The Accountability Gap in State-Owned Holding Companies: A Comparative Doctrinal Analysis of Malaysia and Indonesia

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ABSTRACT

State-owned enterprises (SOEs) have emerged as a preferred method of the government being a regulator and also involved in business activities. They serve multiple purposes such as delivering public value while remaining commercially viable. Nevertheless, these structures raise important legal questions concerning accountability, transparency, related-party transactions (RPTs) and the exercise of state control. This article examines whether the legal frameworks governing SOEs structures in Malaysia and Indonesia adequately balance between commercial autonomy with public accountability. It identifies a potential accountability gap arising from the separation between concentrated state ownership and the allocation of legal responsibility across holding companies and their subsidiaries. Employing a qualitative doctrinal legal methodology, the article analyses relevant legislation, corporate governance instruments, and regulatory requirements. Through comparative approach, the article evaluates directors' duties, ownership oversight, related-party transaction safeguards and policy channelling in both jurisdictions. It posits that ownership consolidation alone is insufficient to ensure effective accountability when oversight obligations remain fragmented across legal entities and regulatory regimes. The article proposes an integrated Accountability Allocation Framework based on ownership transparency, board independence, transaction oversight and disclosure of non-commercial public-policy mandates. It seeks to contribute to comparative corporate law scholarship by providing a legal framework for evaluating accountability in state-controlled corporate groups.

Keywords: State-owned enterprises; holding companies; corporate governance; related-party transactions; policy channelling; Malaysia; Indonesia; Accountability Allocation Framework.

1.0 INTRODUCTION

There are two types of ownership: dispersed and concentrated. Dispersed ownership is a corporate structure in which a company's shares are held by a large number of individual and institutional shareholders, so no single investor or small group can exercise controlling power over the firm. Meanwhile, a concentrated ownership structure is where a majority shareholder, a family group or a small number of shareholders holds majority or *de facto* control and appoints their representatives to the board of directors of the controlled company. Not only are controlling shareholders the norm for a majority of the world's companies, but there has been an overall increase in SOEs within concentrated ownership structures. This is because of the rise of emerging market economies, especially in Asia, where concentrated ownership is a central feature.

For this article, a state-owned enterprise (SOE) refers broadly to an enterprise over which the state exercises ownership or effective control, directly or indirectly. According to the OECD, it refers to any undertaking recognised by national law as an enterprise, and in which the state exercises ownership or control, and should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover, statutory corporations, with their legal personality established through specific

legislation, should be considered as SOEs if their purpose and activities, or large parts of their activities, are of an economic nature (OECD, 2024) .

Traditionally, a corporate group separates control from particular legal duties. The parent company may nominate directors, approve the investment strategy, vote at general meetings, and coordinate financing; the operating company nevertheless remains a separate legal person whose board owes duties to that company under applicable law. However, where a state ownership entity sits above the parent, the chain becomes comp-

lex. A decision affecting the operation of SOEs may have been proposed by a political minister, authorised by controlling shareholders, and implemented by directors. The question is not whether any of these acts can be described as 'government policy'. It is whether the law identifies the legal basis for each act, the decision-maker who adopted it and the forum in which its propriety may be tested.

The OECD expressly recognises that states can exercise ownership through state-owned holding companies (SOHCs) and that corporate groups may involve indirect state control through parent SOEs or holding companies. A comprehensive OECD Report 2026 survey found that the largest category of shareholders in the listed companies in the world (after institutional investors) is the public sector—consisting of central and local governments, state-owned enterprises (SOEs) and sovereign wealth funds- which stood at 12%, a sign of the importance of SOEs in several markets, including Asia (Asia Capital Markets Report, 2026).

This research seeks to determine whether state ownership consolidation should be assessed not only on commercial efficiency but also on whether the existing legal framework clearly allocates accountability for the exercise of state control over SOEs in both Malaysia and Indonesia. The interaction between general company law characterises the legal regulation of state-owned holding companies in Malaysia and Indonesia, as well as state ownership arrangements and sector-specific governance requirements. In Malaysia, the main legal framework includes the Companies Act 2016 (Act 777), particularly sections 211, 213, and 217, which govern board management powers, directors' duties, and the responsibilities of nominee directors. These provisions operate alongside the Minister of Finance (Incorporated) Act 1957, the Malaysian Code on Corporate Governance 2021 and, for listed entities, the Bursa Malaysia Listing Requirements, including the related-party transaction provisions in Chapter 10.

