden State-Owned Enterprises contradict the objectives of establishing State-Owned Enterprises in Article 2 of Law Number 19 of 2003. The objectives of their establishment include, among other things, contributing to the development of the national economy in general and state revenues in particular, pursuing profits, and providing public benefits in the form of providing high-quality and adequate goods or services to fulfill the needs of many people.

### 3.4. Omnibus Law and the Need for Amendments to the Law

The Indonesian government introduced a new legislative model using the Omnibus Law, which is a tradition of the common law system. The goal is to rearrange the legal rules that are spread across various abundant and often overlapping laws and regulations. In fact, the abundance of legal rules slows down bureaucracy and complicates the economy, predominantly domestic and foreign investment. Moreover, the performance of the House of Representatives in recent years has been getting worse in producing legislation, which is one of its duties. The National Legislation Program always fails to achieve its target every year. Therefore, the government believes that the Omnibus Law is the best solution to various problems of chaotic legal bureaucracy and stagnant legislative products.

The legal basis for the formation of the Omnibus Law is Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Formation of Legislation. The House of Representatives carries out the process of creating the Omnibus Law through five stages, namely planning, drafting, discussion, ratification, and promulgation. All stages can be completed quickly because members of the House of Representatives review the draft Omnibus Law containing thousands of articles in packages and collectively with a focus on general rules and policies, not details and specific norms. The Minister of State-Owned Enterprises also made a legislative breakthrough by issuing three Omnibus Law packages on State-Owned Enterprises. The three are Regulation of the Minister of State-

Owned Enterprises Number PER-1/MBU/03/2023 on Special Assignments and Social and Environmental Responsibilities, Regulation of the Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporate Activities, and Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 on Organs and Human Resources.

In the context of effectiveness and efficiency, the Omnibus Law makes it easier for stakeholders to read, review, and understand legal policies for State-Owned Enterprises. The Omnibus Law collects and codifies dozens to hundreds of abundant Ministerial Regulations into just three regulations. However, not all ministries follow this legislative trend because, in fact, the Omnibus model is only used for higher and regulatory laws, not at the level of Ministerial regulations, which are technical procedural following higher legal rules.

However, the Omnibus Law on State-Owned Enterprises has several legal issues that cause it to conflict with Law Number 19 of 2003 concerning State-Owned Enterprises. *First*, the Omnibus Law introduces new legal norms that need to be regulated in Law Number 19 of 2003. The new legal norms are the division of types of State-Owned Enterprises consisting of: (1) State-Owned Enterprises; (2) State-Owned Holding Company; (3) Subsidiary of State-Owned Enterprises; (4) Limited Liability Company; (5) Public Limited Company; (6) Affiliated Companies of State-Owned Enterprises; (7) Public Corporation; and (8) Limited Liability Company. Meanwhile, Law Number 19 of 2003 only mentions four terms, namely: (1) State-Owned Enterprises; (2) Limited Liability Company; (3) Public Limited Company; and (4) Public Corporation.

*Second*, the Omnibus Law, which is a Ministerial Regulation, is a technical legal regulation implementing higher laws and regulations. The Ministerial Regulation becomes a legal policy of a ministry to regulate its field of work based on the orders of the President as head of government. The legal norms in the Regulation of the Minister of State-Owned Enterprises should be in line with Law Number 19 of 2003 on State-Owned Enterprises.

*Third*, the Omnibus Law regulates the governance of State-Owned Enterprises, especially regarding the duties, functions, and institutional relationships between State-Owned Holding Companies, Subsidiaries of State-Owned Enterprises, and Affiliated Companies of State-Owned Enterprises. The three types of State-Owned Enterprises are

still the objects of supervision by the Audit Board and the Financial and Development Supervisory Agency. The role of these two state institutions is evidence of the existence of the state financial regime in all types of State-Owned Enterprises that have capital ties from the State Revenue and Expenditure Budget. Moreover, all types of State-Owned Enterprises also have the same position in obtaining State Equity Participation and Public Service Obligations.

