Jurnal Iman dan Spiritualitas
eISSN: 2775-4596, Vol 6, No 4, 2026, pp. 1617-1632
https://doi.org/10.15575/jis.v6i4.58523

Efforts to Eradicate Criminal Acts of Corruption Following the Enactment of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises

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Suggested Citation:

Paulina, Kiki; Fikri, Ahmad Ma'mun. (2026). Efforts to Eradicate Criminal Acts of Corruption Following the Enactment of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises. *Jurnal Iman dan Spiritualitas*, Volume 6, Number 4: 1617–1632. https://doi.org/10.15575/jis.v6i4.58523

Article's History:

Received August 2026; *Revised* September 2026; *Accepted* October 2026.
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Abstract:

What are the steps to eradicate corruption after the enactment UU BUMN, which is currently a polemic due to the potential for legal immunity in its management, when viewed from the perspective of "subject/perpetrator", "unlawful act", and "state financial loss" object. Regarding the subject/perpetrator of corruption, it is necessary to refer to the doctrine of material criminal law autonomy (*De Autonomie van het Materiele Strafrecht*), so that BUMN managers who commit corruption can be prosecuted under the Corruption Eradication Law. Not less important is the discussion of BUMN as state assets/state finances, where the Mahkamah Konstitusi in Decision Number 62/PUU-XI/2013 states that BUMN assets are included as state assets. Regarding the concept of BJR or Business Judgment Rule as stipulated in Article 9F of the BUMN Law, the author assesses that non-compliance with the provisions of Article 9F of the BUMN Law can be absorbed as an "unlawful act" of corruption. In relation to the BUMN Law's provision that limits the authority of the Audit Board (BPK) only to audits with specific objectives on the use of government funds and not related to corporate business, by referring to the provisions in the explanation of Article 32 UU Tipikor and the explanation of Article 603 KUHP Nasional, the institutions authorized to calculate state financial losses become broader, including BPK, BPKP, and Government Internal Supervisory Apparatus consisting of Inspectorate General at Ministries/Institutions and Regional Inspectorate. Thus, there are no obstacles to law enforcement taking action against irregularities in BUMN management.

Keywords: Audit institutions; Business Judgment Rule Corruption; National Criminal Code; Public officials; State finances.

INTRODUCTION

The Indonesian Constitution, the 1945 Constitution, affirms the principle of a welfare state based on the values of Pancasila. This constitutional mandate was first stated in the fourth paragraph of the Preamble to the 1945 Constitution, which contains the state's goal of advancing general welfare (Iskandar, 2015). This state goal is then further regulated in Article 33 paragraphs (1) to (4). In essence, Article 33 paragraph (3)

mandates the state to control and manage natural resources, aimed solely at achieving the people's prosperity. As a logical implication of this mandate, production sectors that are strategic and vital to the people's lives must be controlled by the state. This aims to prevent the practice of controlling these resources by a handful of groups or certain interests (B. K. D. P. R. R. Indonesia, 2021). In order to realize this goal, the state plays a crucial role in regulating, managing, and strictly supervising various production sectors. This role is carried out so that the economic potential of each sector can be utilized fairly and optimally so that the results can be distributed to the greatest extent possible to improve the welfare of the community.

Considering that the state as a legal entity cannot operate it directly in the business realm, a State-Owned Enterprise was formed as an operational implementer. The existence of SOEs functions as an instrument or extension of the state to carry out economic activities, from production, distribution, to consumption, in managing productive assets controlled by the state (Syahrul Ansari, 2019). The government is progressively transforming the governance of SOEs by adapting to the dynamics of economic development and needs. The restructuring effort began with the issuance of Government Regulation in Lieu of Law No. 19 of 1960 concerning State-Owned Enterprises, which became the basis for equalizing the legal form and management mechanisms of state-owned enterprises (Wei & Li, 2019).

The next development occurred in 1969 through Law No. 9 of 1969, which converted Government Regulation in Lieu of Law No. 1 of 1969 into law. This regulation classified state-owned enterprises (BUMN) into three types of business entities: Perjan, Perum, and Persero (Kratochwil, 1969). Policy changes continued along with the need to align profit orientation and public benefit values. In 2003, the government passed Law No. 19 of 2003 concerning BUMN, which simplified the business entity forms into two: Perseroan (Company) and Perum (Public Corporation) (Trihatmoko & Susilo, 2023).

The most fundamental change occurred through Law No. 1 of 2025 (the State-Owned Enterprises Law), which reconstructed the SOE management system by placing it under the supervision of the Danantara Investment Management Agency (ButarButar & Sari, 2025). This cutting-edge policy clearly separates the functions of regulator, supervisor, and operational implementer to create more professional and optimal governance.

Through this State-Owned Enterprises Law, the government is undertaking a fundamental transformation by placing SOEs not entirely under government control. The President, as head of government, has the authority to manage SOEs, which is part of the government's authority in managing state finances, one of which is ownership of state assets separated under the authority of SOEs. This authority is delegated to the Minister as the holder of series A shares (representative of special/controlling rights), and to BPI Danantara as the holder of series B shares, whose management is carried out by an investment and operational holding, which acts as the Government's representative in state share ownership.

The innovative aspect of this law lies in the change in the foundation of BUMN governance. BUMN capital, which was previously classified as state assets through direct participation, has now undergone a transformation into independent assets owned and managed by BUMN as a private legal entity. This change in capital status is outlined in Article 4A paragraph (5) of the BUMN Law, which emphasizes that its management must apply the principles of good corporate governance, commonly referred to as “the principles of good corporate governance”.

