AL RISALAH: Jurnal Ilmu Syariah dan Hukum

VOLUME 25 NO 2, NOVEMBER 2025
P-ISSN: 2252-8334 / E-ISSN: 2550-0309
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https://doi.org/10.24252/al-risalah.vi.62092

The Concept of Criminal Liability of State-Owned Enterprises in The National Criminal Code and State-Owned Enterprises Law

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Article history:
Submission: 17 October 2025
Received in revised form: 14 October 2025
Acceptance date: 24 Nopember 2025
Available online: 30 Nopember 2025

Keywords:
SOEs; National Criminal Code; Corporate Criminal Liability..

How to Cite:
Amri, U., Syafruddin, A. U. F., Tombi, J. T. N. H., & Luthfan, G. F. F. (2025). The Concept of Criminal Liability of State-Owned Enterprises in The National Criminal Code and State-Owned Enterprises Law. Al-Risalah Jurnal Ilmu Syariah Dan Hukum. https://doi.org/10.24252/al-risalah.vi.62092

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Abstract

Following the enactment of the latest State-Owned Enterprises Law, various state-owned enterprises remain as accountable corporate entities, particularly with the implementation of the National Criminal Code, which requires harmonization from both a normative perspective and in terms of accountability. This study aims to analyse the criminal liability of SOEs under the National Criminal Code and the harmonisation of this concept with Law No. 1 of 2025. The research employs a normative approach using both a conceptual and a legislative method. The legal materials are sourced from primary and secondary legal materials, analyzed using qualitative prescriptive analysis. The results show that 1) State-owned enterprises can be held criminally liable under Article 45 of the National Criminal Code, which categorizes state-owned enterprises as entities that can be held criminally liable. The determination of liability must be based on the degree of corporate fault under the National Criminal Code, as seen from the aspect of internal prevention, 2) SOEs, as entities that control the livelihoods of many people, should also consider restorative aspects, where the purpose of sanctions is not only to provide a deterrent effect, but also to encourage structural improvements by taking into account the principles of effectiveness and efficiency.

INTRODUCTION

Economic crimes are essentially activities carried out by individuals or groups who are professionally involved in various aspects of economic activity, such as production, distribution, and consumption.[1] The complexity of economic crimes has increased in line with rapid technological developments and globalization, which have opened up opportunities for perpetrators to exploit legal loopholes in various jurisdictions.[2] This places corporations in a central position, especially in law. A corporation is a legal entity. The body it creates consists of *a corpus,* which is its physical structure, and the depth of the law incorporates an *animus* element that gives the body personality. Because the legal body is a creation of the law, except for its creator, its death is also determined by the law.[3]

On the one hand, corporations are instruments for achieving economic progress, but on the other hand, they also contribute to economic crimes. Currently, in theory and practice, there is a rapidly growing understanding that corporate actors have a significant impact, both positive and negative.[4] The growth of corporate business activities, which have reached millions to billions of dollars, has given corporations extraordinary economic, social, and political power. This means that these corporate giants can control the economic, social, and political life of a country.[5] This dimension is reflected in forms such as *defrauding stockholders, the public, and the government, endangering public welfare and employees, and illegally intervening in the political process*.[6]

Economic crimes have placed corporations in a central position, resulting in their criminal liability and subjecting them to criminal law. The first indications of the need for criminal liability for legal entities emerged in the early 18th century, following the collapse of the *South Sea Company*, one of the largest companies at the time, and the subsequent financial crisis that resulted in enormous economic losses. These events contributed to public awareness that corporate actions can have significant and long-

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[1] Diaz Jorge Pratamaa, Nuraliah Alib, and Satriya Nugraha, "Studi Tentang Implikasi Pertanggungjawaban Pidana Korporasi Sebagai Pelaku Kejahatan Ekonomi," *Morality: Jurnal Ilmu Hukum* 11, no. 1 (2025), https://doi.org/10.52947/morality.v11i1.937.

[2] Sudrajat and Hudi Yusuf, "Sistem Peradilan Tindak Pidana Ekonomi: Rekonstruksi Mekanisme Penegakan Hukum Dalam Menangani Kejahatan Ekonomi Terorisme Finansial Dan Korporasi Di Era Globalisasi," *JIIC: Jurnal Intelek Insan Cendikia* 2, no. 1 (2025).

[3] Berlian Marpaung, 'The Application of Criminal Offenses Against Corporations in Relation to the NEW Criminal Code' (2024) 4 Journal of Justice Reasoning 141.

[4] Olena Uvarova, 'The Rule of Law and Corporate Actors: Measuring Influence' (2024) 17 Hague Journal on the Rule of Law 1 <https://doi.org/10.1007/s40803-024-00242-3>.

[5]Muladi and Dwija Priyatno, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Prenadamedia Group, 2015).

[6]Mahrus Ali, *Asas-Asas Hukum Pidana Korporasi* (Jakarta: Rajagrafindo Persada, 2015).

lasting consequences and that merely punishing individuals is insufficient to provide adequate criminal law protection.[7]

Internationally, three divisions can be observed in relation to corporate criminal law. There are countries with independent corporate criminal law and countries without it, where only individuals who commit crimes can be prosecuted. The first group includes countries with legal systems based on *common law*, such as the United States or the United Kingdom. Meanwhile, the second group traditionally includes countries with *civil law* systems. However, many of these countries with codified legal traditions have introduced corporate criminal law in recent years.[8]

Corporate criminal liability in Indonesia continues to undergo dynamic reforms. In its development, corporate entities can be recognised as subjects of criminal law, capable of committing criminal acts, including corruption. In reality, the practice of corruption involves not only individuals or natural persons but also often includes cases involving limited liability companies, which are classified as legal entities under the Limited Liability Company Law.[9] Criminal liability in Indonesian criminal law is based on the principle of *geen straf zonder schuld,* which means no punishment without guilt. This means that criminal liability for a person's actions must be based on *schuld/mens rea*, along with the ability to be held responsible and the absence of exculpatory reasons.[10]

The increasingly dynamic development of criminal law requires Indonesia to reformulate its criminal law through the enactment of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the National Criminal Code). Several updates in it include the recognition of corporations as legal entities that can be prosecuted. Article 45 of the National Criminal Code stipulates that

Article 45

1. Corporations are subjects of criminal acts.
2. Corporations as referred to in paragraph (1) include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regionally-owned enterprises, or entities deemed equivalent thereto, as well as

