

Third Amendment of State-Owned Enterprises Law: State Finance Perspective

The President of Republic of Indonesia, enacted Law No. 1 of 2025 on Third Amendment to Law No. 19 of 2003 on State-Owned Enterprises (“**SOE**”) (“**Third Amendment of SOE Law**”), which entered into force on 24 February 2025. Aside from public discussion and opinion with regard to the Third Amendment of SOE Law especially relating to the establishment of *Badan Pengelola Investasi Daya Anagata Nusantara (Danantara)*, the Third Amendment of SOE Law also introduces significant modifications to Law No. 19 of 2003 on State-Owned Enterprises (“**Previous SOE Law**”), which aims to enhance the governance, operational scope, and structural framework of SOEs in Indonesia.

In this regard, we have highlighted several important aspects of the state finance perspective under the Third Amendment of SOE Law, as follows:

1. Definition of SOE and State Finance Perspective

The primary changes introduced by the Third Amendment SOE Law concern the definition of the SOE itself. For clarity and ease of reference, the table below provides a comparison between the definition of SOE under the Previous SOE Law and its amendment under the Third Amendment of SOE Law.

Previous SOE Law	Third Amendment of SOE Law
SOE is a business entity in which all or the majority of the relevant capital is owned by the state through direct participation deriving from separated state assets.	SOE is a business entity that satisfy one of the following criteria at the least: <ol style="list-style-type: none"> All or most of its <u>capital</u> is owned by the Republic of Indonesia <u>through direct participation</u>; or There are <u>privileges</u> owned by the Republic of Indonesia

Based on above, the Third Amendment of SOE Law interestingly removed the phrase “*deriving from separated state assets*” which was previously stated under the Previous SOE Law, which appears to broaden the scope of the definition of SOEs under the current legal framework. Nevertheless, the removal of the phrase “*deriving from separated state assets*” questioned that whether the present definition of SOEs still falls within the scope of state finance, which were regulated in several other laws, as follows:

Article 2 letter g of Law No. 17 of 2003 on State Finance

“*State Finance ... including:*

- g. state/regional assets managed by itself or by other parties in the form of **money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state companies/regional companies.***

Article 1 no. 7 of Law No. 15 of 2006 on Audit Board of Indonesia

“*State finances are **all state rights and obligations that can be valued in money**, as well as any things in the form of money and in the form of goods that can be used as state property in connection with the implementation of these rights and obligations state in connection with the implementation of these rights and obligations*”

Based on the foregoing, it is arguable that the capital of SOE cannot be separated from the context of state finances, as Article 4 paragraph (1) of Third Amendment of SOE Law provides that the capital of SOE could be derived from the State Revenue and Expenditure Budget (*Anggaran Pendapatan dan Belanja Negara – “APBN”*). However, Article 4B of the Third Amendment of SOE Law stipulates that **the**

profits or losses incurred by SOEs are considered the profits or losses of the SOEs, and thus do not automatically constitute profits or losses of the state.

“Any profit or loss incurred by the SOE shall be deemed as the profit or loss of the SOE.”

Further, Article 4A paragraph (5) of the Third Amendment of SOE Law affirms that **the capital of SOEs, whether derived from the APBN or non-APBN sources, constitutes the assets of the SOE, owned by and the responsibility of the SOE.**

“State capital in SOE originating from capital participation, whether in the context of the establishment of the SOE or changes, constitutes the assets of the SOE which are owned by and are the responsibility of the SOE”

As such, further debate and legal conflict may arise should the state finance is in concerns, especially between the aforementioned provisions under the Third Amendment of SOE Law with the Corruption Eradication Law regime, which still considers **the assets of SOEs to be within the scope of state finances**, as follows:

General Elucidation of Law No. 31 of 1999 as amended by Law No. 20 of 2001 on Corruption Eradication (“Corruption Eradication Law”)

“State finances refer to all assets of the state in any form, whether separated or not, including all parts of state wealth and all rights and obligations arising from:

- (a) being under the control, management, and accountability of state officials, both at the central and regional levels;*
- (b) being **under the control, management, and accountability of State-Owned Enterprises, Regional-Owned Enterprises, foundations, legal entities, and companies involving state capital, or companies involving third-party capital based on agreements with the state.***

We view that such multi-interpretation may directly or indirectly affect the implementation and enforcement of the Corruption Eradication Law, which require further harmonization or implementing regulation, especially for the sake of interpretation and fulfillment of the element of Articles 2 and 3 of the Corruption Eradication Law, which still include the element of *“potentially causing losses to state finances or the national economy”*.