The transformation of BUMN into a private legal entity is emphasized by the following provisions, including: (a) State Capital Status in State-Owned Enterprises. The existence of "state capital participation" used in the establishment or change of BUMN, based on Article 4A paragraph (5), becomes a separate asset which becomes the responsibility and ownership of BUMN as a private legal entity; (b) Status of Human Resources/Employees and Company Organs. In accordance with Article 9G in conjunction with Article 87 paragraph (5), all levels of Directors, Commissioners, Supervisory Board, and employees/HR of BUMN are no longer categorized as state administrators; (c) Financial Accountability. The operational profits and losses of BUMN are entirely the responsibility of the BUMN entity, as regulated in Article 4B; (d) Lex Specialist in State-Owned Enterprise Regulation. Based on Article 94A letter b of the State-Owned Enterprises Law, all previous provisions regarding state financial management, treasury, PNBP, and limited liability company law are set aside to the extent regulated in this law (Ackers & Adebayo, 2022).

The shifting paradigm of state-owned enterprise governance has raised concerns among anti-corruption activists and law enforcement about the potential for abuses in SOE management that cannot be

addressed by conventional anti-corruption instruments. As we know, the establishment of anti-corruption legislation in Indonesia was driven by a long history and the immense urgency of combating widespread and entrenched corruption. Beginning during the Dutch colonial period, corruption practices existed but were not specifically regulated. The regulation used was the Criminal Code/WvS, which had been in effect since 1918. Articles 415 to 420 of the WvS regulate bribery (omkoping), but these regulations are considered insufficiently comprehensive to cover various forms of modern corruption (Bajpai et al., 2024).

After independence, corruption began to be considered a serious problem. In 1957, the government issued the Corruption Eradication Regulation, but it was ineffective. In 1960, Government Regulation in Lieu of Law No. 24/1960 concerning the Investigation, Prosecution, and Examination of Corruption Crimes was issued, but its implementation was weak due to political instability (Hutama, 2024). During the New Order era, corruption became increasingly systemic and widespread. The government issued Law No. 3/1971 concerning the Eradication of Corruption Crimes (Quah, 1982). However, this law was ineffective due to authoritarian rule and weak law enforcement. Corruption became rampant among high-ranking officials and ruling families. The fall of the New Order in 1998 marked a new chapter in legal reform in Indonesia, as public demands for the eradication of corruption grew dramatically as part of efforts to build a clean and accountable government. In response to these calls for change, the government issued Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which replaced Law No. 3 of 1971. It was then refined through Law No. 20 of 2001, which increased sanctions and expanded the scope of corruption offenses (Jiang, 2017). The establishment of the Corruption Eradication Commission (KPK) through Law No. 30 of 2002 further emphasized the state's commitment to institutionalizing an independent and robust anti-corruption mechanism.

The urgency of establishing anti-corruption regulations stems from the fact that corruption has long been viewed as an extraordinary crime that undermines the foundations of the state. Corrupt practices hamper economic development, undermine investor confidence, deepen poverty and social inequality, and weaken governance and the quality of democracy. The resulting state losses are substantial, ranging from tax evasion, budget manipulation, mark-ups on government projects, and various other forms of public financial irregularities. On a certain scale, corruption even threatens national stability by undermining government legitimacy and fueling social distrust, as evident in political dynamics in recent years (Khan et al., 2025). The push for legal reform after 1998, combined with pressure from the international community—particularly after Indonesia ratified the United Nations Convention against Corruption (UNCAC) in 2006—encouraged the country to develop a more robust and comprehensive legal framework. The enactment of Law No. 31/1999 in conjunction with Law No. 20/2001 represents a concrete manifestation of this commitment, as well as a response to the rampant corruption that has persisted for decades across various sectors (van Schoor, 2017).

In the context of managing State-Owned Enterprises (SOEs), corruption is a crucial focus of law enforcement. The Anti-Corruption Regulation broadens the definition of corruption to include abuse of authority, bribery, and state financial losses, which frequently occur in SOE business activities. Several high-profile cases—such as corruption at PT Timah, PT Pertamina, PT PLN, and PT Asabri—demonstrate the high complexity and magnitude of state losses resulting from project mark-ups, bribery in procurement of goods/services, embezzlement, and manipulation of financial reports. These cases underscore the need to strengthen the legal system to ensure SOE management adheres to the principles of good corporate governance. To address these various issues, this study employs a normative legal approach with a descriptive-analytical method based on literature review. Through this research, the author hopes to contribute to the development of academic understanding and enrich the rationale for law enforcement efforts against corrupt practices in the management of state-owned enterprises (SOEs), particularly following the enactment of the SOE Law.

METHOD

The normative legal research method in this study is used as the main approach, which focuses on the analysis of legal principles and legal norms in legislation, court decisions, and legal teachings or doctrines. The author analyzes the State-Owned Enterprises Law as a positive legal product to examine its consistency, weaknesses, and normative contributions to the legal system for eradicating corruption (Christiani, 2016). The secondary data sources used in this research cover a variety of related legal materials. Primary sources include various laws and regulations relevant to the research topic, such as

provisions on corruption eradication, the State-Owned Enterprises Law, provisions on limited liability companies, and regulations on state governance free from corruption, collusion, and nepotism (KKN). Furthermore, this research also utilizes secondary sources such as academic papers underlying the formation of the State-Owned Enterprises Law and various other supporting documents. The researchers will collect, research, and study all legal materials related to the research focus, especially citing the opinions of criminal experts related to the principles of criminal law as a tool to analyze the provisions in the State-Owned Enterprises Law and the Corruption Crime Law. Data analysis in this study is carried out through a normative qualitative approach by applying two methods, namely legal interpretation and legal evaluation of the provisions regulated in the State-Owned Enterprises Law and the Corruption Crime Law, to identify their weaknesses and strengths.

