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Reconstructing Indonesian State-Owned Enterprise Governance under the Welfare State Paradigm: Lessons from Malaysia and Norway

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Abstract

The governance of state-owned enterprises (SOEs) in Indonesia reveals a persistent legal tension between the constitutional mandate of the welfare state and the corporate logic of efficiency, profitability, and managerial autonomy. The main legal weakness lies in the unclear boundary between state control, corporate autonomy, and public accountability, particularly in the regulation of state capital, ministerial supervision, board appointments, and public audit mechanisms. This study aims to reconstruct an Indonesian SOE governance model that aligns corporate performance with constitutional responsibility and social welfare. Using a juridical-normative method with statutory, conceptual, and comparative approaches, the study examines Indonesia's SOE legal framework in comparison with Malaysia's developmental-state model and Norway's welfare-oriented public ownership model. The findings show that Indonesia requires a governance framework that does not treat SOEs merely as commercial corporations, but as public fiduciary institutions entrusted with advancing collective welfare. The proposed Welfare-Oriented SOE Governance model consists of four pillars: welfare-based accountability, ethical corporate autonomy, participatory oversight, and transparent execution. Its practical implication is the need to reform SOE law by clarifying welfare-based objectives, strengthening merit-based appointments, institutionalizing public ownership reporting, and integrating welfare indicators into SOE performance evaluation. The novelty of this study lies in combining welfare constitutionalism, responsive law, and social economic law into a concrete legal framework for reconstructing SOE governance in Indonesia.

Introduction

State-owned enterprises occupy a distinctive position in modern constitutional economies because they operate at the intersection of state responsibility, market discipline, and public welfare. In Indonesia, this position is normatively anchored in Article 33 of the 1945 Constitution, which places strategic economic sectors under state control for the greatest prosperity of the people.[1] However, the legal and institutional development of Indonesian SOEs has increasingly adopted a corporate governance logic that emphasizes efficiency, profitability, and managerial autonomy.[2] This shift is not inherently problematic, but it becomes constitutionally vulnerable when the pursuit of commercial performance weakens the welfare function of public ownership.[3] The central issue, therefore, is not whether SOEs should be efficient, but how efficiency can be legally reconciled with the state's constitutional duty to promote social justice, economic democracy, and collective prosperity.[4]

The Indonesian SOE framework continues to face ambiguity in defining the relationship between state ownership, corporate autonomy, and public accountability.[5] Law No. 19 of 2003 on State-Owned Enterprises, as amended, recognizes SOEs as economic actors with corporate characteristics, while the broader constitutional and public finance framework continues to treat separated state assets as part of state responsibility.[6] The issue becomes more complex when SOEs operate under the logic of limited liability companies, especially in relation to board autonomy, ministerial intervention, audit authority, and public service obligations.[7] This hybrid legal identity has generated a governance dilemma: SOEs are expected to compete as corporations, yet they remain bound by constitutional and public accountability standards. The absence of a coherent legal model to harmonize these obligations is the core problem addressed in this article

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[1] Kenneth G. Huang et al., "Coevolution of SOEs and the Chinese Economy: The Roles of SOE Heterogeneity from the Institutional, Strategic, and Organizational Perspectives," *Management and Organization Review* 20, no. 5 (2024): 704–15, https://doi.org/10.1017/mor.2024.68.

[2] Effnu Subiyanto, "Ignoring Commitment of Labor's Welfare: Evidence in State-Owned Enterprise Cement Holding of PT Semen Indonesia (Persero) Tbk," in *Advances in Human Resources Management and Organizational Development*, ed. Radha Yadav et al. (IGI Global, 2021), https://doi.org/10.4018/978-1-7998-3515-8.ch005.

[3] Najla Alkaabi et al., "Executive Pay and Economic Disparity: A Critical Analysis of Equity, Governance, and Corporate Performance," in *Technological Innovation and Enhancing Decision Processes in Modern Enterprises*, vol. 631, ed. Reem Khamis Hamdan, Studies in Systems, Decision and Control (Springer Nature Switzerland, 2026), https://doi.org/10.1007/978-3-032-04378-8_77.

[4] Agustina Merdekawati et al., "Indonesia and Conservation Outside Forests: An Option to Untangle Authority Dualism in the Implementation of the Essential Ecosystem Area," *Yustisia Jurnal Hukum* 11, no. 1 (2022): 54, https://doi.org/10.20961/yustisia.v11i1.54789.

[5] Erma Rusdiana et al., "The Potential for Corporate Corruption in Mining Licensing Policies for Religious Organizations in Indonesia," *Lex Scientia Law Review* 9, no. 2 (2025): 1587–636, https://doi.org/10.15294/lslr.v9i2.21551.

[6] Elisatin Ernawati et al., "Aligning State-Owned Enterprises with Constitutional Values: The Case of Indonesian BUMN Holding Companies," *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 3, no. 2 (2023): 141–50, https://doi.org/10.53754/iscs.v3i2.639.

[7] Mahmoud Alghizzawi et al., "Corporate Governance Paradigm in Developing Country. Theoretical Overview," in *The AI Revolution: Driving Business Innovation and Research*, vol. 525, ed. Bahaa Awwad, Studies in Systems, Decision and Control (Springer Nature Switzerland, 2024), https://doi.org/10.1007/978-3-031-54383-8_68.

The central problem addressed in this study lies in the persistent disjunction between the normative ideals of the welfare state and the operational realities of state-owned enterprise (SOE) governance. Despite constitutional and legislative mandates emphasizing social justice and collective welfare, SOEs in Indonesia often remain trapped in a paradoxical role — oscillating between instruments of public service and agents of profit maximization.[8] This dualistic orientation generates normative and institutional conflicts that blur the boundaries between public obligation and commercial rationality. The legal framework governing SOEs, particularly following the enactment of Law No. 19 of 2003 and its amendments, has yet to provide a coherent model that ensures corporate autonomy while maintaining the state's fiduciary responsibility toward citizens' welfare.[9] The question thus arises: how can legal reform reconstruct SOE governance so that it embodies both corporate efficiency and the ethical imperatives of the welfare state? The inquiry extends beyond the Indonesian context to a broader global dilemma—how emerging economies reconcile neoliberal governance structures with the redistributive logic of welfare constitutionalism.

