

Reconstructing PMN Accountability in Indonesian State-Owned Enterprise Governance

Muhammad Luthfi Ghifari, Sukarmi Sukarmi,
Shinta Hadiyantina, Djumikasih Djumikasih
Faculty of Law, Universitas Brawijaya, Malang, Indonesia
ghifariluthfi@gmail.com

Abstract

This study aims to analyze the legal status of State Capital Participation (Penyertaan Modal Negara—PMN) granted to PT Permodalan Nasional Madani (PT PNM) and to formulate an integrated accountability framework capable of reconciling the normative conflict between state finance law and corporate law in Indonesian State-Owned Enterprises (SOEs). Existing studies have predominantly examined PMN from economic, asset management, or criminal law perspectives, leaving unresolved the legal uncertainty concerning separated state assets, directors' liability, and the relationship between constitutional accountability and corporate governance. This research employs a normative juridical method using statutory, conceptual, and case approaches, with legal materials analyzed through doctrinal reasoning and systematic legal interpretation. The findings reveal that PMN should be understood as a hybrid legal institution that constitutionally remains part of state finance while being operationally managed under corporate governance principles, including separate legal personality, fiduciary duty, and the Business Judgment Rule. The novelty of this study lies in the formulation of a hybrid accountability framework integrating administrative accountability, fiduciary-based civil liability, and criminal liability as a proportional premium remedium, thereby establishing clear legal boundaries between legitimate business risk and unlawful management of state capital. This study contributes theoretically to the harmonization of state finance law and corporate governance, while providing a normative framework for strengthening legal certainty, regulatory coherence, and sustainable governance of Indonesian SOEs.

Keywords: *Accountability; State Finance; State Capital Participation; SOEs*

1. INTRODUCTION

The provision of State Capital Participation (*Penyertaan Modal Negara* as PMN) to State-Owned Enterprises (SOEs) constitutes an important fiscal instrument utilized by the Indonesian government to strengthen corporate capital structures, maintain the continuity of strategic public services, and support national economic development. As regulated under Law Number 17 of 2003 concerning State Finance and Law Number 19 of 2003 concerning State-Owned Enterprises, PMN represents a form of state investment allocated to SOEs through the separation of state assets from the State Budget (*Anggaran Pendapatan dan Belanja Negara* as APBN). Although PMN has long been recognized as a mechanism for enhancing the performance and financial resilience of SOEs, its legal status and accountability framework remain subjects of ongoing debate within Indonesian legal discourse.

The issue became increasingly significant during the Covid-19 pandemic when the government implemented various economic recovery measures to mitigate the adverse

impact of the crisis on business actors and financing institutions.¹ One of the recipients of PMN during this period was PT Permodalan Nasional Madani (PT PNM), a state-owned financing institution tasked with supporting micro, small, and medium enterprises (MSMEs), particularly economically disadvantaged groups with limited access to formal financial services.

As an overview, PT. PNM has two financing programs as the main business field, namely group-based financing to underprivileged women or PNM Mekaar (PNM Fostering the Sejahtera Family Economy) and direct financing to MSE actors through PNM ULaMM (PNM Micro Capital Service Unit). The second service managed by PT PNM is business capacity development services, which is a non-financing service that is run to improve the quality of performance of MSEs, Cooperatives, and People's Credit Banks (BPR). In addition, PT. PNM also has supporting business sectors, namely venture capital financing (PT PNM Venture Capital) and investment management (PT PNM Investment Management).²

Based on these various types of businesses, PT. PNM has a twice service, PNM Mekaar and PNM ULaMM. In the financial statements of the last 5 years (2014-2018), PT. PNM experienced asset growth of Rp. 6 trillion in 2015 and 25.9 trillion in December 2019. However, in March 2020, there was a decrease in assets to Rp. 25.6 trillion. In the calculation of profit, there was a net profit in the first quarter of 2020, which amounted to Rp. 201.8 billion to Rp. 136.80 billion in August 2020.³

The provision of PMN to PT PNM was intended to maintain the institution's financing capacity and support the implementation of national economic recovery policies. However, beyond its economic objectives, the allocation of PMN also generated important legal questions concerning the status of the funds after their transfer to the company and the accountability mechanisms governing their utilization.⁴

A fundamental legal problem arises from the existence of differing legal constructions regarding the status of PMN within the Indonesian legal system. Article 4, paragraph (1) of Law Number 19 of 2003 concerning State-Owned Enterprises stipulates that state assets injected as PMN become separated state assets and are subsequently managed under corporate principles applicable to legal entities. This provision reflects the doctrine of separate legal personality, whereby assets transferred to a corporation become the property

¹ Herman, "Abuse of Authority in Capital Participation Activities of Village Owned Enterprises Which Implicated Criminal Acts of Corruption," *Halu Oleo Legal Research* 5, no. 1 (2023): 234–49, <https://doi.org/10.33772/holresch.v5i1.336>.

² Mohammad Iqbal Firzada, "State Capital Participation Policy for the Recovery of MSMEs," Kementerian Keuangan, 2020, <https://www.djkn.kemenkeu.go.id/artikel/baca/13216/Kebijakan-Penyertaan-Modal-Negara-untuk-Pemulihan->.

³ Akhdi Martin Pratama, "This Year, PNM Receives a Capital Injection of Rp 2.5 Trillion from the Government.," *Kompas.com*, 2020, <https://money.kompas.com/read/2020/12/10/145134126/tahun-ini-pnm-dapat-suntikan-dana-rp-25-triliun-dari-pemerintah>.

⁴ Leonardus Prayogo A, "Mechanism for Converting Debt into Equity Participation as an Effort to Resolve State Receivables in the State-Owned Food Holding Company," *Acta Diurnal* 7, no. 1 (2023): 133–145, <https://doi.org/10.23920/acta.v7i1.1690>.

of the company and are no longer directly controlled by the state. In contrast, Article 2, letter g of Law Number 17 of 2003 concerning State Finance continues to classify separated state assets as part of state finances. Similar interpretations are reflected in several statutory instruments governing state financial supervision and anti-corruption measures, which maintain that assets originating from the state budget remain subject to public accountability mechanisms.