RESULTS AND DISCUSSION

The transformation of SOEs into entities with dual characteristics—as state organs and corporations subject to business principles—creates the potential for strong friction with the corruption eradication regime (Tipikor) as stipulated in Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 (Irawan & Yanto, 2024). This normative tension arises because the SOE Law attempts to emphasize modern corporate principles, including business flexibility and profit orientation, while the Tipikor Law emphasizes the protection of public interests through a repressive approach to abuse of authority, state financial losses, and corrupt practices that undermine the integrity of governance (Fijnaut & Huberts, 2000). In this context, a number of terms, phrase structures, and legal constructions in the SOE Law apparently overlap with elements of corruption crimes, thus opening up opportunities for differences in interpretation—both at the level of investigation, prosecution, and defense of perpetrators who attempt to escape the clutches of the law. Therefore, analysis of three crucial points, namely "subject/perpetrator", "unlawful" acts, and the object of "state financial loss" is very important to determine whether the transformation of BUMN strengthens or has the potential to weaken the eradication of corruption.

First, related to the subject/perpetrator of the crime. One of the new provisions, which is completely different from the previous provisions in the BUMN Law, is the provision stating that Members of the Board of Directors, Board of Commissioners, Supervisory Board and Human Resources/employees of BUMN are not state administrators, this provision is stated in Article 9 G Jo Article 87 paragraph (5) of the BUMN Law (Willemyns, 2016). The regulation of this matter becomes the basis for realizing legal policy in order to change the governance of BUMN which is free from bureaucracy or government administration system. With the existence of this provision, it has become a challenge for the enforcement of the Corruption Law, because it has narrowed the scope of people or subjects included in "state administrators", which of course will substantively benefit the perpetrators. Is the change in the meaning of "state administration" in the BUMN Law a "change" that is beneficial to the accused (perpetrator) as in the transitory/transitional law in Article 1 paragraph (2) of the Criminal Code to Article 3 of Law Number 1 of 2023 concerning the Criminal Code (National)? The Criminal Code and the National Criminal Code do not provide an explanation regarding the meaning of the change in "legislation", so that teachings/doctrines have developed, including: formele leer or changes in legislation include changes to criminal law only, the changes lie in the wording of the criminal law (Firdaus, 2023). The material law is divided into two theories, namely the teaching of "limited material" / beperkte materiele leer, namely changes that occur due to changes in legal beliefs, changes are only recognized as legal changes according to Article 1 paragraph (2) of the Criminal Code, if the change is permanent and arises from changes in legal beliefs (Butt, 2023). Thus, changes that occur solely due to the temporary nature of a statutory regulation cannot be categorized as changes in the meaning of the article.

Meanwhile, the teaching of “unlimited material”/ onbeperkte materiele leer has a broader scope of change, because the change has an influence on a criminal provision. According to Utrecht, quoted by Mahrus Ali, “if in reality there has been a change in the public's view on a matter based on the perception of justice, the public's legal view does not have to be stated in written legislation (Ali, 2011).” According to the material teaching, the change in legislation is not only to criminal law, but also includes changes that occur in other applicable laws and regulations (formal), which can affect the interpretation of a criminal provision. As a result, an article in textual form does not experience changes, but can experience a shift in meaning or have a different meaning (Lamintang, 1984). One example of a case revealed by a legal expert on the

application of material teachings is applied to changes in legislation that provide new meaning and understanding that affect criminal law, namely "Arrest Hoge Raad 3 December 1906 W. Nr. 8468, in December 1904 a person was threatened with imprisonment for employing "underage" women as prostitutes. Based on Article 330 of the Civil Code, the age limit for adulthood is 23 years, when the pimp was tried at the cassation level, the age limit for adulthood based on Article 330 of the Civil Code changed to 21 years (Erbas, 2022). The pimp was released because there was a change in civil law that affected the elements in criminal acts related to minors (Hiariej & Santoso, 2025)." The author assesses that the example of the case of the application of material teachings above is aimed at elements that still require interpretation, in this case the interpretation of the element "underage".

The explanation of Article 27 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption has its own understanding or meaning which is explicitly stated by mentioning "state administrators" with reference to Law No. 28 of 1999 (Isra et al., 2017). The phrase "state administrators" is interpreted to include "officials" who are considered to have strategic functions, including directors, commissioners, and other structural officials of BUMN/BUMD. Mahrus Ali argues that "criminal law is essentially a field of law which, in addition to determining specific sanctions, also establishes formulations of stand-alone norms (Ali, 2011)." Philosophically, the understanding and intention of the makers of the State-Owned Enterprises Law stipulates that Members of the Board of Directors, Board of Commissioners, Supervisors of State-Owned Enterprises and Human Resources/employees of State-Owned Enterprises are not state administrators, because it is based on the change in the concept/paradigm of State-Owned Enterprises into private legal entities whose capital is owned and the responsibility of State-Owned Enterprises. Meanwhile, Law No. 28 of 1999 and the Corruption Law mention the element of "state administrators", one of which is to determine directors, commissioners and other structural officials in State-Owned Enterprises/Regional-Owned Enterprises, because it arises from the understanding that these officials are considered to have strategic functions that are vulnerable to acts of corruption, collusion, and nepotism (OP.Sunggu et al., 2024).