From this central tension emerge several derivative problems that form the analytical focus of this research. First, the study examines to what extent principles of independence, transparency, and professionalism within SOE governance can coexist with the state's moral and constitutional duty to safeguard public welfare. Second, it interrogates the role of comparative legal experiences—particularly Malaysia's hybrid developmental-state model and Norway's welfare-capitalist framework—in informing a balanced governance structure that harmonizes profitability and social justice. Third, it explores the juridical consequences of reimagining SOEs as welfare-oriented entities: how such a shift might redefine the boundaries of corporate law, reshape the fiduciary duties of state shareholders, and recalibrate the relationship between public authority and market autonomy. In addressing these interrelated issues, the study positions itself at the intersection of constitutional theory, corporate governance, and social philosophy, seeking to identify a transformative legal pathway that reaffirms the state's role as both guarantor of welfare and enabler of economic competitiveness.

This study aims to construct a comprehensive legal and theoretical framework for reforming the governance of state-owned enterprises (SOEs) within the paradigm of the welfare state, with a particular focus on Indonesia in comparison to Malaysia and Norway. It seeks to critically examine how legal structures can reconcile the dual mandate of SOEs—as commercial entities pursuing efficiency and as public institutions advancing social welfare—through the integration of responsive, transparent, and accountable governance principles. The research aspires to elucidate how welfare-state constitutionalism can serve as a normative compass in redefining the role of SOEs from bureaucratic instruments of state control into autonomous yet socially responsible corporate entities. By analyzing the legal, philosophical, and comparative dimensions of SOE governance, this study endeavors to formulate a reform model that not only strengthens corporate professionalism and competitiveness but also reaffirms the

[8] Hilda Rossieta et al., "State Ownership, Corporate Missions and Accountability of Dividend Policy: Empirical Evidence of State-Owned Enterprises Governance," *Journal of Governance and Regulation* 14, nos. 1, special issue (2025): 381–88, https://doi.org/10.22495/jgrv14i1siart14.

[9] Anshori Ilyas and Hamzah, "Administrative Land Conflicts and Reforming State-Owned Enterprises in Indonesia," *Hasanuddin Law Review* 8, no. 2 (2022): 186–93.

ethical and constitutional commitment of the state to distributive justice, inclusivity, and collective prosperity.

Existing scholarship on Indonesian state-owned enterprises has provided important but still partial explanations of SOE governance. Reni Anggriani, F.X. Joko Priyono, and Nanik Tri Hastuti[10] examine the problem of separated state assets in SOEs, particularly the ambiguity of state finance, state losses, and the legal consequences of corruption within SOE management. Their study is valuable because it clarifies the public-finance dimension of SOE assets; however, it does not yet develop a broader welfare-oriented governance model that connects state assets, corporate autonomy, and constitutional responsibility within a unified reform framework. Agnes Harvelian, Muchamad Ali Safa'at, Aan Eko Widiarto, and Indah Dwi Qurbani[11] analyze the constitutional interpretation of SOE regulation based on Constitutional Court decisions. Their article shows that SOEs are constitutionally linked to the state's responsibility to manage strategic resources for the greatest prosperity of the people, and that the Constitutional Court tends to use an originalist approach in interpreting SOE-related constitutional issues. Nevertheless, their analysis remains centered on constitutional interpretation and judicial reasoning, rather than on constructing an operational model of SOE governance reform. Elisatin Ernawati, Sri Suhariningsih, Afifa Kusumadara, and Budi Santoso[12] focus on the alignment between BUMN holding companies and constitutional values, especially in relation to corporate accountability, economic constitution, ethical conduct, and socio-economic welfare. Their contribution lies in identifying the discrepancy between constitutional ideals and corporate practice in BUMN holding companies, as well as recommending stronger oversight, transparency, and accountability. However, their study remains focused on holding companies and has not yet formulated a comparative welfare-state governance model by drawing lessons from different public ownership systems such as Malaysia and Norway.

Therefore, the gap addressed by this article lies in its attempt to move beyond fragmented discussions of separated state assets, constitutional interpretation, and holding-company accountability. This article argues that Indonesian SOE reform requires a more integrated legal framework that treats SOEs not merely as commercial corporations or administrative extensions of the state, but as public fiduciary corporations entrusted with realizing constitutional welfare objectives. Unlike previous studies, this article combines welfare constitutionalism, responsive law, and social economic law with comparative lessons from Malaysia's developmental-state model and Norway's welfare-oriented public ownership model. Its contribution is the formulation of Welfare-Oriented SOE Governance, a four-pillar model consisting of welfare-based accountability, ethical corporate autonomy, participatory oversight, and transparent execution. Through this framework, the article offers a more concrete normative basis for reconstructing Indonesian SOE governance so that corporate efficiency, state

[10] Reni Anggriani et al., "The Separated State Property in State-Owned Enterprises," *Sociología y Tecnociencia* 13, no. 1 (2023): 26–43, https://doi.org/10.24197/st.1.2023.26-43.
[11] Agnes Harvelian et al., "Interpretation of the Constitution on the Arrangement of State-Owned Enterprises in the National Economic System Based on the Decision of the Constitutional Court," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, no. 1 (2023): 171–88, https://doi.org/10.19109/nurani.v23i1.17109.
[12] Ernawati et al., "Aligning State-Owned Enterprises with Constitutional Values."

ownership, and social justice are not treated as competing objectives, but as mutually reinforcing constitutional obligations.

Building on these gaps, this article positions Indonesian SOE governance not merely as an economic or managerial issue, but as a constitutional question concerning the state's responsibility to realize social welfare through public ownership. By comparing Indonesia with Malaysia's developmental-state model and Norway's welfare-oriented public ownership model, this study seeks to identify how corporate autonomy, state control, and public accountability can be legally harmonized. The comparative analysis is therefore used not to transplant foreign models into Indonesia, but to construct a welfare-oriented governance framework that is normatively grounded in Article 33 of the 1945 Constitution and institutionally responsive to the practical problems of Indonesian SOE governance.