Meanwhile, Indonesia adopts a different regulatory structure, comprising Law No. 40 of 2007 on Limited Liability Companies, Law No. 19 of 2003 on State-Owned Enterprises as subsequently amended by Law No. 1 of 2025 and Law No. 16 of 2025, and the regulatory framework governing Danantara under Government Regulation No. 10 of 2025 as amended by Government Regulation No. 19 of 2026. Furthermore, Indonesia's OJK Regulation No. 42/POJK.04/2020 governs affiliated-party and conflict-of-interest transactions involving public companies.

These instruments establish distinct legal mechanisms for allocating ownership rights, corporate management responsibilities, and regulatory oversight. Accordingly, the comparative analysis must examine not merely the existence of these legal safeguards but also their application to different entities within state-controlled corporate groups.

2.0 LITERATURE REVIEW

2.1. State ownership in SOEs

State capitalism can be implemented in four forms: wholly owned SOEs, the state as a majority investor, the state as a minority investor, and the state's strategic involvement (Musacchio et al., 2015). These forms are usually represented in the form of controlling rights in the SOEs. SOEs are controlled by the government as the controlling shareholder and play major roles in critical economic domains such as financial services, utilities, and petroleum refining (OECD, 2024). They serve multiple purposes such as delivering public value while remaining commercially viable, particularly when listed as public companies.

The rationale for establishing SOEs is twofold: commercial profitability and public policy responsibilities

(Kim, 2018). However, the prevalence of SOEs, especially in highly concentrated jurisdictions such as Malaysia and Indonesia, raises important legal questions concerning accountability, transparency, related-party transactions, and the exercise of state control.

Jensen and Meckling's agency theory provides a foundational framework for understanding governance conflicts by defining the firm as a nexus of contracts in which principals (owners) delegate decision-making authority to agents (managers) (Fama & Jensen, 1983). In a standard corporate setting, this separation of ownership and control generates Type I agency conflicts. Agents inherently possess differing interests and risk tolerances from the principals, often pursuing personal utility—such as prestige, job security, or excessive perquisites—rather than maximising shareholder wealth. Applying this framework to SOEs requires expanding the model to address Type II agency conflicts, or principal–principal problems. In an SOE, the traditional dynamic is complicated by the presence of a dominant, controlling shareholder: the state.

2.2 Conflict of interest

Based on agency theory, a conflict of interest between owners is when the majority owner uses the company to improve his welfare without considering the adverse effects on the welfare of the minority owner. Then, the problems that arise from asymmetric information are adverse selection and moral hazard. Adverse selection is when the minority owner does not know whether the company's policies are taken because of the information obtained or because of the orders of the majority owner (Abigail & Dharmastuti, 2022).

The issue of holding-company structure and corporate accountability in SOEs requires further examination. Citizens are the ultimate principals who delegate authority to politicians and bureaucrats, who in turn act as principals delegating operational control to SOE managers. This extended chain dilutes accountability and makes effective monitoring exponentially more difficult. The government plays a dual role in SOEs' establishment; it acts as a regulator and controlling shareholder. Musacchio et al. argued that this dual role should be monitored by having internal institutional mechanisms to provide a check and balance on the conflict of interest within the SOEs (Musacchio et al., 2015).

The existence of government control in SOEs reveals two major issues. First, there may be conflicts of interest between the government's role as a shareholder and that of a regulator. Second, there are concerns arising from political interference and extraction of private benefits of control by the government as the controlling shareholder. It is argued that concentrated state ownership in state-owned enterprises creates a conflict of interest because the government acts as both the market regulator and the controlling shareholder. This dual role compromises directors' fiduciary duties and distorts corporate reporting, as boards are persistently pressured to prioritise political and social mandates over commercial independence (Lim, 2017). Consequently, minority shareholders are weakened, institutional stewardship is stifled, and efforts to reform corporate governance within existing legal frameworks remain severely hindered by these structural challenges.

Meanwhile, Indonesia's approach to managing SOEs is unique among nations with centralised ownership models. Unlike most countries, Indonesia utilises a dedicated stand-alone Ministry of State-Owned Enterprises (*Kementerian Badan Usaha Milik Negara* or *Kementerian BUMN)* to act as the government's primary shareholder and oversee the majority of these businesses (Kim, 2018). These structures exposed certain implications of separate corporate personality within state-controlled corporate groups, such as political interference in the decision-making process and conflict between corporate and political interests (Apriliyanti & Randoy, 2018)(Lim, 2024)(Kim, 2018).