[7]Igor Vuletic, "Corporate Criminal Liability: An Overview of the Croatian Model after 20 Years of Practice †," *Laws* 12, no. 2 (2023), https://doi.org/10.3390/laws12020027.
[8]Robin Christmann and Dennis Klein, "Game Theory, Compliance, and Corporate Criminal Liability: Insights from a Three-Player Inspection Game," *Decision Analytics Journal* 11, no. February (2024): 100431, https://doi.org/10.1016/j.dajour.2024.100431.
[9]Hasbullah F Sjawie, *Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi* (Jakarta: Prenadamedia Group, 2015).
[10]Hafrida, Retno Kusniati, and Yulia Monita, "Imprisonment as a Criminal Sanction against Corporations in Forestry Crimes: How Is It Possible?," *Hasanuddin Law Review* 8, no. 2 (2022): 139–49, https://doi.org/10.20956/halrev.v8i2.3187.

associations, whether incorporated or unincorporated, business entities in the form of firms, limited partnerships, or entities deemed equivalent thereto in accordance with the provisions of laws and regulations.

Based on the provisions of Article 45 above, the debate over whether or not corporations can be prosecuted as legal entities has been adequately answered. The definition of a corporation in the National Criminal Code is broad. Corporations can take the form of legal entities or non-legal entities.[11]

The legal issue that arose later was related to the criminalization of state-owned enterprises (SOEs) as legal entities. SOEs embody the State's entrepreneurial role in overseeing sectors that directly impact the welfare of a large number of individuals. Therefore, the growth and progress of SOEs have emerged as important determinants for the long-term sustainability of national development, which aims to promote the prosperity of society as a whole.[12] Previously, Law No. 19 of 2003 on State-Owned Enterprises stipulated that SOEs are business entities whose capital is wholly or primarily owned by the State through direct participation originating from separated State assets. This means that in terms of capital participation, SOEs can be equated with State entities, allowing losses incurred by SOEs to be categorized as State losses.

The ratification of Law Number 1 of 2025, which amends Law Number 19 of 2003 regarding State-Owned Enterprises (hereinafter referred to as the SOE Law), has altered the general form of SOE capital participation. Article 4A paragraph (5) of the SOE Law has confirmed that "State capital in SOEs originating from capital participation, both in the context of establishing SOEs, is the property of SOEs and is the responsibility of SOEs," meaning that there has been a transformation in the legal status of State finances in capital participation in SOEs. This reformulation has addressed the separation of SOEs and the State as entities, while also separating State assets and SOE assets. Previously, based on the doctrine of corporate criminal liability, it was difficult to prosecute SOEs as subjects of criminal law. This was because their entities and assets were integrated with the State, leading to confusion about the imposition of fines and the recovery of State financial losses from SOEs.

State-owned enterprises (SOEs) are the primary channel for the State to fulfil its role as an economic actor. Ownership of SOEs is beneficial in various sectors, including the economy, politics, and society. The same applies to the costs that must be borne in the event of mismanagement or abuse. Currently, SOEs are concentrated in sectors that are

[11]Sutan Remi Sjahdeini, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Grafiti, 2007).
[12]Gde Made Swardhana and Seguito Monteiro, "Legal Policy of State Financial Losses Arrangement in a State-Owned Enterprise," *Bestuur* 11, no. 1 (2023): 171–90, https://doi.org/10.20961/bestuur.v11i1.61326.

of strategic importance to the State and society, including development. The increasingly prominent presence of SOEs in the global market has been marked by several major scandals and evidence of SOEs' vulnerability to corruption. The threat of corruption and malpractice within and around SOEs is real.[13]

Based on the data collected, the 119 corruption cases within SOEs caused State losses of up to IDR 47.9 trillion. Bribery worth up to IDR 106.9 billion and money laundering worth IDR 57.86 billion were also found. Based on ICW's monitoring, considering the State losses incurred from 2016 to 2021, the State has lost at least Rp 47.92 trillion. These losses were caused by at least 119 corruption cases that have been investigated by law enforcement officials within SOEs.[14]

The cases involving state-owned enterprises include corruption related to *LNG* procurement, resulting in State losses of around Rp. 2.1 trillion at Pertamina; bribery in the procurement of *Rolls-Royce* engines at Garuda Indonesia; a case of corruption in financial management and investment, with State losses of Rp. 22.78 trillion at Asabri is a case of corruption in investment fund management, resulting in State losses of Rp. 16.8 trillion at Jiwasraya, and a case of tin commodity trading in the IUP area, with State losses estimated at Rp. 271 trillion at PT. Timah. [15]

Corruption in Indonesia is currently becoming increasingly structured and methodical. There are many cases of corruption involving state-owned enterprises in Indonesia at present.[16] *Indonesia Corruption Watch* (ICW) notes that between 2004 and 2015 alone, the State lost Rp 5.714 trillion from illegal tin smuggling due to unpaid royalties and corporate income tax. On average, over the 12 years, the State lost 32,473 tons of illegal tin per year.[17] This adds to the long list of losses caused by corruption in state-owned enterprises. Corruption not only undermines public trust in government institutions but also hinders economic growth and unity within society.[18] Because the system is already structured, corruption can continue without constant regulation, as if

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[13] OECD, *State-Owned Enterprises and Corruption: What Are the Risks and What Can Be Done?* (Paris: OECD Publisher, 2018), https://doi.org/10.1787/9789264303058-en.
[14]Indonesian Corruption Watch, "Kasus Korupsi Di Lingkungan BUMN: Marak Dan Rawan Pada Sektor Finansial," 2022.
[15] Compiled from various sources.
[16] Asepte Gaulle Ginting and Elwi Danil, "Duty Of Civilians Security Agencies That Suffer Losses Due To Civil Corruption," 2024, 1–17.
[17]Indonesian Corruption Watch, "Kasus Korupsi PT Timah: Potret Buruk Tata Kelola Sektor Ekstraktif," 2024.
[18]Abhishek Thommandru, Fazilov Farkhod Maratovich, and Niyozova Salomat Saparovna, "Fortifying Uzbekistan's Integrity Landscape: Harnessing India's Tech-Driven Anti-Corruption Strategies," *Sustainable Futures* 7, no. March (2024): 100206, https://doi.org/10.1016/j.sftr.2024.100206.

it were part of how they operate.[19] As a result, corporations as economic actors with great power can continue their destructive practices without any meaningful legal consequences.[20]