The novelty of this study lies in its formulation of a welfare-oriented governance model for state-owned enterprises (SOEs) that transcends the dichotomy between profit-driven corporatization and state-centered bureaucracy. By advancing the concept of Welfare-Oriented SOE Governance, this research reimagines corporate law as an instrument of ethical redistribution—one that harmonizes economic efficiency with constitutional imperatives of justice and social welfare. Integrating Nonet and Selznick's responsive law theory, Sunaryati Hartono's Indonesian economic law paradigm, and comparative insights from Malaysia and Norway, the study constructs a multidimensional framework where law operates not merely as a regulatory mechanism but as a transformative moral institution. This contribution challenges the prevailing neoliberal orthodoxy that reduces SOEs to market actors and instead restores their foundational role as vehicles of collective prosperity and public accountability. In doing so, it positions the research within a global discourse that seeks to recalibrate state capitalism through welfare constitutionalism—asserting that the legitimacy of modern economic governance must ultimately be measured by its capacity to humanize the market and uphold the social purpose of the state.

Problem Statement

The central problem addressed in this study concerns the unresolved tension between the constitutional mandate of the welfare state and the neoliberal transformation of state-owned enterprises (SOEs), which increasingly prioritize market efficiency over social responsibility. Despite their foundational purpose as instruments of collective welfare and economic democratization, SOEs in Indonesia continue to operate within a fragmented legal framework that fails to reconcile state ownership, corporate autonomy, and public accountability. This tension raises a critical jurisprudential question: how can legal reform reconstruct the governance of SOEs to embody the ethical imperatives of welfare-state constitutionalism while remaining responsive to the demands of global economic competitiveness? The problem thus transcends administrative or managerial inefficiencies and instead reflects a deeper philosophical crisis in the normative architecture of economic governance—where law, designed to serve justice and social equity, has been subordinated to the logic of profit and market rationality.

Methods

This study employs a juridical-normative method because the main object of analysis is the legal construction of SOE governance within the welfare-state paradigm. The research uses statutory, conceptual, and comparative approaches.[13] The statutory approach examines the legal framework governing Indonesian SOEs, particularly Law No. 19 of 2003 on State-Owned Enterprises as amended, Law No. 40 of 2007 on Limited Liability Companies, public finance regulations, ministerial rules on SOE governance, and Constitutional Court decisions concerning separated state assets. The conceptual approach uses welfare constitutionalism, responsive law, and social economic law as interpretive lenses and normative benchmarks. Welfare constitutionalism functions to evaluate whether SOE governance reflects the constitutional mandate of collective prosperity; responsive law is used to assess whether legal institutions respond to public needs and accountability demands; while social economic law provides a foundation for balancing economic development and distributive justice.

The comparative approach is applied to Malaysia and Norway based on five criteria: legal status of SOEs or state-linked companies, state ownership policy, degree of corporate autonomy and political intervention, accountability and transparency mechanisms, and welfare orientation in corporate governance. Malaysia is selected because it represents a developmental-state model in Southeast Asia where state-linked companies are used to support national development and market competitiveness. Norway is selected because it represents a mature welfare-state model with strong public ownership governance, transparent reporting, and institutionalized public accountability. The analysis is conducted qualitatively through interpretive legal reasoning by connecting statutory norms, institutional arrangements, and philosophical principles. Through this method, the study does not merely compare legal texts, but evaluates how each legal system translates state ownership into governance duties, public accountability, and welfare-oriented economic responsibility.

Reconstructing the Legal Governance of State-Owned Enterprises within the Welfare State Paradigm: From Normative Crisis to Institutional Transformation

1. Theoretical Reconstruction of State-Owned Enterprises within the Welfare State Paradigm

The transformation of state-owned enterprises (SOEs) within modern legal and economic discourse represents a profound philosophical struggle over the meaning of the state itself—whether it should remain a guarantor of collective welfare or evolve into a facilitator of market rationality.[14] In welfare-state constitutionalism, the state is not a neutral arbiter of market relations but a moral institution whose legitimacy

[13] Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Mirra Buana Media, 2020).
[14] Martha Liliana Arias Bello et al., "Effects of Corporatization on the Financial Performance of Non-Financial State-Owned Enterprises in Latin America Between 1999 and 2018," *Revista Brasileira de Políticas Públicas* 12, no. 3 (2023), https://doi.org/10.5102/rbpp.v12i3.8522.

derives from its capacity to promote social justice, equality, and the common good.[15] Drawing from Keynesian economic theory and the normative foundations articulated by R. Kranenburg and Bagir Manan, the welfare state envisions economic activity as an extension of social responsibility.[16] This contrasts sharply with neoliberal orthodoxy, which confines state action to regulatory minimalism. Within this dichotomy, SOEs embody a critical tension: they are simultaneously agents of economic production and instruments of public service, tasked with reconciling profit orientation with social redistribution.[17] This dualism demands not merely administrative reform but a deeper legal-philosophical reconstruction of the state's role in economic governance.

The Indonesian constitutional framework—anchored in Articles 33 and 34 of the 1945 Constitution—reflects this philosophical commitment to welfare-oriented governance, yet its operationalization remains deeply inconsistent. The constitutional text envisions the state as the custodian of natural resources and strategic sectors, ensuring that their utilization benefits the people. However, the corporatization of SOEs under Law No. 19 of 2003 and its subsequent amendments has largely imported the logic of private corporate law into the public sector, marginalizing the welfare mandate in favor of profitability and efficiency metrics.[18] This transplantation of liberal-capitalist legal models has produced an ontological dissonance between the moral objectives of the Constitution and the instrumental rationality of economic law. As a result, BUMN (Indonesian SOEs) have drifted toward commercialism, eroding their public accountability and distancing themselves from their original constitutional ethos as vehicles of collective welfare.

The Indonesian SOE legal framework illustrates this tension in concrete statutory terms. Law No. 19 of 2003 provides the foundational structure for SOEs by distinguishing between Persero and Perum and by recognizing both commercial and public service functions. However, the law does not fully articulate how welfare-based objectives should operate as binding legal standards in corporate decision-making. At the same time, Law No. 40 of 2007 on Limited Liability Companies subjects Persero-type SOEs to ordinary corporate governance principles, including the role of shareholders, directors, and commissioners. This creates a normative overlap: SOEs must comply with corporate law as business entities, yet their capital, ownership, and constitutional purpose remain attached to public responsibility. The result is a legal structure in which welfare obligations are acknowledged but not sufficiently operationalized through enforceable governance indicators, board duties, public reporting standards, or social impact evaluation.