Although the change in the meaning of the term "state administrator" in the BUMN Law is more lenient for the perpetrators compared to the meaning in the Corruption Law, because it is narrowing the meaning, but because the Corruption Law already has its own meaning and understanding that is explicitly stated (Hapsari, 2023), then by referring to the doctrine of material criminal law autonomy introduced by Prof. Mr. H. A. Demeersemen with the term De Autonomie van het Materiele Strafrecht, then against the Directors, Commissioners and Human Resources/employees of BUMN who commit criminal acts of corruption: bribery, gratuities, accepting promises/gifts as regulated in the Corruption Law, can be punished. In addition, the author assesses that the narrowing of the meaning of "state administrator" that has been attached to BUMN administrators so far can be seen as a denial of normative agreements and injustice for the community who expect the perpetrators to be held accountable based on the law they know and believe in. Based on the explanation above, it seems that the polemic regarding the meaning of "state administrator" in the BUMN Law has become less meaningful, especially since law enforcement against subjects/perpetrators of corruption crimes originating from BUMN administrators can not only be prosecuted by fulfilling the element of "state administrator", but can also be prosecuted by fulfilling the elements of "every person" and the element of "civil servant".

Regarding the subject/perpetrator of the crime in Article 2 paragraph (1) and Article 3 of the Corruption Law, the Constitutional Court decision No. 32/PUU-XVII/2019 concerning Separated State Assets Managed Based on the BUMN Law & the Limited Liability Company Law, which was decided on October 23, 2019, which essentially states that the phrase "every person" must be interpreted inclusively and must not discriminate between BUMN officials or employees (Marune, 2021). The existence of exceptions can actually create legal uncertainty which clearly contradicts the guarantee of equality before the law as regulated in Article 28D Paragraph (1) of the 1945 Constitution, this phrase is a universal formulation that covers all legal subjects (Kusdarini & Kemala, 2023). As a general norm, this formulation becomes the standard for equal treatment in the eyes of the law, both for individuals (persons) and legal entities.

New hope is emerging with the enactment of the National Criminal Code in January 2026 in an effort to eradicate corruption. As a special crime regulated in the Criminal Code, the provisions regarding Corruption adopt material previously regulated in the Corruption Law, which is now listed in Articles 603 to 606 of the National Criminal Code. The phrase "state administrator" is again included as a legal subject in

corruption crimes regulated in Articles 605 & 606 of the National Criminal Code (Indriati et al., 2025). However, there is no official explanation that defines this phrase. Interestingly, the National Criminal Code has expressly defined the term "official" in Article 614 letter d which provides a reference to Article 154 of the National Criminal Code, one of which states "a person who receives a salary or wages from a corporation, all or most of whose capital is owned by the state or region" as an "official" in question (Tutak & Jurek, 2025).

Second, related to the element of "unlawful" acts, whether in the form of abuse of authority, accepting gifts/promises, etc. as regulated in the Corruption Law, then if juxtaposed with Article 9E of the BUMN Law regarding the prohibition for "Members of the Board of Directors, Board of Commissioners, and Supervisory Board are prohibited from obtaining personal benefits, either directly or indirectly, from the activities of State-Owned Enterprises (BUMN)", outside of the official income that has been legally determined (Wibisana, 2022). Therefore, violation of the provisions of Article 9E of the BUMN Law is a form of reprehensible action that is qualified as an "unlawful" act in the Corruption Law. In addition to examining the provisions of Article 9E of the State-Owned Enterprises Law above, it is equally important to examine the "unlawful" acts of Corruption against the doctrine/concept of the Business Judgement Rule (BJR) embodied in Article 9F paragraphs (1) and (2) of the State-Owned Enterprises Law, which is a form of anticipation of the emergence of deviations in the management of State-Owned Enterprises. This concept was previously adopted by Law No. 40 of 2007 (2007 PT Law) which was then adopted by the State-Owned Enterprises Law (Apriansyah, 2024). The concept/doctrine of the Business Judgement Rule (BJR) is a parameter of legal accountability in the management of State-Owned Enterprises.

The Board of Directors cannot be held legally responsible for a decision that results in losses for the Company, as long as the decision is made in good faith. Although the Limited Liability Company Law (UUPT) is included in the regulations exempted according to Article 94A letter b of the BUMN Law, the provisions in Article 9F of the BUMN Law apparently adopt the substance of Article 97 paragraph (5) of the 2007 UUPT (Novanda et al., 2025). Therefore, the jurisprudence, doctrine, and decisions of the Constitutional Court regarding the application of Article 97 paragraph (5) of the 2007 UUPT remain relevant and can be used as a reference (Butt & Murharjanti, 2022). In relation to the implementation of Article 97 paragraph (5) of the 2007 UUPT, in carrying out the duties of managing the Company. M. Yahya Harahap emphasized that the members of the board of directors must carry it out in "good faith", which includes the obligation to be trustworthy, manage the company for rational purposes, and comply with all laws and regulations (Harahap, 2009). They must also be fully dedicated to the interests of the company, by not using company funds or assets for personal gain, and are required to maintain the confidentiality of company information.

In addition, directors must avoid conflicts of interest between personal and company interests, are prohibited from exploiting company assets, not taking personal advantage of their position, not withholding part of the company's profits illegally, not conducting transactions between individuals and, and not engaging in business competition with the company. They must also manage the company with a full sense of responsibility. If the directors are negligent in carrying out their obligations or violate the established prohibitions, then the negligence or violation causes losses to the company, therefore the directors will be personally responsible for all losses incurred (Harahap, 2009). What is the point of intersection between the implementation of BJR and "unlawful" acts, both "general unlawful" and "specific unlawful" in the realm of corruption? Does not implementing these steps constitute an "unlawful" act in the Corruption Eradication Commission (Tipikor)? To answer this question, it is necessary to provide an overview of what is meant by "unlawful" in the concept of the Corruption Eradication Commission (Tipikor).