This regulatory dualism has generated a normative conflict concerning the legal regime applicable to PMN. On the one hand, corporate law principles require SOEs operating in the form of limited liability companies (*Persero*) to be governed according to business judgment, corporate autonomy, and commercial risk principles. On the other hand, state finance regulations continue to impose public law accountability mechanisms upon assets that have already been separated into corporate ownership. The coexistence of these competing legal approaches creates uncertainty regarding the legal consequences of PMN management, particularly in determining whether losses arising from the utilization of PMN should be categorized as state financial losses or ordinary corporate losses resulting from legitimate business decisions.

The complexity of this issue has been further reinforced by judicial developments. Constitutional Court Decision Number 48/PUU-XI/2013 and Constitutional Court Decision Number 62/PUU-XI/2013 affirm that separated state assets within SOEs remain part of state finances for constitutional purposes. Conversely, corporate law doctrine emphasizes that once capital has been invested in a corporation, ownership of the assets shifts to the company as an independent legal entity. This divergence between constitutional interpretations and corporate law principles has produced uncertainty concerning the boundaries of state control, corporate autonomy, and legal accountability in the management of PMN.

The absence of a clear and comprehensive accountability framework governing the utilization of PMN creates practical and theoretical challenges. From a governance perspective, uncertainty regarding the legal character of PMN may affect managerial decision-making within SOEs because directors often face the risk that ordinary business losses could subsequently be interpreted as state financial losses. Such conditions potentially undermine the application of the business judgment rule and create legal risks that discourage effective corporate management. From a public accountability perspective, the absence of explicit legal standards concerning PMN supervision may create loopholes in monitoring mechanisms and generate ambiguity regarding the institutions responsible for assessing accountability over the use of PMN funds.

Accordingly, the central issue addressed in this research is not merely whether PMN contributes to corporate sustainability or economic recovery, but rather how the legal status of PMN should be understood within the framework of Indonesian law and how an appropriate accountability model should be constructed to reconcile the principles of state financial accountability with corporate governance doctrines. Resolving this issue is

essential to ensure legal certainty, enhance transparency in SOE governance, and provide clear boundaries regarding the legal consequences arising from the management of PMN.

Previous studies have examined PMN from several different perspectives. The first previous studies focus on the effectiveness and benefits of PMN as a public financing instrument. Heru analyzed the implementation of PMN in supporting electricity infrastructure development and concluded that PMN generated significant economic and social benefits for local communities.⁵ While the study successfully demonstrated the developmental impact of PMN, it primarily emphasized economic outcomes and did not address the legal accountability mechanisms governing the utilization of PMN by SOEs.

The second previous study examines the legal transformation of state assets following their conversion into PMN. Josephine argued that state assets transferred through PMN become corporate assets subject to company law principles rather than the state budget regime.⁶ This study contributes to understanding the legal consequences of asset separation but remains limited to issues of asset ownership and transfer authority. It does not comprehensively address the accountability framework applicable to PMN after its incorporation into SOE capital structures.

The third previous study discusses the relationship between SOE management and state financial losses. Wijaya examined the accountability of SOE management in cases involving losses arising from the management of separated state assets and emphasized the distinction between business risks and criminal liability.⁷ Although the study provides important insights regarding the protection of managerial discretion, it does not formulate a specific legal framework capable of governing PMN accountability or resolving the normative conflict between state finance law and corporate law.

The foregoing studies demonstrate that existing scholarship generally concentrates on three issues, namely the economic effectiveness of PMN, the legal consequences of state asset separation, and the liability of SOE management for state financial losses. However, no previous study has comprehensively examined the accountability model governing the utilization of PMN after its allocation to SOEs by specifically addressing the normative conflict between state finance law and corporate law. Moreover, previous studies have not focused on PMN provided to PT PNM during the Covid-19 pandemic as a case illustrating the broader problem of legal uncertainty concerning PMN accountability. This unresolved issue constitutes the principal research gap addressed by the present study.

⁵ Muhamad Heru and Putu Nanda, "Analysis of the Benefits of State Capital Participation in the Bali Provincial Rural Electricity Infrastructure Development Program," *Journal of Economic Development* 25, no. 1 (2021): 8–22, <https://doi.org/10.26593/be.v25i1.5114.8-22>.

⁶ Ingrid Josephine and Suparjo, "The Authority to Transfer Land Rights Derived from State Capital Participation (PMN) in Persero," *Journal of Social Sciences and Education* 6, no. 2 (2022): 3683–3695, <http://dx.doi.org/10.58258/jisip.v6i2.2929>.

⁷ Ivan Satria Wijaya, "The Accountability of the Management of State-Owned Enterprises for State Financial Losses in the Management of Persero," *Scientific Journal of Students* 4, no. 2 (2015): 1–14, <https://journal.ubaya.ac.id/index.php/jimus/article/view/2163>.

This research positions itself at the intersection of state finance law and corporate governance law. Unlike previous studies that primarily analyze PMN from economic, asset-management, or criminal liability perspectives, this study focuses on the legal status of PMN and the formulation of an accountability framework capable of harmonizing the doctrine of separated state assets with the constitutional principle of state financial accountability.

The scientific contribution of this research lies in three aspects. First, it develops a normative framework for determining the legal status of PMN within the dual regime of state finance law and corporate law. Second, it formulates an accountability model capable of reconciling corporate autonomy with the constitutional obligation to safeguard state finances. Third, it proposes a legal approach to regulatory harmonization aimed at reducing uncertainty concerning the management and supervision of PMN within SOEs. Based on these considerations, this research aims to analyze the legal status of PMN granted to PT PNM and to formulate an accountability model governing the utilization of PMN within the framework of Indonesian state finance law and SOE governance.

2. METHOD

This research employs a normative juridical method that focuses on examining legal norms, principles, doctrines, and judicial decisions⁸ relevant to the legal status and accountability of State Capital Participation (*Penyertaan Modal Negara*) in State-Owned Enterprises (SOEs). The research is directed toward identifying normative inconsistencies and regulatory disharmony concerning the legal position of PMN within the framework of state finance law and corporate law, as well as formulating a legal accountability model capable of providing legal certainty in the governance of SOEs.