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[15] Constanze Janda, "Freedom, Solidarity and Participation in the Democratic Welfare State," *Sozialer Fortschritt* 71, no. 10 (2022): 713–29, https://doi.org/10.3790/sfo.71.10.713.

[16] George Baca, "Neoliberalism's Prologue: Keynesianism, Myths of Class Compromises and the Restoration of Class Power," *Anthropological Theory* 21, no. 4 (2021): 520–40, https://doi.org/10.1177/1463499621989130.

[17] Maciej Bałtowski and Grzegorz Kwiatkowski, *State-Owned Enterprises in the Global Economy*, 1st ed. (Routledge, 2022), https://doi.org/10.4324/9781003244462.

[18] Suherman et al., "Legal Reform in Indonesia's Natural Resource Exploitation: A Study of SOE Privatization and Corporate Responsibility," *Journal of Law and Legal Reform* 6, no. 3 (2025): 1243–74.

From a philosophical perspective, this misalignment signifies not only a structural deficiency but also a crisis of meaning within Indonesia's legal order. The transformation of SOEs into quasi-private entities has obscured the ethical dimension of state ownership—turning public enterprises into instruments of capital accumulation rather than mechanisms of social justice.[19] The critique advanced by welfare theorists such as T.H. Marshall and J.M. Keynes underscores that the state's economic functions must be subordinated to the moral imperatives of justice and equity.[20] Thus, the challenge lies not in redefining the role of the market within the state but in redefining the role of the state within the market. Legal reform, therefore, must reorient SOE governance from a purely technocratic exercise into a moral-constitutional project that restores the social purpose of public ownership and reclaims law as an ethical force within economic life.

In this light, the theory of responsive law developed by Nonet and Selznick becomes particularly relevant. Their critique of autonomous and repressive legal systems exposes the limitations of positivist formalism, which isolates law from the moral and social realities it seeks to regulate. Responsive law conceives legal institutions as dynamic entities that must adapt to the evolving needs of society while maintaining integrity and justice.[21] Applied to SOE governance, this framework demands a shift from procedural legality to substantive responsiveness, where corporate governance structures are evaluated not merely by compliance metrics but by their contribution to social welfare and ethical accountability.[22] The implication is that SOEs, as juridical persons under public ownership, must operate within a dual normative framework: one grounded in corporate efficiency and another rooted in moral responsiveness to public needs.

Furthermore, the Indonesian welfare-state vision must be understood through the lens of hukum ekonomi sosial (social economic law), a concept articulated by Sunaryati Hartono to emphasize the balance between economic development and distributive justice. In this model, the law functions as both an instrument of growth and a safeguard for equity—ensuring that the expansion of national production coincides with the fair distribution of its benefits.[23] When applied to SOEs, this paradigm rejects the reductionist view that public enterprises should merely emulate private corporations; rather, they must embody a juridical synthesis between state responsibility and corporate autonomy. The reorientation of legal frameworks governing SOEs must therefore acknowledge that economic law in a welfare state cannot be ideologically

[19] Ernawati et al., "Aligning State-Owned Enterprises with Constitutional Values."
[20] Kaylee Boccalatte and Bradley Bowden, "Keynesianism: Origins, Principles, and Keynes's Debate with Hayek," in *The Palgrave Handbook of Management History*, ed. Bradley Bowden et al. (Springer International Publishing, 2020), https://doi.org/10.1007/978-3-319-62114-2_33.
[21] Imam Asmarudin et al., "Initiating the Reform of Principle Norms in the Formation of Laws in Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (2024): 208–26, https://doi.org/10.29303/ius.v12i2.1390.
[22] Giuseppe Nicolo' and Francisco Javier Andrades-Peña, "Does Corporate Governance Influence Environmental, Social and Governance Disclosure Practices of State-Owned Enterprises? An International Study," *Corporate Social Responsibility and Environmental Management* 31, no. 5 (2024): 4715–31, https://doi.org/10.1002/csr.2824.
[23] Khudzaifah Dimyati et al., "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (2021): e07865, https://doi.org/10.1016/j.heliyon.2021.e07865.

neutral—it must actively pursue justice as an economic outcome, not merely as an ethical aspiration.

The constitutional and theoretical reconstruction of SOEs also requires confronting the persistent influence of neoliberal governance, which has gradually redefined state intervention as inefficiency rather than obligation. Under this paradigm, privatization and deregulation are portrayed as inevitable paths toward modernization, while welfare commitments are dismissed as fiscal burdens. Yet such a view is antithetical to the foundational principles of Indonesia's Constitution, which positions the economy as a collective endeavor serving the people's prosperity. A return to welfare-state constitutionalism demands a reassertion of the moral and social telos of economic governance. This entails embedding within SOE law a framework of corporate moral responsibility—where economic efficiency is legitimate only insofar as it contributes to distributive justice, environmental sustainability, and social welfare.

Reconstructing SOE governance within the welfare-state paradigm is both a normative and philosophical endeavor. It challenges the reduction of law to economic utility and reclaims it as a transformative institution capable of humanizing the market. Such a reconstruction demands that the state reimagine its relationship with capital, not as a competing actor but as a custodian of justice and collective well-being. In this sense, legal reform becomes an ethical imperative: to align the governance of public enterprises with the moral architecture of the Constitution and the universal ideals of the welfare state. By reframing the SOE as a public fiduciary entity rather than a mere economic instrument, Indonesia can restore coherence between its constitutional vision and its economic reality—affirming that the true measure of progress lies not in profit margins but in the realization of social justice and human dignity.