On a related note, concerning SOE by way of the privileges owned by the Republic of Indonesia, Article 4C of the Third Amendment of SOE Law stipulates that the Republic of Indonesia holds Series A Dwiwarna shares with special rights in the Investment Holding, Operational Holding, and SOEs. These Series A Dwiwarna shares grants at least the following special rights:

- i. right to approve resolutions presented at the GMS;
- ii. right to propose items for the agenda of the GMS;
- iii. right to request and access company information and documents in compliance with applicable laws and regulations;
- iv. right to establish strategic guidelines and policies in critical areas, including:
 - a. Accounting and finance;
 - b. Development and investment;
 - c. Operations and auditing of goods and services;
 - d. Information technology;
 - e. Human resources management;
 - f. Risk management and internal controls;
 - g. Legal and compliance frameworks;
 - h. Social and environmental responsibility programs; and/or
 - i. Environmental, Social, and Governance initiatives.

- v. right to appoint and dismiss members of the Board of Directors and the Board of Commissioners, subject to the approval of the President; and/or
- vi. Any other rights as outlined in the entity's articles of association.

2. Indonesia's Financial Audit Agency (BPK) Authority

Whereas the Third Amendment introduces restrictions on the authority of the BPK to audit SOEs. In accordance with Article 4B of the Third Amendment of SOE Law, which affirms SOEs as separate state assets, Articles 71 paragraph (1) and 71A of the Third Amendment of SOE Law stipulate that **the annual financial statement audits of SOEs are no longer to be conducted by the BPK**. Instead, such audits are now to be carried out by independent public accountants or auditors who are registered with the BPK and the Financial Services Authority (OJK).

Nevertheless, it is important to note that pursuant to Articles 71 paragraphs (2) and (3) of the Third Amendment of SOE Law, the **BPK retains the authority to conduct audits for specific purposes upon the request of the relevant committee of the People's Representative Council (DPR RI) responsible for SOEs**.

Article 71 of the Third Amendment of SOE Law:

- (1) ***"The audit of the company's annual financial statements is conducted by a public accountant appointed by the General Meeting of Shareholders for Persero and appointed by the Minister for Perum."***
- (2) *BPK have the authority to conduct audits for specific purposes on the SOE in accordance with the applicable laws and regulations.*
- (3) *Audits for specific purposes as referred to in paragraph (2) may only be conducted upon the request of the DPR RI commission responsible for SOE.*
- (4) *..."*

Article 71A of the Third Amendment of SOE Law:

"The audit of the management and financial accountability of SOE shall be conducted by a public accountant registered with the Audit Board of the Republic of Indonesia and the Financial Services Authority."

The specific purposes are further outlined in the elucidation of Article 71 paragraph (2) of Third Amendment of SOE Law, which clarifies that audits may be conducted in relation to the use of government funds, such as capital injections, which are not directly associated with the SOEs' corporate business activities, as follows:

Elucidation of Article 71 paragraph (2) of the Third Amendment of SOE Law

"A specific purpose audit of SOEs is conducted in relation to the use of government funds (e.g., state capital participation), and not in matters related to corporate business activities."

3. Protection of Board of Directors, Board of Commissioners and Board of Supervisors of SOE

With the enactment of the Third Amendment of SOE Law, the Board of Directors ("**BOD**"), Board of Commissioners ("**BOC**") and Board of Supervisors ("**BOS**") of SOE are granted specific protections in the course of making operational business decisions. However, Third Amendment of the SOE Law explicitly confirms that members of the BOD or BOC of SOEs cannot be held liable for investment losses under the following circumstances:

- (i) Pursuant to Article 9F paragraph (1) of the Third Amendment of SOE Law, members of BOD of a SOE shall not be held legally accountable for any losses, provided they can demonstrate the following:
- The losses were not attributable to their fault or negligence;
 - They acted in good faith and with due care, in the best interest of the BUMN and in alignment with its objectives;
 - They had no direct or indirect conflict of interest; and
 - They took appropriate measures to prevent the occurrence or continuation of the losses.
- (ii) Furthermore, Article 9F paragraph (2) of the Third Amendment of SOE Law stipulates that members of the BOC of a SOE shall not be held legally accountable for any losses, provided they can establish that:
- They exercised supervision in good faith and with due care, in the best interest of the SOE and in accordance with its objectives;
 - They had no personal interest, either direct or indirect, in the actions of the BOD that resulted in the losses; and
 - They provided advice to the BOD to prevent the occurrence or continuation of the losses.

We are of the view that should the BOD of the SOE fail to demonstrate that their actions were in compliance with Article 9F of the Third Amendment of SOE Law, the BOD may be held personally liable, and legal proceedings against them may proceed.

REMARKS

The enactment of the Third Amendment of SOE Law introduces significant reforms to the governance and legal characterization of SOEs in Indonesia, particularly in redefining the status of SOEs in relation to state finance, limiting the audit authority of the BPK, and establishing enhanced protections for SOE management. While these amendments are intended to modernize SOE governance and operational flexibility, they may also give rise to interpretative challenges, especially concerning the scope of state finance and anti-corruption enforcement—necessitating careful legal analysis and potentially further regulatory clarification to ensure harmonization across the relevant legal frameworks.

For further guidance or to understand how these changes may impact your arbitration agreements or ongoing cases, please contact us at info@tnklaw.id or (021) - 2528636.

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