*Fourth,* the Omnibus Law on State-Owned Enterprises as a ministerial product is useless because it substantially contradicts Law Number 19 of 2003, which is hierarchically higher in position. Therefore, the Central Government or the legislative body (parliament) should issue the Omnibus Law on State-Owned Enterprises.

### 3.5. Indonesian State-Owned Enterprises on OECD Guidelines on Corporate Governance

The OECD Guidelines on Corporate Governance cover seven main aspects in the embodiment of corporate governance values for State-Owned Enterprises. First, a country conceptualizes state ownership of a legal entity that does business in goods and services in the name of national interests. Next, as the owner of State-Owned Enterprises, the state needs to regulate itself so as not to abuse its power because of the potential for conflicts of interest. Then, the state also regulates so that its role as the owner of a State-Owned Enterprise does not "kill" private companies that are often its competitors in gaining profit. In addition, the treatment exists for shareholders and other investors because State-Owned Enterprises carry out privatization, which causes diversification of ownership, is not entirely by the state. Moreover, as a public entity that takes state resources, State-Owned Enterprises are required to strengthen the values of disclosure, transparency, and accountability. In addition, State-Owned Enterprises regulate the duties and responsibilities of their directors fairly and professionally as the values of good corporate governance. Finally, State-Owned Enterprises also prepare for the sustainability of business activities in the future by participating in maintaining a green environment and improving the welfare of the community around the business area.

In principle, Indonesia, with its various existing regulations, has complied with the OECD Guidelines on Corporate Governance. Law Number 19 of 2003 is an umbrella

regulation as a general guideline for the legal and business aspects of State-Owned Enterprises in Indonesia. Furthermore, several other regulations, such as those governing state finances, limited liability companies, prohibitions on monopolies and unfair business competition, and state financial audit mechanisms, also support the implementation of good corporate governance for State-Owned Enterprises. Regulations that are structured hierarchically from laws to ministerial regulations are the key to realizing transparent, responsible, and accountable State-Owned Enterprises.

State institutions play an important role in realizing good corporate governance. The Ministry of State-Owned Enterprises, as a representative of the state as owner and shareholder, issues various regulations that maintain business stability and continuity with a spirit of professionalism. Next, the Audit Board of the Republic of Indonesia and the Financial and Development Supervisory Agency also supervise the finances of State-Owned Enterprises, in addition to internal and external audits of the company, to maintain the values of openness, transparency, and accountability.

However, Indonesian State-Owned Enterprises still face several governance challenges that must be continuously improved. *First*, the policymaking and decision-execution processes are still ineffective and inefficient. The reason is that as the principal, the Minister of State-Owned Enterprises still has to coordinate and dialogue with the Minister of Finance and Technical Ministers in formulating policies for State-Owned Enterprises. Moreover, multiple principles in managing state-owned enterprises often create competition goals and objectives.

*Second*, several cases of monopoly and anti-competition in state-owned enterprises are challenges still being faced today. Although Indonesia has reformed legal policies on fair business competition between state-owned enterprises and private companies, violations still occur. Therefore, prevention of anti-monopoly behavior must be carried out more strictly by implementing good corporate governance.

*Third*, state-owned enterprises are still co-opted by the practical political interests of the state's elite. The involvement of state-owned enterprises in national strategic projects proves that companies cannot work objectively in accordance with profit-oriented corporate governance values but are forced to build high-cost infrastructures that do not create profits

for the company. On the contrary, several state-owned enterprises experience financial burdens in the form of debt and other financial obligations.

*Fourth*, several fraud cases still occur by boards and management of state-owned enterprises. Prevention of corruption in state-owned enterprises has not been effective. Several court decisions that punished directors of state-owned enterprises prove that the implementation of corporate governance is weak in several companies.