2. Legal and Institutional Challenges in Indonesian SOE Governance

The governance of state-owned enterprises (SOEs) in Indonesia reveals a deep structural and normative paradox that reflects the tension between constitutional ideals and institutional realities. Despite the constitutional mandate in Articles 33 and 34 of the 1945 Constitution, which situates the economy as a collective enterprise for the people's welfare, the legal and institutional framework governing SOEs has gradually assimilated the logic of private corporate law. Law No. 19 of 2003 on SOEs, reinforced by subsequent amendments, has embraced a managerial and profit-oriented model that subordinates the welfare function to economic rationalization. This shift has led to a hybrid legal identity for BUMN—entities that are simultaneously public fiduciaries and commercial corporations. The resulting ambiguity erodes legal certainty regarding their financial status, accountability mechanisms, and relationship with the state. Consequently, SOEs operate within a grey zone where constitutional responsibility is weakened by market pragmatism, and public trust deteriorates as the moral dimension of state ownership is obscured by bureaucratic and political manipulation.

At the core of this structural dilemma lies the problem of autonomy and state intervention. While the notion of "kemandirian" (independence) in BUMN management was envisioned to foster efficiency, professionalism, and competitiveness, in practice it has often been compromised by political interference and excessive ministerial control.

Appointments of directors and commissioners frequently reflect political loyalty rather than corporate meritocracy, leading to moral hazard and governance inefficiency.[24] This distortion undermines the constitutional principle that state enterprises must function as instruments of collective welfare, not as vehicles for elite interests. The bureaucratization of decision-making processes has further stifled innovation and responsiveness, turning SOEs into instruments of state dependency rather than state empowerment.[25] The absence of institutional checks and balances—between ministerial oversight, parliamentary supervision, and public accountability—illustrates how the legal design of BUMN has failed to realize the responsive, transparent, and welfare-oriented governance envisioned by the Constitution.

A crucial area of reform concerns the appointment of directors and commissioners. In a welfare-oriented governance model, board appointment cannot be treated merely as an exercise of shareholder discretion by the state. It must be framed as a public fiduciary process because SOE leaders manage assets that carry constitutional and social consequences. Merit-based appointment should therefore be strengthened through transparent selection procedures, competence-based evaluation, integrity assessment, conflict-of-interest disclosure, and public accountability standards. The Ministry of SOEs should retain strategic ownership authority, but such authority must be exercised through objective criteria rather than political accommodation. Without a meritocratic appointment system, the principle of corporate autonomy will remain vulnerable to patronage, and the welfare mandate of SOEs will be reduced to rhetorical commitment.

Equally significant is the legal ambiguity surrounding the financial status of SOEs, which continues to be a contentious issue in Indonesian jurisprudence. The Constitutional Court's Decision No. 62/PUU-XI/2013, which clarified that state capital separated into SOEs remains part of state assets, was intended to reaffirm the state's control over strategic resources.[26] However, the decision also reinforced the hybrid nature of BUMN—subject to public accountability as custodians of state assets, yet expected to operate with the flexibility of private entities. This dualism has generated inconsistencies in financial governance and accountability mechanisms. It blurs the boundaries between public finance law and corporate law, leading to overlapping regulatory jurisdictions and frequent conflicts between the Supreme Audit Agency (BPK), ministries, and SOE boards.[27] The ambiguity not only weakens institutional integrity but also compromises the ethical foundations of public ownership, transforming state assets into a legal abstraction rather than a tangible instrument of social welfare.

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[24] Muhammad Yusuf et al., "Political Connections and Tax Avoidance: The Role of Politically Affiliated Ownership in Corporate Tax Strategies," *Edelweiss Applied Science and Technology* 9, no. 6 (2025): 199–210, https://doi.org/10.55214/25768484.v9i6.7788.

[25] Indri Dwi Apriliyanti and Trond Randøy, "Between Politics and Business: Boardroom Decision Making in State-Owned Indonesian Enterprises," *Corporate Governance: An International Review* 27, no. 3 (2019): 166–85, https://doi.org/10.1111/corg.12270.

[26] Waluyo Waluyo et al., "Aligning State Finance Regulations with SOE Bankruptcy Policy: Evidence from the United States," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (2025): 246–78, https://doi.org/10.53955/jhcls.v5i1.470.

[27] Rossieta et al., "State Ownership, Corporate Missions and Accountability of Dividend Policy."

The Constitutional Court's jurisprudence strengthens the public-law dimension of SOE governance. In Decision No. 62/PUU-XI/2013, the Court affirmed that separated state assets in SOEs remain part of state assets and therefore remain connected to public finance accountability. This position preserves the constitutional logic that state ownership cannot be detached from public responsibility. However, it also creates a practical governance challenge: if SOEs are treated entirely as public finance entities, excessive bureaucratic control may undermine corporate flexibility; but if they are treated merely as private corporations, public accountability may be weakened. The task of legal reform is therefore to create a balanced accountability model in which BPK audit authority, ministerial supervision, and corporate autonomy operate within clearly defined boundaries. Such a model should distinguish between business judgment, administrative accountability, and public finance responsibility, while ensuring that separated state assets remain oriented toward public welfare.

The erosion of Good Corporate Governance (GCG) principles within Indonesian SOEs further exacerbates this institutional fragility. Although statutory and ministerial regulations have formally adopted the GCG framework—emphasizing transparency, accountability, responsibility, independence, and fairness—its implementation remains largely procedural and symbolic.[28] In practice, GCG mechanisms are often reduced to compliance rituals rather than instruments of ethical corporate transformation. Cases of corruption, conflict of interest, and fiscal mismanagement in major SOEs such as Pertamina, PLN, and Garuda Indonesia illustrate the widening gap between normative standards and governance realities.[29] The failure to internalize fiduciary principles within managerial culture reflects not a deficit of regulation but a deficit of moral consciousness. Without a transformation of ethical reasoning in corporate leadership, the codification of governance principles will remain a hollow formality, detached from the substantive goals of welfare and justice.