Regarding the definition of "against the law", Vos defines weddechtelijk as formal wedderechtelijkheid, namely an act that expressly violates the applicable positive law (Hiariej, 2016). Meanwhile, according to the view of Drs. Adami Chazawi, S.H. in a theoretical-academic perspective, the fulfillment of the element of "formally against the law" especially in Article 2 of the Corruption Act, requires several cumulative requirements, namely that the violation of statutory provisions must be carried out intentionally, the perpetrator must be aware that the violation has the potential to harm state finances, the violation can logically have a detrimental impact on state finances or the economy, and the violation is carried out with the intention of enriching oneself, others, or a corporation. According to the legal concept, the four requirements of the “unlawful” element in Article 2 of the Corruption Law must be fulfilled cumulatively. If all these requirements are fulfilled, then a violation that was initially against civil or

administrative law (state administrative error) will change its nature to become a Corruption that is against criminal law (Chazawi, 2011). Based on Andi Hamzah's opinion, the element of "unlawful" especially in Article 2 of the 1999 PTPK Law should be interpreted as "not having the right to enjoy the benefits (of corruption)" (Hamzah, 2005).

Based on the description above, the author assesses that by not fulfilling (not being able to prove) Article 9F paragraph (1) of the BUMN Law which is regulated cumulatively, as well as for commissioners and supervisors for not fulfilling Article 9F paragraph (2) of the BUMN Law, so that these actions can be absorbed as "unlawful" acts of corruption. In addition to the analysis above, it is necessary to discuss the Constitutional Court's view on the BJR concept, one of which is the Constitutional Court's decision in Case No: 32/PUU-XVII/2019. Although the object of the examination is related to the BJR principle regulated in the 2007 PT Law, the Constitutional Court's consideration is still relevant to be used to test the provisions of Article 9F of the BUMN Law, because the provisions regulated therein are identical to the provisions of Article 97 of the 2007 PT Law. The Constitutional Court in its decision, stated:

> The Constitutional Court is of the opinion that, in relation to the norms of the Corruption Eradication Law, the constitutionality of which the Petitioner requested, losses to a State-Owned Enterprise (BUMN) due to business activities do not necessarily result in the threat of criminal penalties for losses to state finances or the state economy. On the other hand, the potential for such losses has been anticipated by the business world by applying the concept of the business judgment rule for company managers, which assumes that company managers do not involve personal interests in decision-making, act rationally, honestly, and believe that their actions are best for the company. Therefore, company managers cannot be prosecuted when their actions or decisions result in losses for the company. (Butt & Murharjanti, 2022).

The discussion related to BJR is also contained in the MARI Decision Number 121K/Pid.Sus/2020 in the name of Ir. Galaila Karen Kardinah, alias Karen Agustiawan, in which, in its legal considerations, the judge stated that the actions carried out by the Defendant in his capacity as President Director of PT Pertamina and Commander of PT Pertamina Hulu Energi were still within the scope of BJR. Based on the explanation above, as long as BUMN officials or Human Resources carry out corporate business in accordance with the provisions, they cannot be charged with the provisions of Article 2 paragraph (1) and Article 3 of the Corruption Law (Sitepu et al., 2025). However, if in the management of BUMN there is fraud, conflict, violation of the law, or deliberate errors that result in losses to BUMN or state finances, then these actions are considered as "errors" or "unlawful acts" that can be subject to criminal responsibility for corruption.

Third, related to the object of "state finance", the basic benchmark for the status of BUMN wealth can be depicted through the structure of the APBN, because in essence, the APBN is a form of state financial management, as regulated in the provisions of Article 23 paragraph (1) of the 1945 Constitution (Republik Indonesia, 1945). For example, the projected revenue (performance support) of BUMN for 2025 is still contained in the structure of the 2025 APBN Non-Tax State Revenue (PNBP), which is projected to be approximately IDR 90 trillion in the budget item of separated state wealth revenue. The achievement of this revenue is carried out, among other things, through efforts to strengthen governance and restructuring of BUMN, in order to increase the financial productivity of BUMN (K. K. R. Indonesia, 2025). This means that BUMN is one of the state assets that forms the structure of the APBN.

The general explanation of the State-Owned Enterprises Law also states that all business activities carried out by the state through state-owned enterprises must be aimed at improving public welfare and realizing equitable (inclusive) social justice. To achieve these goals, state-owned enterprise management must be based on principles consistent with the constitutional mandate (Rizaldi, 2025). Based on this explanation, it can be seen that state-owned enterprises cannot completely become private entities free from the control and accountability of state financial management. A State-Owned Enterprise (BUMN) is a business entity whose capital is wholly or mostly owned by the State, either through direct participation or through special rights held by the State (Demamu, 2024). Based on this definition, we can see that in essence, BUMN assets are state finances as referred to in the Explanation of Law of the Republic of Indonesia No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, namely "all state assets

in any form," including those under the management (control, administration and accountability) of BUMN/BUMD (Muhammad & Yardi, 2025).