To achieve these objectives, this study utilizes three legal research approaches.⁹ First, the statute approach is employed to examine and analyze legislative instruments governing PMN, state finances, SOEs, and corporate governance. The primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law Number 17 of 2003 concerning State Finance, Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for State Capital Participation and Administration in State-Owned Enterprises and Limited Liability Companies, and Regulation of the Minister of State-Owned Enterprises Number PER-1/MBU/03/2021 concerning Guidelines for Proposing, Reporting, Monitoring, and Changing the Utilization of Additional State Capital Participation.

⁸ Dino Rizka Afdhali, "The Ideality of Law Enforcement Reviewed from the Perspective of Legal Purpose Theory," *Collegium Studiosum Journal* 6, no. 2 (2023): 555–61, <https://doi.org/10.56301/csj.v6i2.1078>.

⁹ G. Halley, "The Criminal Liability of Artificial Intelligence Entities – From Science Fiction to Legal Social Control," *Akron Intellectual Property Journal* 4, no. 2 (2010): 182, <https://doi.org/10.2139/ssrn.1564096>.

Second, the conceptual approach is applied to analyze legal doctrines and theoretical concepts relevant to the research problem, including the doctrines of separated state assets, state financial accountability, separate legal personality, business judgment rule, fiduciary duty, and *piercing the corporate veil*. This approach enables the research to construct a coherent conceptual framework for understanding the relationship between public law principles governing state finances and private law principles governing corporate entities.

Third, the case approach is employed by examining judicial decisions that significantly influence the legal interpretation of PMN. Particular attention is given to Constitutional Court Decision Number 48/PUU-XI/2013 and Constitutional Court Decision Number 62/PUU-XI/2013, which address the constitutional status of separated state assets within SOEs. These decisions are analyzed to assess how judicial interpretation contributes to the development of legal norms concerning PMN accountability.

The analytical framework of this research is based on the interaction between state finance law and corporate governance law. The analysis begins by identifying the normative construction of PMN under relevant legislation, followed by an examination of conflicts and inconsistencies among legal norms. Subsequently, the study evaluates the implications of these conflicts for the accountability of SOEs receiving PMN and formulates a legal model capable of harmonizing public accountability requirements with corporate autonomy principles.

The legal reasoning model adopted in this research is prescriptive and systematic legal reasoning. This model is employed to assess the consistency of legal norms, identify normative gaps (*rechtsvacuum*) and conflicts of norms, and formulate legal arguments aimed at achieving coherence within the Indonesian legal system. In resolving normative inconsistencies, the research applies the principles of legal harmonization and systematic interpretation to reconcile competing legal regimes governing PMN.

Furthermore, this research utilizes several methods of legal interpretation, including grammatical interpretation to ascertain the textual meaning of statutory provisions, systematic interpretation to understand legal norms within the broader structure of the legal system, and teleological interpretation to identify the objectives underlying regulations concerning state finance and SOE governance. These interpretative methods are employed to determine the appropriate legal status of PMN and to formulate an accountability framework that reflects both constitutional principles and corporate governance requirements.

The research relies on both primary and secondary legal materials. Secondary legal materials consist of books, scientific journals, legal commentaries, conference papers, and other academic publications relevant to state finance law, corporate law, and SOE governance.¹⁰ All legal materials are analyzed qualitatively through legal argumentation and

¹⁰ Satjipto Rahardjo, *Legal Sciences* (Bandung: Citra Aditya Bhakti, 2006).

doctrinal analysis to produce prescriptive conclusions regarding the legal status and accountability model of PMN in Indonesia.

3. RESULTS AND DISCUSSION

3.1 The PMN Granted to PT PNM Constitutes Part of State Finance: Constitutional Interpretation and Legal Consequences

The legal status of State Capital Participation (PMN) remains one of the most contested issues in Indonesian state finance law. The controversy does not merely concern whether PMN originates from the State Budget (APBN), but rather whether state assets that have been transformed into corporate capital continue to be governed by public law principles or become subject exclusively to private corporate law.¹¹ This issue is particularly significant in the context of PT Permodalan Nasional Madani (PT PNM), which received PMN during the Covid-19 pandemic as part of the government's economic recovery policy.

Normatively, Article 2 letter g of Law Number 17 of 2003 concerning State Finance includes separate state assets within the scope of state finance. However, Article 4 paragraph (1) of Law Number 19 of 2003 concerning State-Owned Enterprises simultaneously establishes that state assets invested as PMN become separated assets managed according to corporate principles. These provisions create a structural tension between two competing legal regimes. On the one hand, state finance law seeks to maintain public accountability over state resources.¹² On the other hand, corporate law requires legal certainty regarding the autonomy of corporate assets and managerial decision-making.

The normative conflict between Law Number 17 of 2003 concerning State Finance and Law Number 19 of 2003 concerning State-Owned Enterprises should not be understood merely as an inconsistency between two statutory provisions. Rather, it represents a constitutional antinomy arising from the coexistence of two legal regimes pursuing different constitutional objectives. The State Finance Law is primarily designed to safeguard public accountability and ensure that public resources originating from the State Budget remain subject to constitutional oversight. Conversely, the SOE Law seeks to establish a corporate governance framework that enables state-owned enterprises to operate efficiently as commercial entities under private law principles. Consequently, the legal tension surrounding PMN is not simply a matter of statutory interpretation but reflects the broader challenge of reconciling constitutional accountability with corporate autonomy.

The application of conventional conflict-of-law principles, such as *lex specialis derogat legi generali* or *lex posterior derogat legi priori*, is insufficient to resolve this issue because both statutes regulate different legal relationships while simultaneously intersecting with the same legal object. The State Finance Law regulates the state's constitutional

¹¹ Widhya Mahendra Putra, "The Mechanism of State Capital Participation in State-Owned Enterprises With or Without the Approval of the House of Representatives from the Perspective of Financial Law," *PDRH Soediman* 1, no. 1 (2019): 1–13, <https://doi.org/10.30641/dejure.2019.V19.385-403>.