### 3.6. Recommendations for the Indonesian Legislation on State-Owned Enterprises

Law Number 19 of 2003 on State-Owned Enterprises requires changes and additions to legal norms to align with current developments. Some policy suggestions that are the focus of this study include:

1) Law on State-Owned Enterprises should regulate the corporate governance of holding companies, subsidiaries, and affiliated companies. It must formulate the conceptual framework of the holding company that Indonesia wants to form, whether an investment holding company or a management holding company. Then, the role of the Ministry of State-Owned Enterprises as a representative of the state should be clear as the owner and shareholder of the company. More importantly, the role of supervision and audit as one of the foundations of corporate governance should become an important object. Apart from internal supervision and audit, state-owned enterprises are still required to receive supervision from the Audit Board of Indonesia and the Financial and Development Supervisory Agency.
2) Corporatization is the peak of the transformation of state-owned enterprise governance in Indonesia. The Law on State-Owned Enterprises needs to remap business sectors that are public services and profit oriented. The Indonesian Government must provide ideal and targeted subsidy funding support for state-owned enterprises that provide public goods and services. Meanwhile, for profit-oriented state-owned enterprises, the Indonesian Government needs to encourage them to provide good quality and globally competitive goods and services.
3) Law on State-Owned Enterprises must regulate the establishment of subsidiaries of State-Owned Enterprises and affiliated companies of State-Owned Enterprises. Both forms of companies are established by State-Owned Enterprises for business

diversification and strengthening specific markets. However, this policy needs to be regulated in the Law so that it does not become a loophole for legal smuggling to avoid supervision and audits by the Audit Board of Indonesia and the Financial and Development Supervisory Agency. In addition, the House of Representatives is also unable to supervise these two types of companies. Their establishment and management are beyond their authority because they follow the provisions of the General Meeting of Shareholders in corporate law.

4) Law on State-Owned Enterprises needs to limit the government's authority to assign State-Owned Enterprises in infrastructure development and business activities that do not generate profits for the company. With the spirit of corporatization, State-Owned Enterprises should not only become a shadow of government in government projects that the State Budget cannot fund. The law needs to limit government actions and decisions that are not in accordance with the values of good corporate governance.
5) Fraud and corruption remain a significant challenge to implementing corporate governance principles. The Law on State-Owned Enterprises must strengthen internal and external supervision that can prevent boards and management from abusing their power through corrupt, manipulative behaviour and destroying the values of good corporate governance.

Furthermore, for future research, scholars and academics can continue this research in broad aspects related to the governance of State-Owned Enterprises. Until this research ends, Indonesia has changed leadership from President Joko Widodo to President Prabowo Subianto. Therefore, the scope of the research is limited until 2024 so that, of course, new legal policies will emerge by the next government period.

## 4. Researcher Publications

### 4.1. Publications connected to PhD Thesis

1. Hidayatulloh, Hidayatulloh. "Business Judgment Rule and Its Implementation in Indonesian Corporate Law." In *A Studia Iurisprudentiae Doctorandorum Miskolciensium*. Miskolc: University of Miskolc, 2021.
2. ———. "Corporate Crime and State-Owned Enterprises." *Justicia Journal of International Legal Sciences* 11, no. 19–20 (2023): 142–49. https://sites.google.com/unite.edu.mk/justicia/vol-11-no-19-20-2023.
3. Hidayatulloh, Hidayatulloh, and Éva Erdős. "Indonesian Financial Law: History and Recent Development." *Curentul Juridic/Juridical Current* 96, no. 2 (August 15, 2024): 61–80. https://doi.org/10.62838/CJJC.97.2.12.
4. ———. "Legal Risk of State-Owned Enterprises' Debt." *European Journal of Law and Political Science* 3, no. 1 (January 20, 2024): 10–16. https://doi.org/10.24018/ejpolitics.2024.3.1.120.
5. ———. "Restrengthening the Role of Supreme Audit Agency in Supervising State-Owned Enterprises." *International Comparative Jurisprudence* 8, no. 2 (December 2022): 152–60. https://doi.org/https://doi.org/10.13165/j.icj.2022.12.003. ***(Scopus Q4)***
6. ———. "State-Owned Enterprise's Debt in the State Financial Regime." *Sriwijaya Law Review* 7, no. 1 (January 27, 2023): 105. https://doi.org/10.28946/slrev.Vol7.Iss1.1843.pp105-120. ***(Scopus Q3)***
7. ———. "The Legal Aspects of Privatization in Electricity Business Sector." *Jurnal Cita Hukum* 10, no. 2 (August 25, 2022): 267–88. https://doi.org/10.15408/jch.v10i2.23540. ***(Web of Science)***