Therefore, the profits or losses suffered by BUMN, even though it is expressly stated in the provisions of Article 4B of the BUMN Law that the profits or losses suffered by BUMN are BUMN profits/losses, as a consequence of the determination of BUMN as a private legal entity, then by adhering to the principle of de autonomie van bet materiele strafrecht, the losses of BUMN/Agency are state financial losses. In addition, several instructions in the BUMN Law show BUMN as state assets/state finances, this can be seen from how state assets are transformed into BUMN-owned assets to become BUMN-owned and responsibilities with the inclusion of Article 4A paragraph (5) of the BUMN Law (McLaughlin, 2020). This concept has shifted from the previous provisions, namely Article 1 point 1 in conjunction with Article 4 paragraph (1) of Law No. 19 of 2003 concerning BUMN which stipulates that "BUMN assets are separated state assets" (Number, 2003). Other provisions that show that BUMN is not a purely private legal entity, but is still state assets, can be seen from the following regulations: BUMN management powers and the concept of separated assets.

Article 3A of the State-Owned Enterprises Law stipulates that the President, as Head of Government, has authority in managing State-Owned Enterprises, which is a manifestation of government power in the field of state financial management (Koma, 2024). This authority includes control over state assets that have been separated for State-Owned Enterprises. Furthermore, this authority is delegated to the Minister as the holder of the Series A Dwiwarna share, as well as to the Agency acting as the holder of the Series B share in the Investment Holding and Operational Holding. Both act as representatives of the Central Government in the ownership of the separated state assets, in accordance with the mechanisms regulated by law. Write-offs and write-offs of BUMN receivables must be reported to the Minister and Agency, as regulated in Article 62F paragraph (1) of the BUMN Law (Swardhana & Monteiro, 2023). The Minister has the authority to submit proposals regarding the Merger, Amalgamation, Acquisition, or Separation of BUMN to the President. Furthermore, these actions can only be implemented after being stipulated through a Government Regulation, as stated in Article 62I of the BUMN Law (Papadopoulos, 2022).

In enforcing corruption crimes, the Constitutional Court, in its decision No. 62/PUU-XI/2013, ruled that the administrative separation of state assets into the management of state-owned enterprises (BUMN) cannot be interpreted as a transfer of rights (ownership of assets) (Wicaksono, 2022). Thus, legally, there is no transfer of rights from the state to BUMN, Regionally-Owned Enterprises (BUMD), or other similar entities. The concept of a BUMN as a private legal entity operates autonomously in the realm of civil law and is subject to corporate principles like private business entities. This is explicitly illustrated in the provisions of Article 4A paragraph (5) and Article 4B of the BUMN Law, and is supported by other provisions in the BUMN Law, including Article 71 paragraph (2) of the BUMN Law which stipulates that "The Audit Board of Indonesia is authorized to conduct audits with specific objectives on BUMN in accordance with the provisions of laws and regulations.", which in its official explanation states that "Audit with specific objectives on BUMN is carried out for audits related to the use of government funds (e.g. state capital participation) and not related to corporate business." Jo. Article 71A of the BUMN Law which stipulates that "Audit of BUMN financial management and accountability is carried out by public accountants registered with the Audit Board of Indonesia and the Financial Services Authority." This shows that the role of the BPK to conduct audits on BUMN is limited only to audits with specific objectives (losses, investigations, and audits of internal control systems), related to the use of government funds and not related to corporate business, because audits related to corporate business are carried out by public accountants registered with the BPK and OJK. This condition will complicate the process of calculating state financial losses, when an unlawful act of Corruption occurs (Siregar, 2012). However, by referring to the explanation of Article 32 of the Corruption Crime Law (UU Tipikor), state financial losses are defined as losses that can be calculated based on the results of an audit by an "authorized agency or appointed public accountant", then on the basis of these provisions there is no deadlock in the process of calculating losses (Puji et al., 2025).

Determining state financial losses is a fundamental issue in law enforcement for corruption crimes, particularly when it concerns the management and business activities within state-owned enterprises

(SOEs) that straddle the public and corporate legal regimes. The Supreme Court's Criminal Chamber Plenary Meeting, through Circular Letter No. 2 of 2024, reaffirmed the configuration of state institutions' authority in calculating and determining state financial losses (Seckinelgin, 2024). The regulation emphasized that the Supreme Audit Agency (BPK) is the sole institution with the constitutional authority to declare the existence or absence of state losses, as mandated by the 1945 Constitution and clarified by Law No. 15 of 2006 concerning the BPK (Crouch, 2011). This affirmation is crucial given the frequent debates that arise in judicial practice, particularly regarding which institution's audit results can be used as valid evidence in determining state losses in corruption cases. The BPK's position as an ultimate declarative body—namely, "declaring" state losses—means that only its decisions or audit findings have the formal authority to conclude that state losses have occurred. Thus, the BPK plays a central role as the guardian of the state's fiscal accountability. However, SEMA No. 2 of 2024 does not preclude other institutions from contributing to the process of calculating and examining state losses (Admass et al., 2024). The Financial and Development Supervisory Agency (BPKP), the Inspectorate General, Regional Inspectorates, Regional Government Agencies (SKPD), and Certified Public Accountants remain authorized to conduct audits, reviews, and audits of state financial management. These institutions' roles are technical-operational, providing data, analysis, and estimates of state losses that can serve as evidence and guidance for law enforcement during investigations and prosecutions (Avtar et al., 2021). In other words, although the BPK is constitutionally authorized to declare state losses, other institutions still play a crucial role in calculating losses professionally, accountably, and based on modern audit methodologies. This framework reflects the principle of checks and balances in state financial governance.