Changes to criminal law relating to corruption in State-Owned Enterprises (SOEs) following the revision of Law No. 1 of 2025, particularly Article 9G, which states that the Board of Directors, Board of Commissioners, and Supervisory Board of SOEs are no longer State administrators. This change is considered to raise concerns about the potential for impunity for SOE officials because it weakens the legitimacy of enforcement by the Corruption Eradication Commission (KPK) and contradicts the principles of transparency, accountability, and the spirit of corruption eradication reform. The author suggests that this exclusive norm needs to be reevaluated so that criminal law reforms can truly guarantee legal certainty and justice in the governance of SOEs.[21]

It is important to regulate corporate legal liability, including that of state-owned enterprises (SOEs). Although SOEs have legal entity status and can be held criminally liable, in practice, it is still rare for SOEs to be directly convicted of a crime. Therefore, more concrete regulations and harmonization between laws and regulations are needed to ensure legal certainty, justice, and effective law enforcement, especially in cases of corruption or serious violations committed by SOEs.[22]

Following the enactment of the latest SOE Law, various SOEs remain as corporate entities that can be held accountable. As explained earlier, the assets and status of SOEs are now considered separate from the state, which has led to an in-depth study of the concept of accountability and the model of imposing responsibility on SOEs. Moreover, the enactment of the National Criminal Code in January 2026 requires harmonization from both a normative perspective and in terms of the form of accountability.

Based on previous research by Febriyanto, there are still no clear regulations regarding the settlement of state compensation claims arising in state-owned enterprises (BUMN/Persero), and the directors of BUMN/Persero also have administrative and

[19]J. R. Nicolás-Carlock and I. Luna-Pla, "Organized Crime Behavior of Shell-Company Networks in Procurement: Prevention Insights for Policy and Reform," *Trends in Organized Crime*, 2023, 412–28, https://doi.org/10.1007/s12117-023-09499-w.
[20]Gilang Cahya Buana et al., "Skandal Suap Hakim Kasus Ekspor CPO : Saatnya Korporasi Bertanggung Jawab" 4 (2025).
[21]Firwanda Sandi Pradipta and Ermania Widjajanti, "Pembaharuan Hukum Pidana Korupsi Dalam Pengelolaan BUMN Pasca Revisi Uu No 1 Tahun 2025" 4, no. 2 (2025): 80–90.
[22]Eliksander Siagian et al., "Urgensi Pengaturan Pertanggungjawaban Pidana Perseroan Terbatas Dalam Kegiatan Bisnisnya," *Locus Journal of Academic Literature Review* 2, no. 7 (2023): 585–97.

criminal liability.[23] In addition, research on the harmonization of corporate law and criminal law aims to create legal certainty, ensure the continuity of BUMN business, and maintain the integrity of the national legal system.[24]

This article contributes to the harmonization of the National Criminal Code and the latest State-Owned Enterprises Law, focusing on the accountability of state-owned enterprises as corporate legal entities, corporate criminal sanctions, and the separation of assets and responsibilities between state-owned enterprises and the State. This study aims to analyse the criminal liability of SOEs in the National Criminal Code and examine the harmonisation of this concept between the National Criminal Code and Law No. 1 of 2025. This study aims to analyse the criminal liability of SOEs under the National Criminal Code and the harmonisation of this concept with Law No. 1 of 2025.

METHOD

The type of research used in this article is normative research using a legislative approach, a case approach, a conceptual approach, and a philosophical approach. The type of data used is secondary data consisting of primary legal materials and secondary legal materials. Primary legal materials are sourced from Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) and Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises. The method of collecting legal materials uses descriptive techniques through documentation studies (library research). The determination of legal materials is based on doctrinal analysis based on concepts related to the National Criminal Code and the Punishment of State-Owned Enterprises. Documentation studies were collected from legislation, books, journals, legal dictionaries, and other relevant legal materials. The legal materials collected will be analyzed using qualitative descriptive methods. This research is non-numerical, whereby the legal materials collected will be analyzed in such a way and presented using descriptive methods to elaborate on general concepts in a more specific and in-depth manner.

[23] Febriyanto and Nynda Fatmawati, "Liability For Corruption Crimes For State Financial Losses That Have Been Separated From State-Owned Enterprises (SOES)," *Jurnal Cermin: Jurnal Penelitian* 8, no. 2 (2024).
[24] Sayit Bandung Bondowoso and Dian Afrilia, "Pertanggungjawaban Direksi BUMN Terhadap Kerugian Negara Berdasarkan Regulasi Pemerintahan SektorPerusahaan Dan Pidana," *Jurnal Ilmu Hukum Lex Scricta* 4, no. 1 (2025).

DISCUSSION AND ANALYSIS

1. Criminal Liability Of State-Owned Enterprises In The National Criminal Code

a. Criminal Liability of Corporations

The emergence of corporations as perpetrators of criminal acts has changed the criminal justice system, which has traditionally been oriented towards individuals. The entry of corporations into the fabric of human life has had consequences in various areas. As entities that contribute significantly to economic growth and national and global development, corporations sometimes engage in acts that harm individuals, communities, or countries. This aligns with the fact that corporations have long been involved in various types of crimes.[25] From several cases, it can be seen that state-owned enterprises play an important role on the one hand, but have great destructive power on the other. The table below shows the losses caused by criminal acts committed by state-owned enterprises.

No	Name of SOE	Case Position (Case Summary)	Estimated State Losses	Status/Important Decision (Until 2024-2025)
1	PT Asuransi Jiwasraya (Persero)	Fraudulent mismanagement of finances and investment funds (stocks & mutual funds).	Approximately IDR 16.8 trillion	Final. Life sentences for several key defendants. Assets confiscated by the state.
2	PT ASABRI (Persero)	Arrangement of stock and mutual fund transactions in ASABRI's investment management (similar to the Jiwasraya pattern).	Approximately Rp 22.7 trillion	Final and binding. Criminal prison sentences (including a zero sentence for Heru Hidayat, who had already been sentenced to life imprisonment in the Jiwasraya case) and trillions of rupiah in compensation.

[25]Muhammad Iftar Aryaputra and Ani Triwati, "Arah Kebijakan Sistem Pemidanaan Bagi Korporasi," *Jurnal Masalah-Masalah Hukum* 52, no. 2 (2023): 208–16.