From a philosophical standpoint, this disjuncture reflects the persistence of a positivist and instrumental view of law in Indonesia's economic governance. Legal reform has been primarily technocratic, emphasizing compliance and structural efficiency rather than ethical accountability or social responsiveness.[30] Such a model fails to capture the essence of responsive law, which, as Nonet and Selznick argued, must adapt to societal needs and integrate moral reasoning into legal design. The absence of moral-constitutional consciousness within the legal architecture of SOEs indicates that reform has prioritized formal rationality over substantive justice. As a result, law becomes an instrument of bureaucratic control rather than a vehicle for the realization of public welfare. The challenge, therefore, is not merely to perfect institutional design but to

[28] Mukhtaruddin Mukhtaruddin et al., "Implementation of Social Culture in Corporate Governance: A Literature Study," *International Journal of Financial Research* 11, no. 1 (2019): 293, https://doi.org/10.5430/ijfr.v11n1p293.
[29] Ni Luh Sari Widhiyani et al., "Navigating Timeliness: Decoupling in Corporate External Reporting by Indonesian State-Owned Enterprises (SOEs)," *Public Money & Management* 45, no. 7 (2025): 819–27, https://doi.org/10.1080/09540962.2025.2462784.
[30] Riccardo Guastini, "The Italian Tradition of Legal Positivism," in *The Cambridge Companion to Legal Positivism*, 1st ed., ed. Torben Spaak and Patricia Mindus (Cambridge University Press, 2021), https://doi.org/10.1017/9781108636377.007.

infuse it with ethical coherence—to reimagine corporate governance as a moral practice that mediates between economic efficiency and the collective good.

The legal and institutional challenges confronting Indonesian SOEs underscore a deeper epistemological crisis in the conception of state ownership. The problem is not only one of mismanagement or corruption but of a fundamental disconnection between legal form and moral purpose. Reconstructing SOE governance thus requires a philosophical realignment: law must once again be understood as a moral architecture that defines the boundaries of economic power and the responsibilities of public institutions. The integration of welfare-state principles into corporate law must transcend rhetorical commitment and translate into enforceable norms that bind the state to its ethical duty. This entails designing governance frameworks that ensure autonomy without detachment, profitability without exploitation, and accountability without politicization. Only through such a synthesis can Indonesia's SOEs evolve from instruments of administrative expediency into embodiments of constitutional justice—entities that reflect not the triumph of capital, but the dignity of collective welfare.

3. Comparative Legal Perspectives: Malaysia and Norway as Reference Models

The reconstruction of Indonesia's state-owned enterprise (SOE) governance within the welfare-state paradigm requires a comparative legal lens to illuminate alternative trajectories of reform. Comparative analysis serves not merely as a descriptive exercise but as a method of legal reasoning that reveals how different jurisdictions reconcile state ownership, market autonomy, and social responsibility within distinct philosophical and institutional traditions. In this context, Malaysia and Norway offer two contrasting yet instructive models. Malaysia's developmental-state hybrid demonstrates how strategic state intervention can coexist with market discipline, while Norway's social-democratic welfare capitalism exemplifies a mature integration of public ownership with democratic accountability and ethical corporate governance.[31] Examining these models allows for a rethinking of Indonesia's governance architecture—not through imitation, but through critical reflection on how legal design, institutional coherence, and moral philosophy can converge to balance profit orientation with welfare imperatives.

Malaysia's experience embodies a pragmatic fusion between economic nationalism and corporate modernization. Since the establishment of Khazanah Nasional Berhad as a sovereign holding company, the Malaysian state has pursued a model of managed capitalism, where state control over strategic sectors is exercised through corporatized entities governed by professional management rather than direct political bureaucracy.[32] This approach stems from the New Economic Policy (NEP) of 1971, which sought to redistribute wealth among ethnic groups while promoting industrial growth. The legal and institutional framework of Malaysian Government-Linked

[31] Victor L. Shammas, "The Global Hinterland of Social Democracy: On the Limitations of Norwegian Welfare Capitalism," *Nordisk Välfärdsforskning | Nordic Welfare Research* 9, no. 1 (2024): 66–83, https://doi.org/10.18261/nwr.9.1.5.

[32] Chan-Yuan Wong and Guanie Lim, "Malaysia Meets (and Remains in) the Middle-Income Trap: Lost Coalition amidst Industrial Value Migration," *Malaysian Journal of Economic Studies* 61, no. 1 (2024): 79–100, https://doi.org/10.22452/mjes.vol61no1.5.

Companies (GLCs) integrates market efficiency with social policy objectives, aligning economic expansion with national unity and equitable development.[33] Through this structure, Malaysia demonstrates that state capitalism can be legitimized not by privatization, but by embedding corporate governance standards that promote transparency and accountability within a welfare-oriented economic mission.

Nevertheless, the Malaysian model reveals both strengths and vulnerabilities that hold important lessons for Indonesia. Its strength lies in the establishment of a clear demarcation between state ownership and political control. Khazanah Nasional operates under a professional board accountable to Parliament, ensuring both strategic direction and managerial autonomy. However, Malaysia's system is not free from critique: the close nexus between political elites and corporate appointments occasionally blurs the line between governance and patronage. The normative tension between developmental objectives and rent-seeking behavior underscores a deeper philosophical challenge—the risk of reducing the welfare-state agenda to an instrument of political legitimacy rather than social justice.[34] For Indonesia, this serves as a cautionary reflection: the pursuit of efficiency through corporatization must not eclipse the ethical responsibility of the state to act as custodian of collective welfare.[35] Thus, the Malaysian model is both a template and a warning, demonstrating that the success of state capitalism depends less on structure and more on the moral discipline of its institutional actors.

In contrast, Norway offers a profoundly different conception of state ownership rooted in the moral and institutional ethos of the Nordic welfare state. Here, state ownership is neither a mechanism of control nor a compensatory tool for market failure but a constitutional expression of democratic solidarity. The Norwegian model is characterized by institutionalized transparency, where ownership policy is publicly articulated, parliamentary oversight is robust, and corporate boards operate under explicit ethical mandates.[36] The Norwegian State Ownership Report, issued annually, functions as a normative contract between the government and the citizenry, ensuring that economic activity reflects societal values of equality, sustainability, and intergenerational justice.[37] Through this mechanism, the state is redefined not as a market competitor but as a moral steward—an institutional guardian of fairness and collective prosperity within a globalized economy.

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[33] Indravathy and Noorlizawati Abd Rahim, "Emerging Ambidextrous Opportunities: How Malaysian Glcs Can Leverage Artificial Intelligence," *Journal of Theoretical and Applied Information Technology* 102, no. 16 (2024): 6038–61.

[34] Kang Wan Tan and Mei Foong Wong, "Heterogeneous Political Connections and Corporate Overinvestment: Evidence from Malaysian Firms," *Managerial Finance* 50, no. 10 (2024): 1705–26, https://doi.org/10.1108/MF-11-2023-0720.