### 4.2. Other Publications during the study period (2021-2025)

8. Asmawi, Asmawi, Abu Thamrin, and Hidayatulloh Hidayatulloh. "The Reformulation of Pancasila Constitutional State: Maqâshid al-Syarî`ah's Perspective." *Madania: Jurnal Kajian Keislaman* 26, no. 1 (July 6, 2022): 95. https://doi.org/10.29300/madania.v26i1.6807.
9. Efrilia, Erma, Dwi Nur Fauziah Ahmad, Amiludin Amiludin, and Hidayatulloh Hidayatulloh. "Implementation of Permendikbudristek Number 30 of 2021 and The

Law on The Criminal Action of Sexual Violence Towards The Behavior of Sexual Harassment by Educators To Students In The Campus Environment (Case Study of The University of Muhammadiyah Tangerang)." *Justitia Jurnal Hukum* 7, no. 1 (June 14, 2023). https://doi.org/10.30651/justitia.v7i1.18386.

10. Hidayatulloh Hidayatulloh. "Human Rights and Data Protection in the Digital Financial Ecosystem." *JHR (Jurnal Hukum Replik)* 11, no. 1 (April 1, 2023): 12–28. https://doi.org/10.31000/jhr.v11i1.8110.
11. ———. "Legal Pluralism of Civil Law in Indonesian Dual Banking System." In *Development of Islamic Economy: Lesson Learned from Various Countries*. Jakarta: Yayasan Bhakti Masyarakat Ekonomi Syariah, 2024. https://drive.google.com/file/d/1Gw1zfZ5D-kGYyuPy00PNlGp7xqj4W0Ot/view.
12. ———. "Value Added Tax for Foreign Digital Plaftorm: Indonesian Legal Framework." In *A Studia Iurisprudentiae Doctorandorum Miskolciensium*. Miskolc: University of Miskolc, 2022.
13. Hidayatulloh, Hidayatulloh, Éva Erdős, and Miklós Szabó. "The Intricate Justice of Poverty: A Case of The Land of Gold in Papua Indonesia." *Journal of Indonesian Legal Studies* 7, no. 2 (December 21, 2022): 557–84. https://doi.org/10.15294/jils.v7i2.58030. ***(Scopus Q1)***
14. Ilahi, M. Ridho, M. Nurul Irfan, Kamarusdiana Kamarusdiana, Hidayatulloh Hidayatulloh, and Eva Achjani Zulfa. "Fatwa Institutions in Handling Religious Blasphemy Crimes in Indonesia and Malaysia." *Al-Ahkam* 34, no. 1 (April 30, 2024): 33–62. https://doi.org/10.21580/ahkam.2024.34.1.18624. ***(Scopus non-Q)***
15. Jamaluddin, Jamaluddin, Hidayatulloh Hidayatulloh, Ahmad Zaini, and Sanawi Sanawi. "The Problems of Implementing Halal Certification through the Self-Declaration Program for MSMEs in Indonesia: A Case Study." *International Journal of Advances in Social and Economics* 4, no. 1 (April 30, 2022): 30–36. https://doi.org/10.33122/ijase.v4i1.221.
16. Julistiyan, Ridoni, and Hidayatulloh. "Rules and Application of Trading Robot on Sharia Stock in Indonesia." *AL-IKTISAB: Journal of Islamic Economic Law* 7, no. 2 (2023): 163–76. https://doi.org/10.21111/aliktisab.v7i2.10588.