3	PT Timah Tbk	Trade in tin commodities in the Mining Business License (IUP) area of PT Timah (2015-2022), including illegal mining accommodations.	Approximately Rp 300 trillion (including ecological/environmental losses)	Trial/Appeal Process. This case has attracted attention due to the large amount of environmental damage included in the indictment.
4	PT Garuda Indonesia (Persero) Tbk	Bribery in the procurement of aircraft (Bombardier CRJ-1000, ATR 72-600) and Rolls-Royce engines, as well as money laundering.	Approximately IDR 8.8 trillion (and foreign currency)	Verdict. Emirsyah Satar was sentenced to prison and fined. The case continues to develop in relation to the procurement.
5	PT Waskita Karya (Persero) Tbk	Misuse of financing facilities from several banks and disbursement of fictitious Supply Chain Financing (SCF) funds.	Approximately Rp 2.5 trillion	Verdict. The defendant was sentenced to prison and ordered to pay compensation.
6	PT Pertamina (Persero)	Corruption in the procurement of Liquefied Natural Gas (LNG) from Corpus Christi Liquefaction LLC, which was deemed non- t with procedures and caused losses to the state.	Approximately USD 113 million (around Rp 1.7 trillion)	Verdict. Sentenced to prison (but frequently filed legal appeals/appeals related to the defense of the Business Judgment Rule).
7	PT Amarta	Fictitious project in which the company received	± IDR 46 billion	Verdict. Found guilty of fictitious project corruption

	Karya (Persero)	payment for fictitious subcontracted work.		and money laundering.
8	PT Antam Tbk	Case of gold trading manipulation (fictitious discounts) and transaction engineering (Loco London) with private entrepreneurs.	Approximately Rp 1.1 trillion (equivalent to the weight of gold)	Legal Process. Involved a civil dispute that later led to a criminal investigation into corruption by the Attorney General's Office.

Corporations as subjects of criminal law can be equated with humans because they have rights and obligations granted by law. Therefore, the capabilities of corporations are also equated with those of humans, as seen within them.[26] Regarding the criminal liability of corporations, Article 48 of the National Criminal Code stipulates that:

Criminal acts by corporations, as referred to in Articles 46 and 47, are punishable if:

1. they fall within the scope of business or activities as specified in the articles of association or other provisions applicable to the corporation;
2. they benefit the corporation unlawfully;
3. It is accepted as corporate policy.
4. the corporation fails to take the necessary steps to prevent the crime, prevent greater damage, and ensure compliance with applicable legal provisions in order to avoid the occurrence of the criminal offense; and/or
5. The corporation allows the criminal act to occur.

Legal responsibility is a key concept in legal regulations. Legal subjects must be aware that if they violate the law, they will face penalties prescribed by law and enforced by the State, also known as sanctions. In general, textbooks on legal theory conclude that legal responsibility consists of the obligation to bear sanctions in the event of a violation of legal obligations. Legal responsibility is merely a consequence of violating legal norms; if it is not sufficiently normalized by law, it is difficult to impose sanctions.[27]

[26] Ujang Charda S., Fernando Manggala Yudha S, Syaefa Wahyuni,
[27]Pavel Kotlán et al., "Criminal Compliance Program as a Tool for Criminal Liability Exculpation of Legal Persons in the Czech Republic," *Laws* 12, no. 2 (2023): 1–15, https://doi.org/10.3390/laws12020020.

Prohibited acts *(actus reus)* committed by individuals, including the intent to commit such acts *(mens rea)*, can automatically be attributed to the company if the individual acted in the course of their duties as an employee and was therefore within the scope of their responsibilities and partly in the interests of the company.[28]

In the context of corporate criminal liability, it is important to examine the fulfilment of the elements *of actus reus* and *mens rea*, as these are fundamental principles in criminal law. Criminal law generally adopts a monistic view, meaning that an act can only be punished if it meets two conditions: it violates applicable legal norms. It is committed by a legal subject who is at fault (*schuld)* and can be held legally responsible.

This monistic view asserts that there can be no criminal punishment without fault *(geen straf zonder schuld)*, a principle that forms the fundamental basis of the modern criminal justice system. This principle requires a causal link between the wrongful act committed by the perpetrator and the perpetrator's mental State. Fault is not merely the objectivity of the act but also the subjectivity of the perpetrator, so that the act can be morally and legally condemned as the perpetrator's own act. *The Hoge Raad* limits the definition of fault to *dolus* (intent) and *culpa* (negligence). Thus, it can be concluded that fault as a legal element must always be the basis for the imposition of criminal sanctions.

In the context of corporations as legal subjects in criminal acts, the application of the principle of fault remains valid. Corporations as legal entities cannot act physically, so all corporate actions must be carried out through humans as their organs or administrators. Therefore, in order to determine the existence of corporate fault, it must first be examined whether the administrators or persons acting on behalf of the corporation have *dolus* or *culpa.* Article 49 of the National Criminal Code stipulates that:

Liability for Criminal Acts by Corporations, as referred to in Article 48, shall be imposed on the corporation, its functional officers, those who give orders, those who exercise control, and/or the beneficial owners of the corporation.

In legal theory, this can be approached through several approaches, such as identification theory and functional perpetrator theory, which explain how individual errors can be transferred or attributed to corporations. Errors committed by corporate officers can be transferred and become errors of the corporation itself. To determine the existence of corporate *dolus* or *culpa*, it is necessary to analyze whether the actions of the officers reflect company policy or the psychological climate (*psychisch klimaat)* that prevails within the corporation.

[28] Christmann and Klein, "Game Theory, Compliance, and Corporate Criminal Liability: Insights from a Three-Player Inspection Game."

The application *of strict liability* to corporations in the process of proving criminal acts means that there is no need to prove fault, whether intentional or negligent, or the corporation's motive in committing the criminal act, as stipulated in the criminal provisions.[29]

There are two major theories related to corporate criminal liability, namely *the agency theory* and the *identification theory*. The first theory, also known as *vicarious liability*, is based on the principle that a corporate employee is an agent of the corporation. A company is vicariously liable for violations that are subject to *strict liability* and committed by its employees. The courts have considered and enforced several instances of corporate liability for legislative violations when there is evidence that its employees committed the actions causing the company to breach its obligations. In determining corporate liability, this theory does not distinguish between the actions or omissions of ordinary employees and those of *top managers*.[30]

Identification theory assumes that corporate misconduct arises from the actions of individuals in managerial or decision-making positions (as the "alter ego" of the corporation). In contrast, aggregation theory combines the actions and knowledge of several individuals within the corporation, resulting in a form of collective misconduct. However, in judicial practice in Indonesia, there is no consistency in the use of these theories by prosecutors or judges, resulting in evidence that is often vague and unsystematic.[31]

Thus, in the concept of corporate legal liability, the fault of an individual *(natuurlijk persoon)* acting on behalf of a corporation can be construed as the fault of the corporation *(rechtspersoon)* through a mechanism of liability *(toerekeningsconstructie)*. This construction provides a legal basis for the State to hold corporations criminally liable as separate legal entities.

b. After the enactment of the State-Owned Enterprises Law

Article 3H paragraph (2) of the State-Owned Enterprises Law states that the profits and losses of state-owned enterprises are the profits or losses of the state-owned enterprises themselves, not the State. This provision affirms the principle of legal

[29] Suriansyah, 'The Principle of Strict Liability in Dispute Resolution' (2025) 06 Journal of Narrative Science 234.