2.3 Related Party Transaction & Transparency

Apart from the corporate structural issue, related-party transactions (RPTs) within SOEs also suffer from tunnelling (wealth extraction from the minority shareholders) and propping (assisting related corporations) (Milhaupt & Pargendler, 2018). According to the OECD, SOEs should observe high standards of transparency, accountability and integrity and be subject to the same high-quality accounting, disclosure, compliance and auditing standards as listed companies (OECD, 2024). Most studies revealed that there is a lack of

transparency in managing the SOEs and therefore it should be further examined from the perspective of SOE objectives, material financial matters, public service obligations and the cost of those obligations. Scholars have also examined government ownership conflicts (Lim, 2021), Indonesian holding-company development issues (Kim, 2018), as well as tunnelling, propping and policy channelling within SOEs (Milhaupt & Pargendler, 2018). The latest study concerning SOEs also revealed that RPTs could bring higher stock returns, but their politically connected nature may enable the misuse of RPTs for personal gain at the expense of minority shareholders (Lee et al., 2026). According to the OECD, among key obstacles faced by institutional investors in SOEs are a lack of corporate disclosure and limited responsiveness or resistance from companies to shareholder engagement, which stood at 33%, reflecting ongoing issues around transparency and accountability (Asia Capital Markets Report, 2026). Also, controlling shareholders frequently leverage their dual role as owners and board members to engage in detrimental related-party transactions. This involves the public company trading with, bailing out, or purchasing assets from other private entities owned by the controlling family at unfair and non-market prices. When the controlling owners sit on both sides of the deal, wealth is tunnelled out of the listed firm, directly reducing firm value for minority shareholders (Fooladi & Farhadi, 2019).

3.0 RESEARCH GAP

Existing scholarship has made significant contributions to understanding the governance consequences of state ownership, although these contributions address different dimensions of the accountability problem. Musacchio examines the institutional varieties of state capitalism (Lim, 2021; Musacchio et al., 2015), while Lim analyses the corporate governance conflicts arising from concentrated government ownership. Kim evaluates the development of state-owned holding companies in Indonesia and identifies institutional concerns associated with ownership consolidation and political influence (Kim, 2018). Apriliyanti and Randøy provide empirical evidence that government intervention may compromise independent decision-making within Indonesian SOEs (Apriliyanti & Randøy, 2018). Meanwhile, Milhaupt and Pargendler distinguish tunnelling, propping and policy channelling as separate governance problems arising from state ownership (Milhaupt & Pargendler, 2018). Although these studies provide important theoretical, institutional and empirical insights, they do not collectively resolve how current Malaysian and Indonesian law allocates enforceable responsibilities when ownership influence is exercised through intermediary holding companies.

The remaining doctrinal question concerns the relationship between the legal powers of ultimate and intermediate state shareholders and the responsibilities of directors within operating enterprises. Existing corporate law scholarship establishes that concentrated ownership may generate conflicts between controlling and minority shareholders. However, the legal implications of government control require further analysis where the state exercises ownership authority through multiple institutions or holding-company structures. In particular, transaction-based protections may not fully address government-directed activities that fall outside conventional related-party transaction classifications such as policy channelling.

The article addresses this question by comparing Malaysian and Indonesian law. Its intended contribution is to identify whether specific inconsistencies arise between ownership authority, corporate legal duties and available accountability mechanisms. On that basis, the article proposes the "Accountability Allocation Framework" for evaluating the legal relationship between state ownership powers, holding-company control and subsidiary-level responsibilities.

4.0 RESEARCH PROBLEM AND RESEARCH QUESTIONS

4.1. Research problem

In many emerging economies, state-owned enterprises (SOEs) represent a substantial share of gross domestic product (GDP), employment and market capitalisation (OECD, 2024). Even in countries where SOEs play only a minor role in the economy, they are often prevalent in utilities and infrastructure industries, such as energy, transport, telecommunications and, in some cases, hydrocarbons, other extractive industries, technology and finance (OECD, 2024). Moreover, they often drive efficiency improvements, streamlining processes and reducing redundancies within their portfolio of companies. It is also intended to enhance

governance, operational coordination and economic performance. Nevertheless, the separation of ownership, management and regulatory responsibilities across multiple corporate entities may complicate the identification of legal accountability.