¹² Wisnu Purna Adhitya and Akhmad Solikin, "The Impact of Government Investment in the Form of Additional State Capital Participation on the Financial Performance of State-Owned Enterprises," *Jurnal Bisnis Dan Akutansi Unsurya* 10, no. 1 (2025): 1–19, <https://doi.org/10.35968/jbau.v10i1.1424>.

responsibility for public resources, whereas the SOE Law governs the legal relationship between the state as shareholder and the corporation as a separate legal entity. Therefore, the apparent contradiction should instead be interpreted through constitutional harmonization that accommodates both public accountability and commercial efficiency.

A constitutional interpretation further suggests that PMN possesses a dual legal character. From the perspective of constitutional law, PMN remains inseparable from the state's obligation to manage public resources responsibly. However, from the perspective of corporate governance, PMN simultaneously functions as corporate capital exposed to commercial risk and governed by company law. This dual character explains why the legal status of PMN cannot be adequately explained through either public law or private law alone, but instead requires an integrated legal framework capable of balancing constitutional values with commercial realities.

This dualism reveals a fundamental doctrinal problem within Indonesian SOE governance. Corporate law is built upon the doctrine of separate legal personality, which recognizes a corporation as an independent legal entity distinct from its shareholders. Once capital is injected into a company, ownership of the assets is transferred to the corporation, and the shareholder, including the state, retains only ownership over shares rather than direct ownership over corporate assets. Consequently, from a corporate law perspective, PMN should be treated as corporate capital subject to commercial risk and business judgment principles.

However, Indonesian constitutional jurisprudence adopts a different approach. Through Constitutional Court Decision Number 48/PUU-XI/2013 and Constitutional Court Decision Number 62/PUU-XI/2013, the Constitutional Court affirmed that separated state assets within SOEs remain part of state finance. The Court reasoned that the constitutional concept of state finance cannot be interpreted narrowly because public resources allocated through the APBN remain connected to the state's obligation to achieve public welfare and economic justice as mandated by the 1945 Constitution. Therefore, the separation of assets into PMN does not eliminate the state's constitutional responsibility to ensure accountability in their utilization.¹³

The Constitutional Court's reasoning reflects a functional rather than a formal interpretation of state finance. Instead of focusing exclusively on the legal transfer of ownership following capital injection, the Court emphasized that the constitutional identity of public resources is determined by their origin and public purpose. Since PMN originates from the APBN, which is financed through public revenue and approved through democratic constitutional procedures, its public character cannot be entirely extinguished by its transformation into corporate capital. Consequently, constitutional accountability follows the allocation of public resources rather than merely their legal ownership.

¹³ Leonardus Prayogo A, "Mechanism for Converting Debt into Equity Participation as an Effort to Resolve State Receivables in the State-Owned Food Holding Company."

This interpretation is closely aligned with the constitutional principle of the welfare state embodied in Article 33 of the 1945 Constitution. Under this approach, state participation in corporate activities is not intended solely to maximize financial returns but also to fulfill broader constitutional objectives, including economic democracy, equitable development, and social welfare. Accordingly, PMN should be viewed as an instrument through which the state performs its constitutional obligations rather than as an ordinary commercial investment comparable to private shareholder capital.

While the Constitutional Court successfully strengthened constitutional accountability, its decisions did not comprehensively clarify the legal consequences arising from the continued classification of PMN as state finance. In particular, the Court did not establish clear criteria distinguishing the circumstances in which corporate law should prevail from those requiring the application of public law. This omission has contributed to continuing uncertainty regarding the respective scope of corporate autonomy and governmental oversight.

Although the Constitutional Court's interpretation strengthens public accountability, it simultaneously generates a significant legal dilemma. If PMN remains part of state finance after being transformed into corporate capital, the distinction between public assets and corporate assets becomes increasingly blurred. Such an interpretation potentially weakens one of the fundamental principles of corporate law, namely the separation between shareholder assets and company assets. As a result, SOEs operate within a hybrid legal regime in which they are expected to compete as commercial entities while remaining subject to public-law accountability mechanisms that do not apply to private corporations.

This ambiguity produces important legal consequences. First, uncertainty arises regarding the classification of losses suffered by SOEs. Under corporate law, losses resulting from legitimate business decisions constitute ordinary business risks that should not automatically trigger legal liability. However, under the state finance approach, such losses may be interpreted as state financial losses because PMN remains categorized as part of state finance. This overlap creates uncertainty concerning the application of the business judgment rule and exposes directors of SOEs to potential administrative, civil, or even criminal liability despite acting within the scope of prudent corporate management.

The uncertainty surrounding the classification of PMN also affects the practical application of the Business Judgment Rule within Indonesian SOEs. Under universally accepted principles of corporate governance, directors are expected to make strategic decisions involving commercial risk, and not every unsuccessful decision should result in legal liability. The Business Judgment Rule protects directors who act in good faith, exercise due care, avoid conflicts of interest, and reasonably believe that their decisions serve the best interests of the corporation. Such protection is essential for encouraging entrepreneurial decision-making and maintaining the competitiveness of state-owned enterprises.

However, the continued classification of PMN as state finance has created a tendency to equate corporate losses with state financial losses. As a consequence, directors may face

administrative investigations, civil claims, or even criminal proceedings despite having acted prudently and in accordance with accepted standards of corporate governance. This legal uncertainty may generate a defensive managerial culture in which directors become reluctant to undertake commercially necessary decisions due to concerns over potential personal liability.

The distinction between legitimate business losses and unlawful state financial losses therefore becomes crucial. A corporate loss resulting from ordinary commercial risk should not automatically be regarded as a state financial loss unless it is accompanied by fraud, corruption, abuse of authority, gross negligence, or bad faith. Establishing this distinction is indispensable for preserving both constitutional accountability and the operational independence of SOEs.

Second, the dual status of PMN complicates the accountability framework applicable to SOEs. If PMN is treated entirely as state finance, extensive public oversight may undermine managerial flexibility and reduce the efficiency of corporate decision-making. Conversely, if PMN is treated solely as corporate capital, public accountability over state resources may be weakened. The current legal framework fails to provide a clear boundary between these two approaches, resulting in overlapping supervisory authority and inconsistent standards of accountability.