[30]Iwan Kurniawan, "Kriteria Untuk Menenentukan Bentuk-Bentuk Tindak Pidana Dan Pertanggungjawaban Pidana Dari Korporasi Yang Melakukan Tindak Pidana Korupsi," *UNES Law Review* 5, no. 3 (2023): 1285–1306, https://doi.org/10.31933/unesrev.v5i3.444.

[31]Muhammad Ilham Ismaidar, "Implementasi Pertanggungjawaban Pidana Korporasi : Analisis Efektivitas Pasal 20 UU Pemberantasan Tindak Pidana Korupsi Ilham Perluasan Subjek Hukum Pidana Dari Individu (Natural Person) Ke Entitas Badan Hukum (Legal Teori Identifikasi (Identification," *Jurnal Hukum Administrasi Publik*, 2025.

separation between SOEs and the State as the owner of capital, so that SOEs have corporate responsibility for the results of their management. Thus, even though SOE capital comes from the State, in corporate governance, any financial risks that arise are the sole responsibility of SOEs as autonomous legal entities. This principle supports the strengthening *of corporate accountability* and maintains the independence of SOEs in managing their businesses without direct intervention from the State. This also provides legal protection to SOEs, ensuring they are not burdened by the State's fiscal obligations, while maintaining transparency and accountability in their financial reports.

Article 3X paragraph (1) emphasizes that the organs and employees of the Agency, which is the managing institution of state-owned enterprises, are not State administrators. This provision is important to distinguish the legal status of the Agency's organs from that of government bureaucrats, ensuring they act professionally in accordance with the principles *of good corporate governance*. By excluding the Agency's organs from the category of State administrators, the legal relationship between the Agency and the State is based on corporate law rather than administrative law. This also has implications for the legal accountability system, whereby the Agency's organs cannot be held administratively liable by the State, but must meet corporate accountability standards as private company management. Thus, this Article serves as the foundation for professionalism and independence in the management of SOEs within the context of the national business ecosystem.

Article 4B states that SOE capital originating from State capital participation is part of the SOE's assets that belong to and are the responsibility of the SOE. This separation reinforces the principle of legality that even though the initial source of capital comes from the State, once it is deposited as SOE capital, the assets become the property of the SOE as an autonomous legal entity. In other words, the State has no direct claim on SOE assets, as management and accountability are entirely the responsibility of the SOE. Consequently, SOEs are required to manage their assets efficiently and transparently to increase the company's value and provide sustainable benefits for both the State and the community. This provision also protects SOEs from possible political intervention or discretionary policies from the government in the daily management of the company.

Article 9G states that members of the Board of Directors, Board of Commissioners, and Supervisory Board of SOEs are not State administrators. This provision further clarifies the distinction between corporate functions and State administrative functions, ensuring that SOE officials are not categorized as government officials subject to State administrative law. Instead, they are placed within a corporate legal framework that requires professionalism, objectivity, and managerial responsibility in accordance with

the principles of good corporate governance. Thus, this article provides legal certainty that SOE managers cannot be subject to State administrative sanctions; instead, they are responsible for violations of corporate law or the company's articles of association. Furthermore, this also supports the strengthening of the independence of SOE organs in making strategic decisions without political pressure or short-term government interests.

The prosecution of corporate legal entities in corruption cases, particularly those involving state-owned enterprises (SOEs), presents legal challenges due to the principle of separation between the State and SOEs as autonomous legal entities. Although SOEs' capital comes from the State, the SOE Law explicitly states in Article 3H paragraph (2) that the profits and losses of SOEs are the responsibility of the SOEs themselves, not the State. This has implications for the criminal liability system, whereby SOEs as corporations can be held liable for criminal acts committed by their organs or officials in the context of company management. Thus, the prosecution of SOEs in the form of fines or obligations to return State losses remains possible as long as the acts are committed in the capacity of the corporation, not the State as the owner.

Within the framework of criminal procedure law, fines on state-owned enterprises as corporate legal entities can be imposed by considering their financial capacity and the principle of proportionality in sanctions. Article 9G reaffirms the formal legal principle that members of the Board of Directors, Board of Commissioners, and Supervisory Board of SOEs are not State administrators, so that the criminal liability system is more directed at corporations as legal entities than at the State apparatus. In other words, even though the State owns shares in SOEs, the prosecution and punishment of SOEs must be carried out in the same manner as private corporations, including in terms of the payment of fines as a consequence of a court decision. This principle is also supported by Article 4B, which emphasizes that State capital, once deposited, becomes the property of SOEs, making its management entirely the responsibility of SOEs as corporate entities.

The recovery of State financial losses from criminal acts of corruption by state-owned enterprises is possible within the framework of positive law, provided these actions are conducted in a corporate context and do not violate the principle of separation of entities. Article 87 paragraph (5) provides the philosophical basis that SOEs must be professional and globally competitive, so that they must act in accordance with good corporate governance standards, including in terms of legal accountability. Thus, if there is a loss to the State due to corruption, embezzlement, or misappropriation committed by an SOE organ, the recovery can be charged to the SOE, as it is the entity that manages the separated State assets. This is also relevant to Article 62H, which regulates write-offs and

debt write-offs, requiring transparency and accountability in the management of SOE assets.