[35] "Implementation of Importance Performance Analysis Methods as Government Internal Supervisory Apparatus (GISA) Performance Measurements in Indonesian Provinces," *International Journal of Recent Technology and Engineering* 8, no. 2S4 (2019): 879–86, https://doi.org/10.35940/ijrte.B1176.0782S419.

[36] Ola Innset, "State-Owned Enterprises After the Market Turn: Hybridisation and the Historical Development of Nested Paradoxes in the Case of Norway," *Business History* 67, no. 2 (2025): 496–520, https://doi.org/10.1080/00076791.2024.2353661.

[37] Sverre A. Christensen, "Explaining State Ownership in Listed Companies in Norway," *Enterprise & Society* 25, no. 3 (2024): 907–32, https://doi.org/10.1017/eso.2023.19.

Norway's legal framework situates SOEs within a governance paradigm anchored in accountability and ethical rationality. The White Paper on State Ownership mandates that all state-controlled companies integrate environmental, social, and governance (ESG) principles into their operational conduct. Unlike in many developing economies, where state ownership is justified by necessity, Norway grounds its legitimacy in public trust.[38] This trust is sustained by a transparent ownership structure, merit-based appointments, and a legal culture that elevates fiduciary responsibility to the level of civic morality. The philosophical foundation of this system rests on a Rawlsian understanding of justice—where economic structures must be designed to benefit the least advantaged members of society.[39] Through such moral coherence, the Norwegian state transforms its economic power into an ethical project, ensuring that profit serves as an instrument of social equity rather than an end in itself.

For Indonesia, the Norwegian experience offers a transformative paradigm for aligning economic governance with constitutional morality. While differences in political culture and developmental stages must be acknowledged, the principle of public fiduciary stewardship embedded in Norway's legal system provides a normative model for reform. Reimagining BUMN governance through a Norwegian lens would entail establishing an ownership policy that explicitly articulates the welfare objectives of state enterprises, enshrining transparency as a legal duty rather than a managerial option, and institutionalizing parliamentary oversight to ensure that corporate decisions remain consistent with public welfare goals. Such reform would mark a departure from Indonesia's bureaucratic paternalism toward a model of responsive state capitalism, in which the law functions not as a control mechanism but as a framework of moral accountability binding state and market alike.

A comparative synthesis of the Malaysian and Norwegian models reveals a conceptual continuum rather than a dichotomy. Malaysia represents the developmental pragmatism of the Global South, where welfare and competitiveness coexist under strategic state direction; Norway epitomizes the mature ethical institutionalism of the Global North, where public ownership is sustained by civic virtue and legal transparency. For Indonesia, the convergence of these models suggests the need for a hybrid welfare-oriented corporate governance framework—one that combines Malaysia's emphasis on managerial autonomy and economic modernization with Norway's commitment to moral governance and public accountability. Such hybridity would not signify compromise but balance: a recognition that welfare-state governance in the twenty-first century must integrate efficiency with ethics, globalization with social justice, and law with morality.

Nevertheless, the Malaysian and Norwegian models cannot be transplanted mechanically into Indonesia's legal system. Malaysia's model is shaped by its developmental-state history, ethnic redistribution policy, and the strategic role of

[38] Ståle Knudsen, *CORPORATE SOCIAL RESPONSIBILITY AND THE PARADOXES OF STATE CAPITALISM: Ethnographies of Norwegian Energy and Extraction Businesses Abroad*, 1st ed. (Berghahn Books, 2023), https://doi.org/10.3167/9781800738737.

[39] Pedro Luis Bracho Fuenmayor, "John Rawls' Theory of Justice from a Perspective of Political Philosophy," *Revista Chilena de Derecho y Ciencia Política* 12, no. 2 (2022): 109–32, https://doi.org/10.7770/rchdcp-V12N2-art2650.

government-linked companies in national economic planning. Norway's model, meanwhile, is supported by a high-trust political culture, strong social-democratic institutions, and a mature tradition of transparent public ownership. Indonesia operates within a different constitutional, bureaucratic, and political environment. Therefore, the comparative value of Malaysia and Norway lies not in institutional imitation, but in selective normative adaptation. From Malaysia, Indonesia may draw lessons on strategic ownership and professional corporate autonomy; from Norway, Indonesia may learn the importance of public ownership reporting, parliamentary accountability, and welfare-based performance evaluation. These lessons must be reconstructed within Indonesia's own constitutional identity, particularly Article 33 of the 1945 Constitution and the principle of economic democracy.

This comparative inquiry also underscores that governance reform cannot be confined to institutional design; it is fundamentally a question of legal philosophy. What distinguishes successful welfare-oriented SOE governance is not merely the presence of laws and policies, but the moral ontology underpinning them—the belief that the economy is an extension of social responsibility, not its antithesis. Both Malaysia and Norway demonstrate, in different ways, that the legitimacy of state ownership arises from its responsiveness to the moral demands of the public sphere. Thus, the ultimate lesson for Indonesia is not to emulate, but to internalize: to craft a legal order that reasserts the ethical dimension of state capitalism and repositions SOEs as moral, not merely economic, actors within the national development project.

The comparative study of Malaysia and Norway exposes the philosophical deficit in Indonesia's current SOE governance and points toward a reconstructive path grounded in welfare constitutionalism. By synthesizing Malaysia's developmental pragmatism with Norway's ethical institutionalism, Indonesia can forge a model of Welfare-Oriented SOE Governance that transcends the binary of profit and welfare. Such a model would reestablish law as a transformative moral force capable of harmonizing economic rationality with social justice—thereby realizing the constitutional vision of the Indonesian welfare state as both an economic and ethical enterprise.