Third, the ambiguity surrounding separated state assets reflects a broader inconsistency within the Indonesian SOE legal regime.¹⁴ SOEs are expected to pursue commercial objectives, generate profits, and compete in the market according to private-law principles. At the same time, they are required to fulfill public service obligations and remain accountable under public-law mechanisms. This institutional contradiction creates uncertainty regarding the fundamental character of SOEs: whether they should primarily be regarded as commercial corporations or as extensions of the state apparatus.¹⁵

In the case of PT PNM, this issue becomes particularly relevant because the PMN provided during the Covid-19 pandemic was not merely intended to increase corporate profitability.¹⁶ Rather, it functioned as an instrument of constitutional economic policy aimed at maintaining access to financing for micro, small, and medium enterprises (MSMEs), which constitute a vital component of Indonesia's economic structure. Therefore, the constitutional justification for PMN lies not in its commercial value but in its role as a mechanism for fulfilling the state's obligation to promote social welfare and economic inclusion pursuant to Articles 27 paragraph (2) and 33 of the 1945 Constitution.

The constitutional role of PT PNM further illustrates why PMN should not be evaluated exclusively through conventional corporate performance indicators. During the

¹⁴ Nuzul Fathyah, Tintin Sri, and Nurmita Sari, "State Capital Participation in State-Owned Enterprises within Public Corporations (Perum): A Study on Perum Perhutani," *Journal of Business Administration Economic & Entrepreneurship* 1, no. 1 (2019): 16–26, <https://doi.org/https://jurnal.stialan.ac.id/index.php/jbest/article/view/111>.

¹⁵ Mohammad Iqbal Firzada, "State Capital Participation Policy for the Recovery of MSMEs."

¹⁶ Herman, "Abuse of Authority in Capital Participation Activities of Village Owned Enterprises Which Implicated Criminal Acts of Corruption."

Covid-19 pandemic, the government's capital injection into PT PNM formed part of the National Economic Recovery (PEN) programme, which aimed to preserve economic resilience by maintaining access to financing for micro, small, and ultra-micro enterprises that were disproportionately affected by the economic downturn. Accordingly, the principal objective of the PMN was not merely to increase shareholder value but to ensure continuity of productive economic activities among vulnerable sectors of society.

PT PNM performs a unique institutional function that distinguishes it from conventional commercial SOEs. Through financing programmes such as Mekaar and ULaMM, the company facilitates financial inclusion by providing capital access to entrepreneurs who frequently lack adequate collateral or access to formal banking institutions. Consequently, PT PNM serves as a development finance institution whose activities simultaneously pursue commercial sustainability and constitutional objectives relating to poverty reduction, employment generation, and equitable economic development.

From this perspective, the PMN allocated to PT PNM demonstrates that state capital participation may perform both economic and constitutional functions. While corporate governance principles remain essential to ensure efficient management of public investment, the constitutional justification for PMN lies primarily in its contribution to public welfare rather than its ability to maximize corporate profit. This characteristic further supports the proposition that PMN occupies a hybrid legal position requiring both constitutional accountability and corporate autonomy.

Despite the Constitutional Court's clarification regarding the constitutional status of PMN, Indonesian legislation continues to exhibit a significant normative gap concerning the legal consequences of that classification. Existing regulations, including Minister of Finance Regulation Number 146/PMK.06/2022, primarily regulate administrative matters such as reporting, monitoring, and evaluation of PMN. They do not establish a comprehensive legal framework governing directors' liability, the recovery of losses arising from PMN management, or the interaction between administrative, civil, and criminal accountability.

Similarly, neither the State Finance Law nor the SOE Law explicitly defines the legal threshold separating legitimate commercial risk from unlawful management of state capital. The absence of such statutory guidance has resulted in inconsistent interpretations among supervisory institutions, auditors, and law enforcement agencies. Consequently, the legal consequences of PMN remain uncertain despite the Constitutional Court having settled its constitutional status.

This normative vacuum ultimately demonstrates that the principal challenge no longer concerns the constitutional classification of PMN, but rather the absence of harmonized legislation regulating how constitutional accountability should coexist with the principles of modern corporate governance. Addressing this gap is essential to ensure legal certainty for SOEs while simultaneously preserving public accountability over state resources.

Recognizing PMN as part of state finance should not automatically lead to the conclusion that all corporate actions involving PMN must be assessed through a public-law lens. Such an approach risks undermining the operational autonomy of SOEs and creating excessive legal exposure for corporate management. A more coherent interpretation would distinguish between the constitutional origin of PMN and the legal consequences of its utilization. While PMN remains subject to public accountability because it originates from public resources, its day-to-day management should be governed by corporate law principles, including the doctrines of separate legal personality, fiduciary duty, and business judgment rule.

Despite the Constitutional Court's clarification regarding the constitutional status of PMN, Indonesian legislation continues to exhibit a significant normative gap concerning the legal consequences of that classification. Existing regulations, including Minister of Finance Regulation Number 146/PMK.06/2022, primarily regulate administrative matters such as reporting, monitoring, and evaluation of PMN. They do not establish a comprehensive legal framework governing directors' liability, the recovery of losses arising from PMN management, or the interaction between administrative, civil, and criminal accountability.

Neither the State Finance Law nor the SOE Law explicitly defines the legal threshold separating legitimate commercial risk from unlawful management of state capital. The absence of such statutory guidance has resulted in inconsistent interpretations among supervisory institutions, auditors, and law enforcement agencies. Consequently, the legal consequences of PMN remain uncertain despite the Constitutional Court having settled its constitutional status.

This normative vacuum ultimately demonstrates that the principal challenge no longer concerns the constitutional classification of PMN, but rather the absence of harmonized legislation regulating how constitutional accountability should coexist with the principles of modern corporate governance. Addressing this gap is essential to ensure legal certainty for SOEs while simultaneously preserving public accountability over state resources.

The principal legal challenge is not determining whether PMN forms part of state finance, as this issue has largely been settled by the Constitutional Court. Rather, the unresolved issue concerns the absence of a clear legal framework defining the consequences of such classification. Without a coherent accountability model, the coexistence of public law and corporate law will continue to generate uncertainty regarding supervision, liability, and the legal status of separated state assets. This uncertainty ultimately reflects a deeper structural inconsistency in Indonesian SOE governance that requires legislative harmonization between state finance law and corporate law.