This multi-stakeholder authority is also in line with current corruption court practices, which fundamentally recognize the plurality of audit sources. The Corruption Court consistently accepts audit results from the Financial and Development Supervisory Agency (BPKP), the inspectorate, or public accountants as valid evidence as long as their methodology can be justified and tested in court (Hendri et al., 2024). In this context, the judge's position is highly strategic. Judges not only function as parties who assess the formal validity of audit reports but also have full authority to determine whether or not state losses exist based on facts revealed in court, including expert examinations and audit data confrontation (Power, 1996). Thus, judges have substantive authority to control the evidentiary process, assess audit quality, and ensure that the determination of state losses is not merely administrative but is truly based on actual or potential losses that can be legally and economically accounted for. In the context of state-owned enterprises (SOEs), the issue becomes more complex because SOEs are entities that fall under two legal regimes: on the one hand, they are private legal subjects in business activities, but on the other hand, they use and manage separated state assets, so they can still be categorized as part of state finances according to Law No. 17 of 2003 and Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 (Smith et al., 2014). This complexity is what makes the determination of state losses in SOEs often spark debate, especially regarding whether these losses should be assessed based on corporate financial losses or state financial losses from a public perspective. SEMA No. 2 of 2024 is an important reference that emphasizes that as long as it is related to state finances, law enforcement can still use the results of audits by the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), the inspectorate, and public accountants as a basis for building evidentiary construction (Mulahela et al., 2024).

Therefore, in corruption cases involving state-owned enterprises—whether in cases of abuse of authority, procurement bribery, project mark-ups, embezzlement, or manipulation of financial reports—law enforcement can still calculate state losses by involving all institutions with authority under positive law. The audit results of these institutions serve not only as evidence, but also as a basis for analysis in assessing the modus operandi of corruption, patterns of financial irregularities, and the financial impact on the state and on the performance of state-owned enterprises. Thus, the normative framework affirmed in SEMA No. 2 of 2024 creates legal certainty while strengthening the effectiveness of corruption eradication in the state-owned enterprise sector, where corrupt practices are often carried out in complex ways and involve modern business instruments (Wibowo, 2018). Ultimately, certainty regarding which institution is authorized to conduct audits and declare state losses will encourage a more objective, accountable, and consistent law enforcement process, and avoid differences in interpretation that have often hampered the process of proving in corruption cases.

In a global context, regulating the authority of state institutions to calculate and determine state financial losses is not an issue unique to Indonesia, but rather a concern for many countries facing rampant corruption in public financial management and the activities of state-owned enterprises (SOEs). International instruments such as the 2003 United Nations Convention against Corruption (UNCAC) provide a normative framework that encourages participating countries to ensure the existence of a strong, independent public audit mechanism capable of providing a legitimate basis for enforcing laws against corruption (Borlini, 2024). One key provision of the UNCAC requires participating countries to develop an independent financial audit institution and a state accounting system capable of accurately identifying public losses (Rose-Ackerman & de Mattos Pimenta, 2020). This principle aligns with the position of the Supreme Audit Agency (BPK) in Indonesia as a constitutional institution mandated to determine the existence or absence of state losses.

Several developed countries, such as the United States and the United Kingdom, have implemented a similar model by granting significant authority to public audit institutions as part of a checks and balances mechanism. In the United States, for example, the Government Accountability Office (GAO) serves as the highest auditing body, not only auditing budget expenditures but also supporting the investigation of federal government fraud cases (McDonough et al., 2024). The GAO has the authority to assess the financial impact of fraud, mismanagement, or budget irregularities, and its findings often serve as evidence in investigations and litigation. This pattern demonstrates that the existence of an independent public audit institution is a fundamental element in addressing public sector corruption. In the UK, the National Audit Office (NAO) plays a similar role in detecting state losses and auditing the use of public funds, including the activities of state-owned enterprises like Network Rail and companies receiving government funding. The NAO has extensive authority to access all state financial documents and data, enabling it to identify state losses professionally and objectively (Talbot & Wiggan, 2010). Similar to the practice of the Supreme Audit Agency (BPK), NAO reports do not necessarily legally determine state losses, but serve as a basis for analysis that can be used in investigations, prosecutions, and public policymaking.

Another example can be seen in Singapore, a country with a high reputation for good governance and public integrity. Singapore's Auditor-General's Office (AGO) has broad authority to conduct in-depth audits of government institutions and state-owned enterprises, and its audit findings are often directly followed up by law enforcement agencies such as the Corrupt Practices Investigation Bureau (CPIB) (Gooneratne & Hoque, 2016). Within this system, there is a clear yet integrated division between audit institutions, internal oversight institutions, and law enforcement agencies, so that any findings of state losses can be promptly prosecuted. Singapore's practice demonstrates that the effectiveness of corruption eradication is greatly influenced by inter-institutional coherence, not just the existence of an audit institution alone.

On the other hand, in developing countries, particularly in Southeast Asia, the issue of audit authority and the determination of state losses often generates debate. In the Philippines, for example, the Commission on Audit (COA) has exclusive authority to determine state losses, but COA reports are often treated with excessive scrutiny by law enforcement, leading to criticism that the legal process becomes overly reliant on loss figures alone (Imasa & Campos, 2025). In Malaysia, the National Audit Department (NAD) has broad audit authority, but cases such as the 1MDB scandal demonstrate that public audits can be influenced by political forces if their independence is not guaranteed (Jones, 2020). Lessons from these countries demonstrate that the mere existence of an audit institution is not enough—independence, integrity, and technical audit capabilities are other equally important determinants. Compared with international practice, Indonesia's position through SEMA No. 2 of 2024 actually demonstrates significant normative progress, as it provides certainty regarding the separation of declarative authority (held by the Supreme Audit Agency) and technical-operational audit authority (held by the Financial and Development Supervisory Agency (BPKP), the inspectorate, regional government agencies (SKPD), or public accountants. This affirmation avoids overlapping authority that has often been debated in court, particularly in corruption cases involving state-owned enterprises (BUMN) and other state-owned corporations. This separation aligns with practices in several countries that have a three-tier audit system: external state auditors, internal government auditors, and independent professional auditors (Saraiva, 2023).

