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Legal Analysis of The Exclusion of Pt Danantara's Losses From State Financial Losses In Investment

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Abstract: Investment management by state-owned enterprises (BUMN) or entities related to state finances often raises legal issues, particularly when losses occur that impact state finances. PT Daya Anagata Nusantara (PT. DANANTARA) is an entity that has been in the spotlight due to allegations of state losses arising from its investment management activities and the status of those losses. However, the emergence of exceptions to these losses from the category of state financial losses has given rise to legal debate that requires in-depth analysis. The method used in this research is a descriptive analytical method by solving research problems on the object of study, namely regarding Legal Analysis of PT Danantara's Exclusion from State Finance in Investment. The results of the study concluded that the exclusion of PT Daya Anagata Nusantara's (PT Danantara) losses from the category of state losses is based on a strong legal basis, especially referring to the legal status of PT Danantara as a limited liability company subject to private law and the principle of *separate legal entity* as regulated in the Law on Limited Liability Companies. The legal consequences of the exclusion of Daya Anagata Nusantara's (PT. DANANTARA) losses from the category of state finances due to investment management from the perspective of statutory regulations have a strategic position as a state investment management body that is directly responsible to the President. As a limited liability company, PT Danantara is legally separated from state finances as regulated in the State Finance Law No. 17 of 2003, so that the losses it experiences are not automatically categorized as state losses.

Keyword: Investment Management, PT Danantara, State Finance

INTRODUCTION

The establishment of Danantara as part of a strategic policy has not escaped public attention. The government policy that established Danantara has a broad impact on the economic and social sectors, often eliciting various public reactions ranging from support to criticism (Sugita, 2024). Danantara was established based on Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law). In the BUMN Law, the regulations regarding Danantara are contained in Articles 3A to 3AB of the BUMN Law.

Danantara is defined as an innovative mechanism for managing state assets that integrates legal, economic, and digital aspects. This concept allows for responsive adaptation to contemporary economic dynamics (Sugita, 2024). Danantara's legal construction presents a new paradigm in the legal system in Indonesia through unique regulatory flexibility, so that its legal basis cannot be separated from key regulatory references such as Law (UU) Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Ciptaker Law), through the Ciptaker Law Danantara can accommodate a more efficient investment scheme in the utilization of state assets for the private sector while maintaining the principle of accountability. The fundamental characteristics of Danantara include four dimensions, including dynamic regulatory adaptation, comprehensive integration of administrative economic legal aspects, sophisticated transparency mechanisms, and an orientation towards optimizing the economic value of state assets. This approach transforms the traditional view of state assets from static entities to dynamic instruments that can be developed through responsive legal mechanisms.

Good Corporate Governance (GCG) is a crucial factor for the sustainability and success of a company. The implementation of GCG has a strong background, both from a practical and academic perspective. Practically, this concept emerged as a response to various corporate crises that occurred, such as the major bankruptcy cases experienced by United States corporations. Meanwhile, academically, GCG developed through various theories put forward by experts in the fields of management and economics, emphasizing the importance of good governance in order to create a healthy and competitive company (Sugita, 2024). GCG is a mechanism for good corporate organizational governance in order to manage organizational resources efficiently, effectively, economically, or productively by implementing GCG principles. These GCG principles are necessary in order to achieve company goals. Both corporate governance in the context of international corporate organizational mechanisms, as well as external mechanisms of government organizations. Internal mechanisms are more focused on how the leadership of an organization manages the organization's operations in accordance with GCG principles, while external mechanisms emphasize how the organization's interactions with external parties run harmoniously and in balance, without affecting the achievement of organizational goals (Rastuti et al., 2018).

As a corporate entity carrying out strategic business activities in the resources and energy sector, Danantara has an urgency to consistently and comprehensively implement GCG principles. GCG not only serves as a normative framework that regulates corporate governance in a transparent, accountable, responsible, independent, and fair manner, but also as an instrument to strengthen the legitimacy and public trust in state-owned corporations. Danantara's context in implementing GCG is relevant to prevent irregularities such as conflicts of interest, political investment, and abuse of authority that often occur in the management of State-Owned Enterprises (BUMN). For example, the Pertamina case, which caused state losses due to alleged corruption in the management of crude oil and refinery products of Pertamina subholdings for the 2018-2023 period could be greater than IDR 193.7 trillion, because that figure only covers losses in 2023. Meanwhile, this corruption crime has occurred from 2018 to 2023. If that figure is multiplied by five, according to the time span of the case, the losses could reach around IDR 968.5 trillion or nearly 1 quadrillion. Another case also occurred at the West Java and Banten Regional Development Bank (BJB) regarding the corruption case of advertising procurement with a total loss of 222M.