3.2 Accountability Model for the Utilization of State Capital Participation Granted to PT PNM

One of the principal weaknesses in the current regulatory framework governing State Capital Participation is the absence of a specific accountability mechanism governing the

utilization of PMN after its transfer into the capital structure of State-Owned Enterprises (SOEs). Regulation of the Minister of Finance Number 146/PMK.06/2022 primarily focuses on reporting, monitoring, and evaluation procedures. However, reporting obligations cannot be equated with legal accountability.¹⁷ Reporting merely functions as an administrative instrument, whereas accountability requires the existence of legal consequences when PMN is utilized contrary to its intended purpose or results in losses arising from unlawful conduct.

This regulatory gap becomes increasingly problematic because PMN occupies a unique legal position. As discussed previously, PMN remains part of state finance from a constitutional perspective while simultaneously functioning as corporate capital within an SOE. Consequently, the accountability framework governing PMN cannot rely exclusively on either public law or corporate law. Instead, it requires an integrated model capable of reconciling public financial accountability with corporate governance principles.¹⁸

An integrated accountability framework is necessary because PMN simultaneously performs two legal functions that cannot be separated in practice. On the one hand, PMN represents public resources originating from the State Budget and therefore remains subject to constitutional principles of transparency, accountability, and public financial responsibility. On the other hand, once injected into an SOE, PMN becomes corporate capital that must be managed according to commercial principles to ensure the enterprise's competitiveness and financial sustainability. An accountability framework that emphasizes only one of these dimensions inevitably produces legal imbalance. Excessive reliance on public law may discourage managerial innovation and commercial risk-taking, whereas excessive reliance on corporate law may weaken democratic oversight over public resources.

Accountability should not be conceptualized as a mechanism designed solely to impose sanctions after losses occur. Rather, accountability should operate as a governance system that regulates the entire life cycle of PMN, beginning with the allocation of capital, continuing through implementation and monitoring, and concluding with legal evaluation of managerial performance. Such a life-cycle approach enables preventive supervision while preserving the operational flexibility necessary for commercial decision-making.

From a corporate law perspective, not every loss suffered by an SOE should automatically be regarded as a state financial loss. The doctrine of the business judgment rule protects directors who make business decisions in good faith, with due care, and within the scope of their authority. Therefore, accountability should not be triggered merely because an investment or business policy funded by PMN results in financial losses. Legal

¹⁷ Y Abimanyu and R. Rokhim, "The Effect Of State Capital Participation On The Financial And Non-Financial Performance Of State-Owned Enterprises And Other Institutions," *Cakrawala Repositori IMWI* 6, no. 6 (2023): 2539–2557, <https://doi.org/10.52851/cakrawala.v6i6.556>.

¹⁸ A Mada and T. W Dati, "Analysis of the Effect of State Capital Participation, Solvency, Liquidity, and Asset Growth on the Financial Performance of State-Owned Enterprises," *IDEI: Jurnal Ekonomi & Bisnis* 3, no. 2 (2022): 114–128, <https://doi.org/10.38076/ideijeb.v3i2.140>.

responsibility should arise only where losses are attributable to misconduct, abuse of authority, bad faith, conflicts of interest, or violations of statutory and fiduciary obligations.

In this regard, the accountability model should be constructed based on the doctrine of fiduciary duty. Directors of SOEs receiving PMN act not only as corporate managers but also as trustees of public resources originating from state finance. Consequently, directors are required to comply with the duties of care, loyalty, and good faith in managing PMN. A breach of these duties constitutes a legitimate basis for imposing legal liability. This approach is preferable to a strict liability model because it preserves managerial discretion while ensuring accountability for misconduct.

The fiduciary nature of directors' obligations should also be interpreted within the broader framework of public corporate governance. Unlike directors of purely private corporations, directors of SOEs receiving PMN simultaneously owe responsibilities to the corporation, the state as shareholder, and the public whose financial interests are represented by the state. This expanded fiduciary relationship does not create multiple conflicting duties but rather reinforces the requirement that directors exercise corporate authority consistently with both commercial objectives and constitutional values.

Fiduciary duty should not be interpreted merely as a private contractual obligation between directors and the corporation. Instead, it represents a public governance obligation requiring directors to ensure that PMN is utilized efficiently, transparently, and consistently with the constitutional objectives for which the capital was originally allocated. Consequently, breaches of fiduciary duty involving PMN possess both corporate and public law dimensions, thereby justifying an integrated accountability mechanism.

The doctrine of *piercing the corporate veil* becomes relevant when directors abuse the corporate form to conceal unlawful conduct or evade personal responsibility. However, this doctrine should not be applied automatically whenever an SOE suffers losses. Rather, its application must be limited to exceptional circumstances where directors have acted beyond the legitimate boundaries of corporate authority.

The doctrine may be invoked where several conditions are satisfied. First, directors engage in *ultra vires* actions by utilizing PMN for purposes unrelated to the objectives for which the funds were allocated. Second, directors violate their fiduciary duties by prioritizing personal interests, affiliated parties, or political interests over corporate and public interests. Third, there is evidence of abuse of authority, namely the exercise of corporate power for purposes inconsistent with statutory mandates or public policy objectives. Fourth, directors intentionally use the corporate structure as an instrument to conceal unlawful transactions or misappropriate state resources.

Under these circumstances, the principle of limited liability should no longer protect directors. Personal liability becomes justified because the loss is no longer attributable to ordinary business risk but rather to deliberate misconduct. Consequently, directors may be held personally liable for restoring losses suffered by the company or the state. Such liability

reflects not only the doctrine of *piercing the corporate veil* but also broader principles of corporate accountability recognized in comparative corporate governance systems.¹⁹

Comparative corporate governance further supports the selective application of the piercing the corporate veil doctrine. Jurisdictions such as the United Kingdom, Singapore, and Australia consistently regard veil piercing as an exceptional remedy rather than a routine response to corporate losses. Courts generally require clear evidence that the corporate form has been deliberately abused to facilitate fraud, evade statutory obligations, or conceal unlawful conduct. The doctrine therefore functions as a corrective mechanism directed against misuse of the corporate personality rather than as a substitute for ordinary corporate liability.