4. Constructing the Model of Welfare-Oriented SOE Governance for Indonesia

Reconstructing Indonesia's state-owned enterprise (SOE) governance through the welfare-state paradigm necessitates an epistemological departure from the neoliberal assumption that efficiency and welfare exist in mutual exclusion. The legal and philosophical foundation of this reconstruction lies in welfare constitutionalism—a conception of law that situates economic activity within the moral purpose of justice and equality.[40] Under this vision, the state is not merely an economic regulator or shareholder but the ethical custodian of public welfare, responsible for ensuring that markets function within the boundaries of social solidarity. In this framework, law operates as a moral architecture that structures corporate governance to serve not only the interests of shareholders but also the well-being of citizens as collective stakeholders. Thus, SOEs are reimagined not as bureaucratic extensions of government nor as profit-maximizing corporations, but as fiduciary entities entrusted with

[40] Ernawati et al., "Aligning State-Owned Enterprises with Constitutional Values."

translating constitutional values into tangible economic justice.

This theoretical shift requires the integration of three foundational doctrines: welfare constitutionalism, responsive law, and social economic law. Welfare constitutionalism provides the normative basis that legitimizes state ownership as an expression of collective welfare rather than political control. Responsive law, as articulated by Nonet and Selznick, demands that legal institutions remain open to social needs, encouraging participatory governance and ethical accountability.[41] Meanwhile, social economic law, developed by Sunaryati Hartono, bridges these doctrines by asserting that law in developing economies must simultaneously facilitate growth and ensure equitable distribution. The convergence of these frameworks produces a multidimensional legal model in which corporate autonomy is preserved, but always within a moral and constitutional mandate. Such an integrative approach moves beyond formalist reform and repositions the SOE as a responsive, ethical, and welfare-oriented institution capable of embodying the ideals of the Indonesian Constitution.

The proposed framework—BUMN Welfare Governance—translates these theoretical insights into a normative structure with four interdependent pillars: welfare-oriented legal accountability, ethical corporate autonomy, institutionalized public participation, and transparent policy execution. First, welfare-oriented legal accountability demands that the fiduciary duties of SOE executives extend beyond financial performance to include social impact, environmental sustainability, and distributive justice. Second, ethical corporate autonomy emphasizes professionalism insulated from political interference, ensuring that managerial independence functions as an instrument of public interest, not personal gain. Third, institutionalized public participation creates mechanisms for stakeholder engagement, including parliamentary oversight and civil-society monitoring, thereby aligning corporate objectives with societal needs. Fourth, transparent policy execution ensures that state ownership and corporate performance are continuously audited through open-access reporting systems. Together, these pillars operationalize the moral essence of welfare-state governance, transforming corporate management into an ethical praxis of constitutional responsibility.

In practical terms, this model requires recalibrating the relationship between the state and its enterprises through the principle of public fiduciary stewardship. This principle asserts that state ownership carries not only proprietary rights but moral obligations toward equity and sustainability. Under this principle, the Ministry of State-Owned Enterprises would shift its role from direct controller to strategic overseer, guided by clearly defined constitutional objectives rather than short-term fiscal targets. Legislative oversight must be strengthened to institutionalize transparency, while judicial mechanisms should be empowered to adjudicate corporate misconduct not solely as financial violations but as breaches of public trust. The transformation of SOE governance thus demands a shift in accountability—from political discretion to moral-legal responsibility—anchored in the state's duty to serve the public good.

This reformative vision also challenges Indonesia to transcend the technocratic boundaries of corporate governance and embrace a holistic paradigm of humanized

[41] Janda, "Freedom, Solidarity and Participation in the Democratic Welfare State."

economic governance. The humanization of law and market implies that economic institutions must reflect the ethical and spiritual dimensions of national life, as enshrined in Pancasila and the 1945 Constitution. Under this paradigm, economic rationality is not abolished but subordinated to moral reason—profit becomes legitimate only when it contributes to social justice. SOEs must therefore internalize a moral compass of governance, where decision-making is guided by considerations of fairness, environmental ethics, and intergenerational responsibility. Such a transformation is not merely institutional but cultural, requiring the cultivation of integrity as a core virtue within corporate leadership and state institutions alike.

Constructing a welfare-oriented SOE governance model represents an act of philosophical reconstruction—a reassertion of law as an ethical instrument for human flourishing. The reform of BUMN governance cannot be measured solely by financial efficiency or market competitiveness but by its ability to restore coherence between the moral foundations of the Constitution and the realities of economic governance. In this sense, the law must evolve from a command-and-control mechanism into a transformative force that nurtures justice, sustainability, and collective dignity. A reimagined legal order for SOEs—rooted in welfare constitutionalism and responsive law—would not only enhance institutional integrity but also reaffirm Indonesia's constitutional identity as a humanist and solidarist state. Such reconstruction positions SOEs as moral exemplars of public trust, ensuring that state capitalism serves not the concentration of wealth, but the realization of social welfare and human dignity as the highest ends of economic governance.

Conclusion

This study concludes that Indonesian SOE governance reflects a persistent legal and philosophical tension between the constitutional mandate of the welfare state and the corporate rationality of efficiency, profitability, and managerial autonomy. The problem does not lie in corporatization itself, but in the absence of a coherent legal framework that clearly defines the relationship between state ownership, corporate autonomy, and public accountability. Through comparison with Malaysia and Norway, this article demonstrates that SOE reform must combine professional autonomy with welfare-based accountability. Malaysia offers lessons on developmental pragmatism and strategic corporate management, while Norway provides lessons on transparent public ownership, parliamentary scrutiny, and welfare-oriented reporting. These lessons, however, must be adapted to Indonesia's constitutional framework rather than copied mechanically.

The practical implication of this study is that Indonesia needs to reform its SOE governance framework in at least five directions. First, the SOE Law should clarify welfare-based objectives as binding legal standards, not merely political aspirations. Second, the appointment of directors and commissioners should be strengthened through merit-based, transparent, and integrity-oriented procedures. Third, the state should adopt a formal public ownership policy that explains the objectives, expectations, and welfare duties of SOEs. Fourth, parliamentary, public, and audit oversight should be institutionalized without undermining legitimate business judgment. Fifth, SOE performance evaluation should integrate welfare indicators,

including public service contribution, social impact, sustainability, and distributive justice. The proposed Welfare-Oriented SOE Governance model is therefore intended as a normative benchmark and legislative blueprint for reconstructing Indonesian SOEs as public fiduciary corporations. Since this study is primarily normative and comparative, future research should test the model empirically across specific SOE sectors, such as energy, transportation, banking, and infrastructure, to evaluate its practical applicability in different institutional contexts..

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