Another corruption case that is detrimental to the state is the tin case. On March 27, 2024, the West Jakarta Tribune published a news article titled ' *Crazy Rich* PIK Commits Corruption of Rp 271 Trillion'. Since the news with that title, both the phrases " *Crazy Rich* PIK" and "Rp 271 T" as well as the entire news of the corruption case began to spread on social media. In fact, the tin corruption case has the potential to become a case with large state losses. The Role

of *Crazy Rich* Helena Lim in the Rp 271 Trillion Tin Corruption Revealed (Brandon Mulya Wijaya, 2025) .

The implementation of GCG is expected to be implemented in the formation of Danantara, but it does not rule out the possibility that there are still loopholes in the process of forming Danantara, such as regarding the exclusion of Danantara's losses from the state finance category which is contrary to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Corruption Law), the existence of this exception opens up opportunities for corruption for *moral hazard practices* , where managers take high investment risks without clear legal consequences. This exception is seen in Article 3H Paragraph (2) of the State-Owned Enterprises Law which states that the profits or losses experienced by the Agency in carrying out investments as in paragraph (1) are the profits or losses of the Agency. By excluding Danantara's losses from the state finance category, the government essentially creates a legal loophole that weakens oversight of potential misuse of public funds. Another corruption case occurred in the corruption case at PT Migas Utama Jabar with state losses amounting to Rp 86.29 billion. The three suspects in the corruption case are suspected of corruption in the provision of goods and services by PT Energi Negeri Mandiri (ENM) and PT Serba Dinamik Indonesia from 2022 to 2023. Based on the description above, the author intends to study the **Legal Analysis of the Exclusion of PT Danantara's Losses From State Financial Losses In Investment.**

METHOD

This research uses a normative juridical approach, an approach based on literature review to explore relevant laws and regulations and legal literature in order to identify the legal concepts and principles underlying the issues under study. The research was conducted in two stages: literature review and fieldwork. Literature review included the collection of primary legal materials, secondary legal materials (such as expert opinions in legal literature), and tertiary legal materials (such as articles or magazines that support the secondary materials). Meanwhile, the fieldwork aimed to supplement the data by obtaining primary information through interviews with relevant sources. Data collection techniques were conducted through documentation studies and interviews, using tools such as books, pens, laptops, and voice recorders. All data obtained were analyzed qualitatively, emphasizing the interpretation of interview results and legal documents to draw conclusions relevant to the research focus.

RESULTS AND DISCUSSION

Exclusion of Anagata Nusantara Power Losses (PT. DANANTARA) from State Losses Due to Investment Management

The Daya Anagata Nusantara Investment Management Agency (BPI Danantara) is an institution tasked with managing Indonesia's state wealth funds with the aim of maximizing government investment and driving national economic growth. In carrying out its role, it is crucial to ensure transparency, oversight, and clear accountability, particularly in managing the risk of losses on state financial investments. Transparency is key to ensuring the proper management of state funds and the trust of the Indonesian people. Therefore, BPI Danantara is expected to implement strict transparency principles in its management, so that state investment management can be carried out professionally, accountably, and have a positive impact on the economy (Rastuti et al., 2018) .

The principle of transparency, a fundamental principle of GCG, is implemented based on the principles of transparency/openness in the decision-making process and openness in disclosing material and relevant information about the company. These basic principles are non-binding and provide guidelines for corporations to improve corporate governance. To maintain objectivity in conducting business, companies must provide material and relevant

information in a manner that is easily accessible and understood by stakeholders. Companies must take the initiative to disclose not only issues required by laws and regulations, but also matters that are important for decision-making by shareholders, creditors, and other stakeholders. Transparency can be defined as openness of information, both in the decision-making process and in disclosing material and relevant information about the company.

The principle of transparency is a key pillar in the implementation of good corporate governance, which is highly relevant in the context of PT Danantara's management, particularly as a subsidiary of a state-owned enterprise (BUMN) that manages public investments. Transparency requires adequate, accurate, and timely disclosure of information to all stakeholders, including shareholders, the public, and supervisory authorities.

In the case of PT Danantara's investment management, transparency is a key instrument to ensure that all business decision-making processes are conducted objectively, accountably, and free from conflicts of interest. Furthermore, by prioritizing transparency, corporate entities such as Danantara can build market trust and mitigate the negative perceptions that often arise regarding state-owned enterprises or their subsidiaries in managing investment funds. The absence of transparency in financial reporting, investment risk assessments, and managerial accountability can open up space for accusations of irregularities or even criminalization for losses that are actually part of normal business risks. Therefore, the consistent application of the principle of transparency in the management of PT Danantara serves not only as an internal control mechanism but also as a preventative measure against potential irregularities that could impact the perception of state losses, while also providing justification for exempting the entity from responsibility for state losses as long as no elements of *fraud* or violations of the law are found.