This problem becomes particularly important where the state controls corporate decisions, influences related-party transactions, or directs the pursuit of policy channelling objectives that may not align with the commercial interests of individual SOEs.

The central research problem is therefore whether existing Malaysian and Indonesian laws sufficiently allocate responsibility, oversight and accountability within state-owned holding-company structures.

4.2 RESEARCH QUESTIONS AND CORRESPONDING OBJECTIVES

• Research Questions	• Research Objective
• **Research Question 1:**	• **Research Objective 1:**
How do Malaysian and Indonesian legal frameworks regulate the distribution of ownership, control and directors' responsibilities within state-owned holding companies?	• To analyse and compare the legal allocation of ownership, control and directors' duties.
• **Research Question 2:**	• **Research Objective 2:**
• To what extent do existing legal safeguards address accountability risks involving RPTs, policy channelling and non-commercial state objectives?	• To evaluate the adequacy of corporate governance, disclosure and internal-control requirements.
• **Research Question 3**:	• **Research Objective 3**:
RQ3: What legal and governance reforms can strengthen accountability without undermining the commercial autonomy of SOEs?	• To propose a comparative legal accountability framework for state-owned holding companies.

5.0 RESEARCH METHODOLOGY

This article employed qualitative and comparative doctrinal legal research. This is because its primary objective is to examine the existing law and whether existing legal mechanisms adequately regulate state ownership and corporate accountability, and what legal reforms are necessary. Hutchinson and Duncan (Hutchinson & Duncan, 2012) described doctrinal research by conceptualising doctrinal legal research as the systematic examination of law and legal concepts, involving the identification, interpretation and synthesis of legal principles derived from authoritative legal sources. They further emphasise that doctrinal research extends beyond a conventional literature review, requiring critical analysis of legislation and judicial decisions to establish the nature and scope of existing legal rules.

More recently, Theil has discussed the distinction between doctrinal and empirical legal contributions (Theil, 2025). Doctrinal research operates within the legal system, focusing exclusively on analysing legal sources like legislation and case law to determine legal rules. Empirical research, on the other hand, analyses the law from the outside using real-world data and direct observation. It supports doctrinal work by establishing the external facts necessary to trigger legal rules, evaluating the law's real-world impact to guide normative reforms, and helping researchers efficiently filter and process massive amounts of legal data.

Malaysia and Indonesia are selected as the comparison because both jurisdictions employ significant state ownership in commercial enterprises but differ in the institutional organisation and legal regulation of that ownership. Malaysia operates through a plurality of government ownership and investment institutions, including the Minister of Finance (Incorporated), Khazanah Nasional and other government-linked investment

institutions, whereas, Indonesia has pursued statutory restructuring of state ownership through its SOE framework and Danantara-related arrangements.

The comparison is further justified by the differences between Malaysia's unitary board structure and Indonesia's two-tier system, which formally separates management and supervision responsibilities. These differences allow an examination of whether accountability concerns associated with concentrated state control arise from particular corporate structures or from broader limitations in allocating legal responsibility.

6.0 FINDINGS

6.1 Different state-ownership structures produce different board accountability arrangements

6.1.1 Malaysia's Unitary Board System

In Malaysia, every company comprises two symbiotic organs: the shareholders (general meeting) and the board of directors. The shareholders provide share capital for incorporation. Upon incorporation, a company shall be managed and controlled by the board of directors as stated in Section 211 of the Malaysian Companies Act 2016 (Act 777). As such, the state ownership in a company is represented in the form of controlling shareholders and the ability to nominate directors, approve investment strategy and vote at general meetings. This unitary board model allows the state direct control over the company and dominates the decision-making process. A decision in SOEs may be proposed by a political minister, authorised by the board, and implemented by the company's executive.