The relationship between the separation of entities and the responsibility for paying fines or reimbursing State losses becomes increasingly complex when SOEs experience financial difficulties or even bankruptcy. However, Article 3X paragraph (1) emphasizes that the organs of the Agency are not State administrators, so the legal accountability system remains applicable within the framework of corporate law. In practice, the government can use the restructuring mechanism as stipulated in Article 72A to maintain the survival of SOEs while ensuring the fulfillment of their legal obligations, including the payment of fines or reimbursement of State losses. Therefore, even though the capital of SOEs comes from the State, the mechanism for fulfilling legal obligations is still carried out in a corporate capacity, while maintaining independence and the principles *of good corporate governance.*

The separation of entities between SOEs and the State is an important foundation in the modern economic legal system, supporting corporate accountability without direct intervention from the State as the owner of capital. Article 3H paragraph (2) and Article 4B together form the legal basis that SOEs are independent legal entities that have corporate obligations, including in terms of criminal liability. Thus, the imposition of fines and the obligation to reimburse State losses on SOEs remain valid as long as these actions are carried out within the context of SOE operations, not as the State acting as an administrative entity. This also strengthens the legitimacy of SOEs as competitive, transparent, and legally responsible economic actors, in line with the principles of economic democracy mandated in Article 1A paragraph (1).

c. Separation of State Assets/Finances

Conceptually, State financial management and the financial management of State-Owned Enterprises (SOEs) are separate entities. SOEs were established to manage the State's production sectors, with the ultimate goal of improving the State's economy. Profits and losses are risks inherent in every company, including SOEs. Losses incurred by SOEs are considered corporate risks.[32]

The separation between State assets and finances is an important principle in the management of state-owned enterprises, especially in the context of corporate law. This principle is rooted in the doctrine of legal separation, which stipulates that the legal entity of a company has a separate identity from its capital owners. In the case of state-owned

[32]Swardhana and Monteiro, "Legal Policy of State Financial Losses Arrangement in a State-Owned Enterprise."

enterprises, even though the State is the primary capital owner, the company is still considered a legally independent entity. This allows SOEs to have the same rights and obligations as private companies, including the ability to own assets, enter into contracts, and bear business risks independently. This separation is reinforced by the provisions of Law No. 1 of 2025, which grants legal entity status to Persero and Perum, enabling them to carry out their business activities with a certain degree of autonomy.

In corporate law theory, this principle of separation is known as *the separate legal entity*, which forms the basis for *limited liability* protection. Based on this principle, the State as a shareholder is only liable for the value of its investment. It is not obliged to bear legal obligations or financial losses that exceed the capital that has been paid up. This concept is highly relevant in the management of SOEs because it ensures that the company's operational risks do not directly become a financial burden on the State. Thus, the government is not personally burdened with the obligations of SOEs, even though it still has responsibilities as an owner within the limits set by law. The provisions of Article 3G paragraph (1) of Law Number 1 of 2025 emphasize that capital owners are only liable for the value of their paid-up capital.

In addition, the separation of State assets and finances is also closely related to the principle of *good corporate governance*. The *principal-agent* theory is relevant in the relationship between the State, as the owner (principal), and the management of state-owned enterprises, as agents. The State, as the principal, mandates the board of directors and the board of commissioners/supervisory board to manage the company to achieve strategic objectives and serve the public interest. However, in order to prevent conflicts of interest or abuse of authority, there must be a strong and transparent oversight system. This is reflected in the articles of Law Number 1/2025, which regulate the authority of the Minister as a shareholder, including the appointment and dismissal of company organs and the evaluation of management performance.

Within the corporate legal framework, this principle of separation also supports macroeconomic stability and increases investor confidence. With the clarity that SOE assets are separate from State assets, SOEs can more easily access capital markets and obtain funding from third parties. This also opens up opportunities for privatization or the sale of State shares to the private sector, as stipulated in Article 76 of Law Number 1 of 2025 concerning Privatization. This process not only improves the operational efficiency of SOEs but also encourages healthy competition in the market and reduces the burden on the State budget. Therefore, the separation of assets is an important foundation in the restructuring and transformation of SOEs into more professional and market-oriented companies.

The theory of financial separation is also related to the principle *of the business judgment rule*, which protects SOE management in making rational business decisions based on reasonable considerations. As long as decisions are made in good faith and in accordance with established procedures, directors will not be personally liable for losses arising from those decisions. This protection is provided so that management does not hesitate to take strategic steps for the development of the company. Law Number 1 of 2025 accommodates this principle through several provisions that provide legal guarantees to board members, as long as they can prove that their actions were not culpable and that they still adhere to the principles of good corporate governance.

Finally, the separation between State assets and finances in the context of SOEs is also a manifestation of the principles of the *rule of law* and transparency in the management of public resources. As legal entities, SOEs must comply with generally applicable legal norms, including in matters of bankruptcy, liquidation, and legal claims from third parties. If an SOE is declared bankrupt, the liquidation process must be carried out in accordance with applicable corporate mechanisms, without direct intervention from the government. This is emphasized in Article 86K of Law Number 1 of 2025, which stipulates that a Perum declared dissolved may only take legal action related to the settlement of assets during the liquidation process. Thus, the separation of State assets and finances is not only a technical principle of corporate law, but also an effort to maintain the integrity of the national legal and financial systems as a whole.

Hasil Penelitian dan Pembahasan berisi hasil penelitian dan pembahasannya secara ilmiah. Berisi tentang penjelasan tentang regulasi dan tentang fakta. Analisa sesuai dengan pendekatan masalah yang dipilih oleh penulis. Selain itu, harus dijelaskan juga perbandingannya dengan hasil-hasil para peneliti lain yang hampir sama topiknya. Hasil-hasil penelitian dan temuan harus bisa menjawab rumusan masalah penelitian di bagian pendahuluan.

2. Harmonization Of The Concept Of Criminal Liability Of State-Owned Enterprises In The National Criminal Code And The State-Owned Enterprises Law

a. Application of Fines to SOEs and/or Management

Corporations found guilty may be subject to criminal sanctions, including significant fines. In addition, they may also be subject to administrative sanctions, such as revocation of business licenses or bans on operating in specific sectors. These sanctions are intended to serve as a deterrent and prevent the recurrence of corruption in the future.[33] Regulating

[33]Sachrudin, "Penegakan Hukum Pidana Terhadap Korporasi Dalam Tindak Pidana Korupsi Secara Maksimal , Namun Kenyataan Menunjukkan Bahwa Jumlah Tindak Pidana Korupsi," *Jurnal Hukum, Administrasi, Dan Negara*, 2025.

criminal sanctions to enforce *Corporate Social Responsibility* obligations by corporations is important because administrative sanctions are less effective in making corporations aware of their social responsibilities.[34] Regarding fines imposed on corporate entities, particularly state-owned enterprises, several provisions in the National Criminal Code are as follows.