The investment management body as stipulated in Article 3F of Law No. 1 of 2025 concerning State-Owned Enterprises is bound by its duties, namely:

Article 3F

(1) The agency is tasked with managing state-owned enterprises.

(2) In carrying out the duties as referred to in paragraph (1), the authorized agency:

- a. managing Investment *Holding dividends*, Operational *Holding dividends*, and BUMN dividends;
- b. approve the addition and/or reduction of capital participation in BUMNs originating from dividend management;
- c. together with the Minister to form an Investment *Holding* and Operational *Holding*;
- d. together with the Minister, approve the proposal to write off and/or write off debts on BUMN assets proposed by the Investment *Holding* or Operational *Holding*;
- e. provide loans, receive loans, and use assets with the approval of the President; and
- f. ratify and consult with the DPR RI's supporting apparatus in charge of BUMN regarding the work plans and budgets of Investment *Holding* and Operational *Holding companies*.

Article 3H paragraph (2) of Law No. 1 of 2025 concerning State-Owned Enterprises stipulates that profits or losses experienced by the Agency in carrying out investments constitute profits or losses of the Agency. By excluding Danantara's losses from the state finance category, the government essentially creates a legal loophole that weakens oversight of potential misuse of public funds. In fact, Article 3G of the State-Owned Enterprises Law clearly regulates Danantara's capital sources, which come from:

(1) Corporate capital comes from:

- a. state capital participation; and/or
- b. other sources.

(2) State capital participation as referred to in paragraph (1) letter a may come from:

- a. cash funds;
- b. state property; and/or
- c. state-owned shares in state-owned enterprises.
 1. The minimum corporate capital is set at IDR 1,000,000,000,000,000.00 (one thousand trillion rupiah).
 2. The Company's capital as referred to in paragraph (3) may be increased through state capital participation and/or other sources.

With this provision, all forms of financial management and accountability should remain within the boundaries of state finances. Excluding Danantara's losses from the state finances category risks creating a gray area in the management of public funds (including taxes), which could be misused for specific purposes without adequate oversight.

Furthermore, in determining the exclusion of PT Danantara from the category of state losses due to investment management in examining whether the losses experienced by PT Danantara can be qualified as state losses, it is necessary to carry out a systematic interpretation of several relevant legal provisions. First, Article 1 number 22 of Law Number 1 of 2004 concerning State Treasury defines state losses as a real and definite shortage of money, securities, and/or goods as a result of unlawful acts, whether intentional or negligent, committed by treasurers, civil servants, or other parties working in government agencies. Based on this formulation, it is necessary to underline that the elements of unlawful acts and direct connection to state finances are absolute prerequisites for declaring a loss as a state loss.

Second, Article 2 paragraph (1) of Law Number 17 of 2003 concerning State Finance states that state finance includes all state rights and obligations that can be valued in money. However, in the Explanation of Article 2 it is stated that the assets of BUMN in the form of limited liability companies or subsidiaries that are subject to private law, are not included in the direct definition of state finance, unless used directly by the government. Therefore, because PT Danantara is in the form of a Limited Liability Company, its assets and losses are within the scope of private law and are not automatically categorized as state losses.

Third, Article 3 of Law Number 40 of 2007 concerning Limited Liability Companies states that a company is a legal subject that has its own assets separate from its shareholders. This emphasizes the principle of *separate legal entity*, where even though PT Danantara's shares are owned by a BUMN, responsibility for losses is corporate, not state. Furthermore, in terms of investment decision-making, the *Business Judgment Rule principle applies*, which is implicitly protected by Article 92 paragraph (1) of the PT Law, where the board of directors is responsible for managing the company as long as it is in accordance with the company's aims and objectives and is carried out in good faith and with full responsibility.