17. Mardiyanto, Ibnu, and Hidayatulloh Hidayatulloh. "The Responsibility to Protect (R2P) Concept as an Attempt for Protection of Human Rights in International Humanitarian Law Context." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 30, 2023, 103–18. https://doi.org/10.24090/volksgeist.v6i1.7229. ***(Scopus Q2)***
18. Nizami, Auliya Ghazna, Andini Rahma Hidayah, and Hidayatulloh. "Inappropriate Behavior in Buying and Selling Usernames on Twitter: An Islamic Law Perspective." *Jurnal Hukum Islam* 21, no. 2 (December 15, 2023): 309–34. https://doi.org/10.28918/jhi_v21i2_04. ***(Scopus non-Q)***
19. Nuzul, and Hidayatulloh Hidayatulloh. "Islamic and Cultural Negotiations in Endogamous Marriage in Kerinci." *Jurnal Hukum Islam* 20, no. 1 (June 16, 2022): 49–76. https://doi.org/10.28918/jhi.v20i1.6515. ***(Scopus non-Q)***
20. Putri, Tiara, Amiludin Amiludin, Dwi Nurfauziah Ahmad, and Hidayatulloh Hidayatulloh. "Inadequate Cryptocurrency and Money Laundering Regulations in Indonesia (Comparative Law of US and Germany)." *Yustisia Jurnal Hukum* 12, no. 2 (August 2, 2023): 129. https://doi.org/10.20961/yustisia.v12i2.71835. ***(Scopus non-Q)***
21. Supyadillah, Asep, Hidayatulloh Hidayatulloh, and Zainal Arif. "Diversity and Uniqueness of Sovereign Sukuk Issuance: Indonesian Experience." *Journal of Ecohumanism* 4, no. 2 (January 20, 2025). https://doi.org/10.62754/joe.v4i2.5964. ***(Scopus Q2)***

### 4.3. Oral Presentations

1. Governance Legal Reform of State-Owned Enterprises: A Study of Contemporary Indonesia. EDELNet+Ph.D. Conference at University of Wroclaw, Poland on 7-11 October 2024.
2. The Role of State-Owned Enterprises in National Strategic Projects and Their Impact on Corporate Governance. International conference Hopes of Legal Science held by Faculty of Law, University of West Bohemia, The Czech Republic on 24 November 2023.
3. The Role of State-Owned Enterprises in the Indonesia-China High-Speed Railway Project and Its Legal Implications for State Finance. Doktoranduszok Fóruma held by Doctoral School of Law, University of Miskolc on 23 November 2023.

4. Legal Position of OECD Guidelines on Corporate Governance for State-Owned Enterprises among Member Countries. International conference on Crisis, Economy, Technology and Law held by University of Pécs and Károli Gáspár University of the Reformed Church on 17 November 2023.
5. State-Owned Enterprises as a Quasi-Governmental Agency. Via Scientiae Iuris held by Doctoral School of Law, University of Miskolc on 8 September 2023.
6. Joint Venture Agreement between Indonesia and China: Legal Policy Analysis for the Indonesian High-Speed Rail. Workshop on Global Corporations and International Law held by Max Planck Institute for Comparative Public Law and International Law, Heidelberg Germany on 13-14 July 2023.
7. Rule of Law and Supervision of State-Owned Enterprises. The XXV Doctoral Student's Conference held by Károli Gáspár University of the Reformed Church on 26 May 2023.
8. Human Rights and State-Owned Enterprises: Implementation of the UN Guiding Principles on Human Rights and Business. The International Scientific Conference of Doctoral Students and Young Researchers 'Law without Borders' organized by Faculty of Law, Pavol Jozef Šafárik University in Košice on 27 April 2023.
9. Rethinking the Position of State-Owned Enterprises between Public Law and Private Law. The International Conference 'The Economic and Legal Management of the Crisis' organized by Faculty of Law, University of Pécs and Faculty of Law, Károli Gáspár University on 7 April 2023.
10. Business Judgment Rule and State-Owned Enterprises. The International Scientific Conference 'The Law of the Future – The Future of Law' organized by Faculty of Law, the Pan-European University in Bratislava on 31 March 2023.
11. Human Rights and Digital Finance: Constructive Study on Personal Data Protection in Indonesia. VIA SCIENTIAE IURIS the international conference for PhD students organized by Deak Ferenc Doctoral School of Law, the University of Miskolc on 24 February 2023.
12. Financial Autonomy of Local Self-Government: A Case of Indonesia. Annual Scientific Conference of the Central European Academy in Budapest 6-7 October 2022 held by Central European Academy.