Article 119
The principal penalty referred to in Article 118, letter a, is a fine.
Article 121
1. The fine for a corporation shall be at least category IV, unless otherwise specified by law.
2. In the case of a criminal offense punishable by:
   a. Imprisonment for less than 7 years, the maximum fine for corporations is category VI;
   b. Imprisonment for a maximum of 7 (seven) years to a maximum of 15 (fifteen) years, the maximum fine for corporations is category VII; or
   c. The death penalty, life imprisonment, or imprisonment for a maximum of 20 (twenty) years are possible. The maximum fine for corporations is category VIII.

Article 122
1. The fine must be paid within a specific period specified in the court decision.
2. The court decision referred to in paragraph (1) may determine the payment of fines in installments.
3. If the fine referred to in paragraph (1) is not paid within the specified period, the assets or income of the corporation may be seized and auctioned by the prosecutor to settle the unpaid fine.
4. Suppose the corporation's assets or income are insufficient to pay the criminal fine referred to in paragraph 3. In that case, the corporation shall be subject to a substitute penalty in the form of suspension of some or all of the corporation's business activities.

The separation of assets between the State and state-owned enterprises (SOEs) is a fundamental principle in Law No. 1 of 2025 on SOEs. This principle affirms that although the State is the owner of capital, SOEs have the status of independent legal entities and act as separate legal subjects in accordance with the doctrine *of separate legal entity* in corporate law, so that all forms of assets, liabilities, and business risks are the responsibility of the SOEs themselves, not the State directly. Therefore, when SOEs are involved in criminal acts of corruption and are subject to sanctions in the form of fines, the source of funds to fulfill these obligations must come from the assets of the SOEs, not from the State budget or other State assets.

Article 3G paragraph (5) of Law Number 1 of 2025 states that State capital in SOEs is the property of SOEs and is the responsibility of SOEs as legal entities. This provision establishes a strong legal basis, ensuring that any income, profits, losses, or liabilities

[34] Della Fazilla; Sunariyo; Ikhawanul Muslim, 'Analysis of Criminal Liability of Corporations that Do Not Implement Corporate Social Responsibility' (2025) 7 Retentum Journal 110.

arising from SOE activities cannot be categorised as State profits or losses. Thus, if a SOE commits a criminal offense in the context of corruption and is subject to a penalty in the form of a fine, the source of payment for the fine must come from the SOE's own assets. This is in line with the principle *of limited liability,* whereby the State, as the owner of the capital, is only liable to the extent of its investment.

In previous practices of enforcing criminal law on corruption, a paradox often overlooked has emerged. The State can indirectly punish itself when the fines imposed on state-owned enterprises (SOEs) are sourced from State assets. This occurs when SOEs lack adequate financial reserves or face financial difficulties, forcing them to use State bailout funds to pay fines. This situation contradicts the principle of separation of assets. It has the potential to undermine the integrity of the SOE governance system, as public funds are used to finance corporate mistakes that should be borne independently.

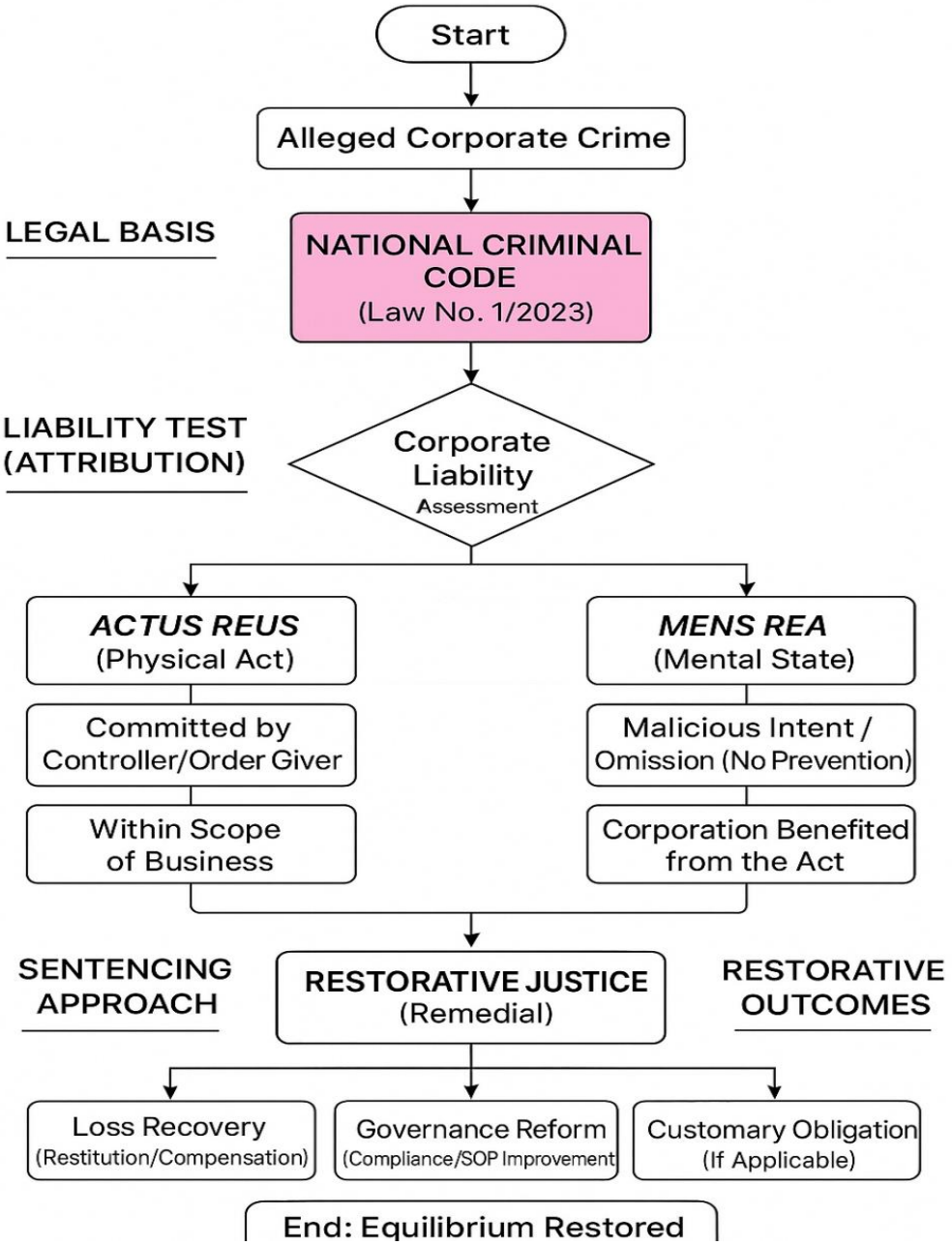
The provisions of Article 4A paragraph (5) of Law Number 1 of 2025 further clarify that the State capital in SOEs has been separated and belongs to, and is the responsibility of, SOEs as corporate entities. In other words, SOEs have their own assets that cannot be automatically associated with State assets. Therefore, when an SOE is subject to a fine in a criminal corruption case, the fine must be paid from the SOE's net profit, reserves, or assets generated from corporate operations, not from State assets. This preserves the integrity of the principle *of good corporate governance* and prevents the use of public funds to pay for corporate wrongdoing.