Legal Consequences of the Exclusion of Losses of Daya Anagata Nusantara (PT. DANANTARA) from the State Finance Category Due to Investment Management from the Perspective of Legislation

PT Danantara as a reliable Agency in order to increase investment, BUMN operations, and other funding sources as a supporter of sustainable development by being directly responsible to the President as per Article 2 paragraph (3) and (4) PP 10/2025 jo. Article 3E paragraph (3) and (4) Law 1/2025. This is done to encourage sustainable economic development in Indonesia. The concept of this Agency refers to *Temasek Holdings Limited Singapore*. Article 3G of Law 1/2025 explains that the sources used for the capital of this Agency, namely from state capital participation which can be in the form of cash funds, state-owned goods, and/or state-owned shares in BUMN. As a superholding institution, the amount of capital in this Agency is set at a minimum of Rp1,000,000,000,000,000.00 (one thousand trillion rupiah) or called 1 quadrillion. This enormous amount serves as capital to invest state assets and can still be supplemented with capital from state capital participation (cash funds,

state-owned assets, and/or state-owned shares in SOEs) and/or other sources as stipulated in Article 3G of Law 1/2025. Other sources referred to could be the results of state budget efficiency as is currently being done, namely Danantara's initial capital, one of which comes from ministry/institutional budget efficiency of around IDR 300 trillion or US\$20 billion.

As previously mentioned, based on Article 1 number 1 of Law Number 17 of 2003 concerning State Finance, in essence, State finance is all the rights and obligations of the state that can be valued in money. This article emphasizes that state finance includes rights and obligations that can be valued financially, but the assets of legal entities in the form of limited liability companies such as PT Danantara are not automatically included in state finances. The separation of PT Danantara's losses from state finances is seen in Article 2 of Law Number 17 of 2003 concerning State Finance that the assets of BUMN in the form of limited liability companies are subject to civil law, not a direct part of state finances. This is the main legal basis that separates PT Danantara's losses from state losses.

This exception serves as a means of immunity for Danantara officials or managers in the event of irregularities in investment management, as legally, the resulting losses are not considered state losses subject to investigation or criminal prosecution for corruption. Furthermore, this regulation opens the door to *moral hazard*, allowing Danantara managers to take high investment risks without clear legal consequences if losses occur. Due to *the business judgment* of Danantara's directors (the Implementing Body), who enjoy immunity, funds collected from taxpayers could also be harmed. In the worst-case scenario, this policy could be exploited to channel public funds to projects that are non-transparent or have conflicts of interest, without adequate accountability mechanisms.

PT Danantara as an agency that plays a strategic role in increasing investment, supporting the operations of BUMN, and providing funding sources for sustainable development in Indonesia, has a clear legal basis as stipulated in Article 2 paragraph (3) and (4) of Government Regulation Number 10 of 2025 in conjunction with Article 3E paragraph (3) and (4) of Law Number 1 of 2025. This regulation indicates that PT Danantara is directly responsible to the President, reflecting the strategic position and importance of this agency in driving sustainable national economic development. This is in line with the principles of state finance as stipulated in Article 1 number 1 of Law Number 17 of 2003 concerning State Finance, which states that state finance includes all rights and obligations of the state that can be valued in money. However, PT Danantara as a limited liability company legal entity is legally separated from state finance, as stated in Article 2 of Law No. 17 of 2003, which emphasizes that the assets of BUMN in the form of a limited liability company are subject to civil law and are not included as a direct part of state finance. This separation does provide a strong legal basis for the exclusion of PT Danantara's losses from the category of state losses. However, this exclusion also has the potential to become a tool of immunity for PT Danantara officials and managers in the event of irregularities or losses in investment management, because legally, such losses cannot automatically be investigated or prosecuted for corruption. This condition opens up the risk of *moral hazard violations*, where managers can take high investment risks without any firm legal consequences if losses occur, under the umbrella of *business judgment rules* stipulated in the Law on Limited Liability Companies. As a result, public funds sourced from people's taxes have the potential to be harmed without adequate accountability and transparency mechanisms. This demonstrates the importance of strong oversight and accountability mechanisms to prevent misuse and maintain the integrity of state investment management. Therefore, although PT Danantara has a separate legal entity status and substantial capital to drive economic development, the legal protection provided to managers must be balanced with strict oversight to ensure that sustainable development goals can be achieved without sacrificing the public interest.

CONCLUSION

1. The exclusion of PT Daya Anagata Nusantara (PT Danantara) losses from the category of state losses is based on a strong legal basis, especially referring to the legal status of PT Danantara as a limited liability company subject to private law and the principle of *separate legal entity* as regulated in the Law on Limited Liability Companies. Although PT Danantara's capital is sourced from state capital participation which is included in state assets according to the State Finance Law, PT Danantara's assets and losses are legally separated from state finances so that the losses experienced are not automatically qualified as state losses.
2. PT Danantara holds a strategic position as a state investment management agency directly responsible to the President. As a limited liability company, PT Danantara is legally separated from state finances, as stipulated in State Finance Law No. 17 of 2003. Therefore, any losses it experiences are not automatically categorized as state losses. This has the potential to legalize self-serving actions that cause losses to state finances under the guise of business losses alone.

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