13. The Legal Risk of State-Owned Enterprise Debt. First EDELNet PhD Online Conference on Climate Change, Public Control and Human Rights: Legal Scholarship in the Face of Current Global Challenge, 13 October 2022 held by the EDELNet+PhD Training Programme.
14. Value Added Tax for Foreign Digital Plaftorm: Indonesian Legal Framework. Doctoral Forum Conference, 17 November 2022 held by University of Miskolc.
15. Personal Data Protection: Indonesian and European Legal Framework. The Peculiarities of Jurisprudence online conference, 16 December 2022 held by Doctoral School of Law and Political Sciences, University of Gyor.
16. The Legal Reform of Digital Taxation in Indonesia. Conference on Digital Environment of the State and Law in the 21st Century, 13rd May 2022, University of Szeged.
17. State-Owned Enterprise's Debt in the Perspective of State Finance. 25th Spring Wind Conference, 6-8th May 2022, University of Pécs.
18. Introduction to Financial Law and Islamic Capital Market. Capital Market Community Online Webinar, 27th April 2022, Syarif Hidayatullah State Islamic University Jakarta, Indonesia.
19. The Business Judgement Rule and Its Implementation in State-Owned Enterprises. Doktoranduszok Fóruma Konferencia, University of Miskolc, 18 November 2021.
20. The Privatization of State Electricity Company. The 10th Jubilee Interdisciplinary Doctoral Conference, Doctoral Student Association of University of Pécs, 12-13 November 2021.
21. Legal Reform of Indonesia's State-Owned Enterprises. National Conference of Doctoral Students in Law, University of Miskolc, 27 October 2021.
22. Covid-19 Pandemic as a Force Majeure Clause in Indonesia. The 5th International Conference on Law and Justice, Syarif Hidayatullah State Islamic University Jakarta Indonesia, 13 October 2021 (online).
23. Protection of Children's Rights during the Covid-19 Pandemic: A Case Study in Indonesia. Children's Rights VS. Parental Responsibility, international conference for doctoral students and doctoral candidates, University of Miskolc, 11 October 2021.

## 5. Curriculum Vitae

Hidayatulloh is an Indonesian citizen who was born in Bogor on August 30, 1987. He has been studying at the Deak Ferenc Doctoral School in Law and Political Sciences, Faculty of Law, University of Miskolc since 2021 with a Stipendium Hungaricum scholarship. Previously, he received a Bachelor of Law at the Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta (2007-2011). Next, he got a Master of Law at the Faculty of Law, University of Indonesia (2012-2014). In addition, he completed several professional trainings such as Basic Education for Lawyer Profession (2017), Lecturer Competency Certificate (2018), Professional Mediator Education (2019), Capital Market Sharia Expert (2024), and Sharia Supervisory Board (2024).

He started his career as a teaching staff at the Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta in 2014. Later, he was appointed as the coordinator of the Law Laboratory in 2016-2018 and the secretary of the undergraduate law study program in 2018-2021. Besides, he has been a corporate legal advisor and a junior trainer for capital market and financial institutions since 2018.

During his studies in Miskolc, he participated many trainings, including: (1) Summer School of International Arbitration on 12-23 September 2022 at the Faculty of Law International University of Sarajevo; (2) EDELNet PhD Blended Intensive Program at the Faculty of Law University of Bologna on 8-12 May 2023; (3) Summer School The European Union, United Nations, and Global Governance at the University of Leiden on 12-23 June 2023; (4) PhD/Early Career Researcher Workshop on Global Corporations and International Law at the Max Planck Institute for Comparative Public Law and International Law on 13-14 July 2023; and (5) EDELNet+ PhD Conference & Training Program at the University of Wroclaw on 7-11 October 2024. Moreover, he actively participated in several conferences at various universities in Hungary and neighboring countries such as Slovakia and the Czech Republic.

He has written several articles published in national journals, international journals, and book chapters.

ORCiD: https://orcid.org/0000-0002-8449-6351.

Scopus ID: http://www.scopus.com/inward/authorDetails.url?authorID=57216677031&partnerID=MN8TOARS.