b. Degree of Guilt Based on Actions

Provision of Article 56 of the National Criminal Code stipulates that:

In the punishment of corporations, the following must be considered:

1. The level of loss or impact caused;
2. the level of involvement of persons who hold functional positions within the corporation and/or have a role as decision-makers, controllers, and/or beneficial owners of the corporation;
3. the duration of the criminal act committed;
4. the frequency of criminal acts by the corporation;
5. the nature of the criminal offense;
6. the involvement of officials;
7. the values of law and justice that exist in society;
8. the corporate track record in conducting business or activities;
9. the impact of punishment on the corporation; and/or
10. Corporate cooperation in handling criminal acts.



In line with this, the consideration for prosecuting corporations in the context of SOEs is to examine and determine the degree of fault of the SOE regarding criminal liability, which must include the elements *of mens rea* (corporate intent or negligence) and *actus reus* (actual unlawful acts). Within the Indonesian legal framework, *mens rea* in SOEs is manifested through company policies that demonstrate intent, negligence, or acts as regulated in criminal law.

Actus reus refers to actions or omissions that violate legal norms, such as corruption or misuse of State assets. Both elements must be fulfilled concurrently in order for state-

owned enterprises to be held criminally liable, in accordance with the principle *of geen straf zonder schuld*, which prioritizes the existence of fault before imposing sanctions. Without proof of these two elements, the criminalization of SOEs would be contrary to the principle of *due process of law*. Therefore, analysing the structure of corporate decisions and internal control mechanisms is essential for assessing the degree of fault.

Furthermore, proving *mens rea* in the context of SOEs requires an evaluation of the governance and internal control systems implemented by corporate bodies. If there are policies that clearly support or ignore the risk of legal violations, this can be used as an indicator of fault. Conversely, if SOEs can prove that the violation occurred beyond the organization's control or due to external intervention, the degree of fault can be reduced. This proof requires internal documents, such as Standard Operating Procedure (SOP) regulations, audit reports, or performance evaluations. Without such evidence, it is difficult for SOEs to avoid being held accountable. In addition, the involvement of corporate bodies (board of directors, board of commissioners, or supervisory board) in the company's policy-making process is a factor in holding the corporation criminally liable.

The role of the internal work system of SOEs is an indicator in assessing the degree of SOE misconduct. If an SOE has a supervisory mechanism, such as an ethics committee or an anti-corruption division, and then fails to prevent corruption, this can be categorised as negligence. Conversely, if SOEs lack adequate oversight structures, corporate misconduct is considered more serious because it fails to meet the governance standards required by law and may even be categorised as intentional. The principle *of due diligence* is also suitable for evaluating whether SOEs have made proportional efforts to prevent legal violations. Suppose it is proven that SOEs have ignored supervisory recommendations or disregarded illegal practices, the degree of fault increases. This is in line with the theory *of organizational neglect,* which links corporate misconduct to the systemic inability to prevent violations.

The causality between the SOE's misconduct and the resulting losses must also be clearly proven. If the violation of the law occurred due to a flawed corporate decision-making structure, then the causal relationship between the misconduct and its impact becomes clear. However, if the losses were caused by external factors beyond the SOE's control, such as contradictory government policies, then the SOE's criminal liability may be reduced. This proof requires forensic analysis of cash flows, decision documents, and the roles of parties involved in the violation. Without a direct link between corporate misconduct and losses, the prosecution of SOEs cannot be upheld. In addition, the amount of losses must be calculated accurately to determine the proportionality of

sanctions. Thus, causality becomes an important indicator in assessing the extent to which SOEs are responsible for the violation.

In addition, the prosecution of SOEs must also consider the principle *of restorative justice*, whereby the purpose of sanctions is not only to deter, but also to encourage structural improvements. If SOEs can prove that violations occurred due to systemic weaknesses that have been corrected, sanctions may be reduced as a form of reward for rehabilitative efforts. Conversely, if SOEs do not show good faith in improving their governance, heavier fines or external supervision may be imposed. This principle aligns with the provisions of Article 87E of Law Number 1 of 2025, which requires SOEs to carry out their social and environmental responsibilities transparently. Proportional sanctions will ensure that SOEs are not only punished but also encouraged to improve transparency and accountability. Thus, the punishment of SOEs is not merely repressive but also has preventive and reformative dimensions.

The degree of fault of state-owned enterprises in the context of criminal liability is determined by the fulfillment of the elements of *mens rea* and *actus reus*, the quality of the internal control system, the causality between the fault and the loss, and the good faith to improve the organizational structure. The evidence must be presented objectively with reference to corporate documents, audit reports, and forensic analysis. The sanctions imposed must be proportional and consider the principle *of restorative justice* to encourage improvements in governance. With this approach, the criminalization of SOEs not only upholds the principle of *the rule of law* but also supports the effective management of SOEs in a transparent and accountable manner.

CONCLUSION

State-owned enterprises can be held criminally liable under Article 45 of the National Criminal Code, which categorizes state-owned enterprises as entities that can be held criminally liable. The determination of liability must be based on the degree of corporate fault under the National Criminal Code, as seen from the aspect of internal prevention. SOEs, as entities that control the livelihoods of many people, should also consider restorative aspects, where the purpose of sanctions is not only to provide a deterrent effect, but also to encourage structural improvements by taking into account the principles of effectiveness and efficiency.

The enactment of the National Criminal Code in 2026 The author suggests that there is a need for a Supreme Court Regulation and an Attorney General Regulation governing the guidelines for determining fault for SOEs and guidelines governing the procedures for handling cases with a restorative justice approach to encourage internal improvement

of SOEs so that punishment is not only based on deterrence, but also on aspects of recovery and crime control, taking into account the principle of efficiency.

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