Applying this principle to PMN governance suggests that veil piercing should remain an extraordinary remedy reserved for cases involving intentional abuse of state capital. Routine commercial losses resulting from market fluctuations, economic downturns, or unsuccessful investment decisions should remain within the sphere of corporate risk governed by the Business Judgment Rule. Such an approach preserves legal certainty while preventing the misuse of public accountability mechanisms to penalize legitimate business decisions.

The accountability framework should further distinguish between civil, administrative, and criminal liability. This distinction is particularly important because current public discourse frequently assumes that any irregularity involving PMN should automatically trigger criminal prosecution.²⁰ Such an approach risks criminalizing legitimate business decisions and undermining the effectiveness of SOE management.

From the perspective of modern criminal law theory, criminal sanctions should not always constitute the first response to irregularities involving PMN. Traditionally, criminal law is regarded as an *ultimum remedium*, meaning that penal intervention should be employed only when other legal mechanisms prove inadequate. However, contemporary developments in economic crime regulation have introduced the concept of *premium remedium*, whereby criminal sanctions may serve as a primary enforcement instrument in sectors involving substantial public interests, systemic risks, or significant threats to state finances.

Nevertheless, the adoption of a *premium remedium* approach in PMN governance must be carefully justified. It should not be interpreted as requiring automatic criminal prosecution whenever state losses occur. Such an interpretation would contradict the principle of proportionality, which requires that legal sanctions be proportionate to the gravity of the misconduct and the degree of culpability involved. Criminal liability should

¹⁹ Mutia RH et al., “Regional Government Capital Participation in Regional-Owned Enterprises: The Shift of Legal Regimes and Challenges in Regional Asset Governance,” *Widya Yuridika: Jurnal Hukum* 8, no. 3 (2025): 739–754, <https://doi.org/https://doi.org/10.31328/wy.v8i3.7044>.

²⁰ Agni Mahesa, “Legal Aspects of the Regulation of State Capital Participation in International Financial Institutions,” *Jurnal Reformasi Hukum* 19, no. 2 (2016): 243–265, <https://doi.org/10.46257/jrh.v20i2.10>.

therefore be reserved for situations involving corruption, embezzlement, money laundering, fraudulent reporting, or intentional misuse of PMN. In contrast, cases involving negligence, poor business judgment, or administrative non-compliance should primarily be addressed through administrative sanctions and civil liability mechanisms.

Accordingly, the debate between *ultimum remedium* and *premium remedium* should not be framed as a choice between weak and strong law enforcement. Rather, the appropriate accountability model requires a graduated enforcement structure. Administrative accountability should function as the first layer through monitoring, audits, corrective orders, and regulatory sanctions.²¹ Civil accountability should constitute the second layer through compensation claims and the application of piercing the corporate veil where fiduciary duties have been breached. Criminal accountability should function as the final and most severe layer, applicable only when misconduct demonstrates intentional abuse of authority and causes substantial harm to state finances.

To operationalize this framework, Article 10 paragraph (3) of Regulation of the Minister of Finance Number 146/PMK.06/2022 should be revised. The current provision merely requires monitoring results to be submitted to the Minister of SOEs without establishing legal consequences for misuse of PMN. Such a mechanism is inadequate because it treats accountability as a reporting obligation rather than a legally enforceable responsibility. Future regulations should establish a clear accountability pathway linking audit findings to administrative sanctions, civil recovery mechanisms, and criminal investigation procedures where necessary.²²

The proposed integrated accountability model demonstrates that the governance of State Capital Participation (PMN) cannot rely solely on conventional distinctions between public law and private corporate law. Instead, PMN accountability should be understood as a hybrid governance regime in which constitutional accountability and corporate governance complement rather than negate one another. Such an approach enables SOEs to preserve commercial flexibility through the Business Judgment Rule while simultaneously ensuring that public resources remain subject to transparent and enforceable legal control. From a regulatory perspective, this model provides a normative foundation for harmonizing the State Finance Law, the SOE Law, and the Limited Liability Company Law by establishing clear boundaries between administrative oversight, fiduciary-based civil liability, and criminal responsibility for intentional misconduct. More broadly, the model contributes to the development of Indonesian public corporate governance by shifting the focus of PMN supervision from a reactive, loss-oriented paradigm toward a risk-based and governance-

²¹ Januwianti Atikah, "A Legal Study on Capital Ownership in the Transformation of State-Owned Enterprises into Private-Owned Enterprises," *Lex Crimen* 5, no. 3 (2016): 1–13, <https://www.neliti.com/id/publications/3436/kajian-hukum-tentang-kepemilikan-modal-terhadap-badan-usaha-milik-negara-menjadi>.

²² Hidayatussalam, "Legal Analysis Of State Financial Loss In State Owned Business Entity (BUMN)," *Jurnal Pendidikan Dan Konseling* 4, no. 5 (2022): 2693–2701, <https://doi.org/10.31004/jpdk.v4i5.7019>.

oriented accountability framework capable of balancing legal certainty, economic efficiency, and constitutional responsibility.

4. CONCLUSION

This study concludes that State Capital Participation (Penyertaan Modal Negara/PMN) granted to PT Permodalan Nasional Madani (PT PNM) should be understood as a hybrid legal institution that constitutionally remains part of state finance while being operationally governed by corporate law principles, including separate legal personality, fiduciary duty, and the Business Judgment Rule. The coexistence of these legal regimes has created regulatory uncertainty regarding the legal status of separated state assets, directors' liability, and the limits of state supervision. The novelty of this research lies in the formulation of a hybrid accountability framework that integrates administrative accountability, fiduciary-based civil liability, and criminal liability as a proportional *premium remedium*, thereby providing a coherent legal model for balancing constitutional accountability with corporate autonomy. This framework differs from previous studies, which primarily examined PMN from economic, asset management, or criminal law perspectives, by offering an integrated normative approach to resolving the conflict between state finance law and corporate governance. The study contributes theoretically to the development of Indonesian public corporate governance by redefining PMN accountability within a unified legal framework, while practically providing a normative basis for harmonizing the State Finance Law, the State-Owned Enterprises Law, the Limited Liability Company Law, and implementing regulations governing PMN. Future research should evaluate the applicability of this accountability framework through comparative studies of state-owned enterprises and sovereign investment institutions in other jurisdictions.