This international context provides a theoretical foundation for this study's contributions. First, this study enriches the study of criminal law and public administration in Indonesia by providing a comprehensive analysis of the division of authority between audit institutions in determining state losses, particularly following the issuance of SEMA No. 2 of 2024. In Indonesian legal literature, the issue of audit authority is still relatively new and continues to evolve, thus this study makes a substantive contribution to reducing the interpretive ambiguity often found in corruption investigations and trials (Fenecia et al., 2024). Second, this research contributes to the discourse on SOE governance. Much international literature emphasizes the vulnerability of SOEs to corruption due to a mix of political interests, broad authority, and significant state capital involvement (Akhmouch & Correia, 2016). This research demonstrates that in the Indonesian context, the legal framework for determining state losses in SOEs needs to be understood not only from a corporate perspective, but also from a state financial perspective as stipulated in Law No. 17 of 2003 and the Anti-Corruption Law. This contribution strengthens the argument that SOE management must remain subject to the principle of public accountability, even though they operate within a business mechanism.

Third, this study makes a methodological contribution through the use of a normative-descriptive approach that combines analysis of legislation, judicial practice, and international comparisons. Thus, this study not only examines legal norms textually but also offers an empirical perspective on the implementation of state loss calculations in various jurisdictions. This approach aligns with global trends in governance studies that emphasize the integration of legal analysis and public policy (Fukuyama, 2016). Fourth, this research provides practical contributions to law enforcement, as it can serve as a reference in determining the appropriate institution to calculate state losses, particularly when dealing with corruption cases in state-owned enterprises (SOEs) involving complex financial structures, cross-sector transactions, and political influence. By improving understanding of the role of each audit institution and the limits of its authority, this research has the potential to improve the effectiveness of anti-corruption law enforcement. Fifth, this research contributes to strengthening Indonesia's legal system by encouraging harmonization between national provisions and international standards, particularly the UNCAC. In the era of globalization, eradicating corruption is not only a domestic issue, but also a crucial factor in enhancing foreign investor confidence, government credibility, and Indonesia's standing globally (Lukito, 2015). By clarifying the mechanism for calculating state losses, Indonesia can demonstrate a serious commitment to building transparent, accountable state financial governance that aligns with international best practices.

Thus, the international context provides a comparison that strengthens the argument that a strong and integrated audit system is a key pillar in eradicating corruption. This research contributes by offering an analytical framework that can be used to strengthen corruption law enforcement in Indonesia, improve the accuracy of calculating state losses, and provide legal certainty for law enforcement, state-owned enterprises, and the public. Ultimately, this research not only addresses legal issues but also provides an intellectual foundation for legal reform oriented towards improving sustainable state governance.

CONCLUSION

This study confirms that the implementation of Law No. 1 of 2025 concerning State-Owned Enterprises does not reduce the scope of enforcement of corruption crimes, although it creates a number of normative tensions with the established anti-corruption legal regime. The research question regarding how corruption eradication efforts are carried out after the enactment of the State-Owned Enterprise Law is answered through three main findings: first, the change in the definition of "state administrators" does not eliminate the possibility of criminalizing directors, commissioners, or employees of State-Owned Enterprises, because the principle of De Autonomie van het Materiële Strafrecht still places them as legal subjects based on the element of "every person" in the Corruption Law and Article 614 of the National Criminal Code. Second, the element of "unlawful act" can be fulfilled when there is a violation of Article 9E and Article 9F of the State-Owned Enterprise Law, because non-compliance with the principles of the Business Judgment Rule (BJR) can be qualified as an act that violates the criminal law on corruption. Third, the change in the status of State-Owned Enterprise assets as private assets does not eliminate the character of state finances, as confirmed by the Constitutional Court, so that losses of State-Owned Enterprises are still categorized as state financial losses.

Theoretically, this research enriches the discourse on the relationship between corporate law and public criminal law, particularly regarding the autonomy of criminal law in dealing with the administrative privatization of SOEs. This finding shows that the new codification that positions SOEs as private legal entities cannot automatically be used as a basis for avoiding the corruption regime, because criminal law still has interpretive autonomy that safeguards the public interest. Practically, this research provides certainty for law enforcers that corruption eradication instruments can still be applied, including through the utilization of audits by the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), the inspectorate, and public accountants—as emphasized in SEMA No. 2 of 2024—so that there is no vacuum of authority in calculating state losses in SOEs. This research also emphasizes the need for integrated internal supervision of SOEs to align with the principles of good corporate governance and comply with public accountability standards.

However, this study has limitations, primarily due to its reliance on a normative approach with library materials, thus failing to provide empirical verification of the implementation of the State-Owned Enterprises Law in investigative and judicial practice. The absence of field studies on the effectiveness of BJR in corruption litigation is also another limitation that needs to be considered. Therefore, further research is recommended to employ a socio-legal approach and comparative analysis, particularly by examining the practices of other countries in enforcing corruption laws in state-owned enterprises, as well as examining the dynamics of coordination between audit institutions in the context of actual cases. A more in-depth study of the role of BPI Danantara and its implications for SOE oversight is also needed to clarify the relationship between administrative privatization policies and public accountability.

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