REFERENCES

- Abimanyu, Y, and R. Rokhim. "The Effect Of State Capital Participation On The Financial And Non-Financial Performance Of State-Owned Enterprises And Other Institutions." *Cakrawala Repositori IMWI* 6, no. 6 (2023): 2539–2557. <https://doi.org/10.52851/cakrawala.v6i6.556>.
- Adhitya, Wisnu Purna, and Akhmad Solikin. "The Impact of Government Investment in the Form of Additional State Capital Participation on the Financial Performance of State-Owned Enterprises." *Jurnal Bisnis Dan Akuntansi Unsuraya* 10, no. 1 (2025): 1–19. <https://doi.org/10.35968/jbau.v10i1.1424>.
- Afdhali, Dino Rizka. "The Ideality of Law Enforcement Reviewed from the Perspective of Legal Purpose Theory." *Collegium Studiosum Journal* 6, no. 2 (2023): 555–561. <https://doi.org/10.56301/csj.v6i2.1078>.
- Atikah, Januwianti. "A Legal Study on Capital Ownership in the Transformation of State-Owned Enterprises into Private-Owned Enterprises." *Lex Crimen* 5, no. 3 (2016): 1–13. <https://doi.org/https://www.neliti.com/id/publications/3436/kajian-hukum-tentang-kepemilikan-modal-terhadap-badan-usaha-milik-negara-menjadi>.
- Fathyah, Nuzul, Tintin Sri, and Nurmita Sari. "State Capital Participation in State-Owned Enterprises within Public Corporations (Perum): A Study on Perum Perhutani."

- Journal of Business Administration Economic & Entrepreneurship* 1, no. 1 (2019): 16–26. <https://jurnal.stialan.ac.id/index.php/jbest/article/view/111>.
- Firzada, Mohammad Iqbal. “State Capital Participation Policy for the Recovery of MSMEs.” Kementerian Keuangan, 2020. <https://www.djkn.kemkenku.go.id/artikel/baca/13216/Kebijakan-Penyertaan-Modal-Negara-untuk-Pemulihan->
- Halley, G. “The Criminal Liability of Artificial Intelligence Entities – From Science Fiction to Legal Social Control.” *Akron Intellectual Property Journal* 4, no. 2 (2010): 182. <https://doi.org/10.2139/ssrn.1564096>.
- Herman. “Abuse of Authority in Capital Participation Activities of Village-Owned Enterprises Which Implicated Criminal Acts of Corruption.” *Halu Oleo Legal Research* 5, no. 1 (2023): 234–249. <https://doi.org/10.33772/holresch.v5i1.336>.
- Hidayatussalam. “Legal Analysis Of State Financial Loss In State-Owned Business Entity (BUMN).” *Jurnal Pendidikan Dan Konseling* 4, no. 5 (2022): 2693–2701. <https://doi.org/10.31004/jpdk.v4i5.7019>.
- Josephine, Ingrid, and Suparjo. “The Authority to Transfer Land Rights Derived from State Capital Participation (PMN) in Persero.” *Journal of Social Sciences and Education* 6, no. 2 (2022): 3683–3695. <http://dx.doi.org/10.58258/jisip.v6i2.2929>.
- Mada, A, and T. W. Dati. “Analysis of the Effect of State Capital Participation, Solvency, Liquidity, and Asset Growth on the Financial Performance of State-Owned Enterprises.” *IDEI: Jurnal Ekonomi & Bisnis* 3, no. 2 (2022): 114–128. <https://doi.org/10.38076/ideijeb.v3i2.140>.
- Mahesa, Agni. “Legal Aspects of the Regulation of State Capital Participation in International Financial Institutions.” *Jurnal Reformasi Hukum* 19, no. 2 (2016): 243–265. <https://doi.org/10.46257/jrh.v20i2.10>.
- Nanda, Akhmadi Heru and Putu. “Analysis of the Benefits of State Capital Participation in the Bali Provincial Rural Electricity Infrastructure Development Program.” *Journal of Economic Development* 25, no. 1 (2021): 8–22. <https://doi.org/10.26593/be.v25i1.5114.8-22>.
- Pratama, Akhdi Martin. “This Year, PNM Receives a Capital Injection of Rp 2.5 Trillion from the Government.” Kompas.com, 2020. <https://money.kompas.com/read/2020/12/10/145134126/tahun-ini-pnm-dapat-suntikan-dana-rp-25-triliun-dari-pemerintah>.
- Prayogo, Leonardus A. “Mechanism for Converting Debt into Equity Participation as an Effort to Resolve State Receivables in the State-Owned Food Holding Company.” *Acta Diurnal* 7, no. 1 (2023): 133–145. <https://doi.org/10.23920/acta.v7i1.1690>.
- Putra, Widhya Mahendra. “The Mechanism of State Capital Participation in State-Owned Enterprises With or Without the Approval of the House of Representatives from the Perspective of Financial Law.” *PDRH Soediman* 1, no. 1 (2019): 1–13. <https://doi.org/10.30641/dejure.2019.V19.385-403>.
- Rahardjo, Satjipto. *Legal Sciences*. Bandung: Citra Aditya Bhakti, 2006.
- RH, Mutia, Aisha Sugiharti, Dewi Kania, and Tsuraya Ghefiranisa. “Regional Government Capital Participation in Regional-Owned Enterprises: The Shift of Legal Regimes and Challenges in Regional Asset Governance.” *Widya Yuridika: Jurnal Hukum* 8, no. 3 (2025): 739–754. <https://doi.org/10.31328/wy.v8i3.7044>.
- Wijaya, Ivan Satria. “The Accountability of the Management of State-Owned Enterprises

Received: 2026-05-22
Accepted: 2026-06-23
Available: 2026-06-27
e-ISSN: 2621-4105

<https://journals.usm.ac.id/index.php/julr>
DOI: <https://doi.org/10.26623/julr.v9i3.14609>

This work is licensed under [Creative Commons Attribution International License](https://creativecommons.org/licenses/by/4.0/)

for State Financial Losses in the Management of Persero.” *Scientific Journal of Students* 4, no. 2 (2015): 1–14.
<https://journal.ubaya.ac.id/index.php/jimus/article/view/2163>.