In Malaysia, most SOEs are controlled by the Federal government or State government. Government-linked corporations (GLCs) are companies that are invested in and controlled by GLICs or statutory bodies, with their primary objective being to conduct commercial activities. Meanwhile, Government-linked Investment Companies (GLICs) are federal government investment entities that hold controlling interests in companies they invest in, including GLCs. Currently, there are seven GLICs, as follows:

i. Minister of Finance Incorporated (MOF Inc.)
ii. Employees Provident Fund (EPF)
iii. PERMODALAN Nasional Berhad (PNB)
iv. Kumpulan Wang Amanah Pencen (KWAP)
v. Khazanah Nasional Berhad (Khazanah)
vi. Lembaga Tabung Haji (TH)
vii. Armed Forces Fund Board (LTAT)

From the perspective of agency theory, this unitary board structure serves as an internal governance mechanism designed to align the interests of the principals (shareholders) with the agents (executives) by allowing directors to directly monitor management. However, because Malaysia's corporate landscape is heavily characterised by concentrated ownership, the system predominantly experiences the Type II Agency Problem (Principal-Principal conflict). The primary conflict is not between managers and shareholders (Type I), but rather occurs when dominant, controlling shareholders leverage their power on the unitary board to make decisions that expropriate or disadvantage minority shareholders. In the Type II Agency Problem, the “Entrenchment effect” occurs when the owners are also the managers. Generally, this phenomenon occurs mostly in family firms or SOEs. The owners tend to be predatory toward minority shareholders, a phenomenon known as "owner opportunism" (Shleifer & Vishny, 1997). This problem creates an accountability gap because standard corporate governance mechanisms are neutralised by controlling shareholders who are the state.

In a unitary board system, directors are entrusted with monitoring management and protecting all shareholders. However, because controlling shareholders hold the majority of voting rights, they control the appointment, remuneration, and tenure of these directors. This compromises the directors' objectivity, heavily manipulating board decisions in favour of the controlling shareholders and leaving minority shareholders without an independent voice. For example, citing the 1MDB scandal, despite incorporating internationally recognised shareholder-protection standards into Malaysian corporate law, there have been difficulties in ensuring

effective accountability (Chen, 2022). The scandal involved significant financial mismanagement and corruption, with billions of dollars reportedly embezzled from the state investment fund. This highlighted several key issues: first, the enforcement mechanisms of corporate law may be inadequate or ineffective in practice, allowing corporate wrongdoings to go unchecked. Second, there may be gaps in regulatory oversight or institutional weaknesses that fail to deter malfeasance, even when robust laws are in place. The 1MDB scandal serves as a cautionary lesson that warrants the need for a holistic approach to corporate governance, one that prioritises transparency, accountability, and adherence to ethical practices, alongside legal reforms.

The above highlights a lack of board accountability within Malaysia's unitary board system. Since the directors are appointed by the controlling shareholders, they usually owe their loyalty to the shareholders, and not to the company as expected. As a director, they owe a fiduciary duty to the company alone and no one else, as was decided in the English case, Percival v Wright [1902] 2 Ch 401. Act 777 outlines key responsibilities for a company's director, emphasising that decisions must be made for a proper purpose and in the best interests of the company as a whole. This means acting in alignment with the company's goals and values, considering the impacts on all stakeholders, including employees, shareholders, and customers. It highlights the importance of ethical practices and long-term sustainability, reminding directors that true leadership involves integrity and a commitment to the company's mission and values.

The legal distinction between shareholder influence and directors' responsibilities is reinforced by Malaysian judicial authority. In Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd [2018] 2 MLJ 177, the Federal Court considered the relationship between shareholders' powers, corporate management and directors' obligations to act in the company's best interests. Although the dispute did not involve a state-owned holding company, it does provide a relevant doctrinal foundation for examining the limits of shareholder influence over corporate management. Furthermore, section 217 of the Companies Act 2016 requires a director appointed by, or representing, a shareholder or other nominator to prioritise the company's interests where those duties conflict.

Accordingly, the accountability concern in Malaysian SOEs should not be categorised as an absence of statutory restrictions on nominee directors. Rather, the relevant inquiry is whether existing duties and enforcement mechanisms adequately address situations in which government ownership influence is exercised indirectly through controlling shareholders or holding-company structures.

6.1.2 Indonesia's Two-Tier Board System

Meanwhile, for Indonesia**,** the state, via a two-tier management board, manages the SOEs under a single law by incorporating Danantara. Established by the Law No. 1 of 2025, Danantara Indonesia (BPI Danantara) manages and optimises state-owned enterprise assets and government investments. Working as an independent body under the President, the agency exists to translate national wealth into sustained economic progress—supporting the administration's Asta Cita vision and accelerating industrial development nationwide. Danantara states that it operates as a *sui generis* entity as amended by Law No. 16 of 2025 (Law No.16 of 2025 on the Fourth Amendment to Law Number 19 of 2003 on State-Owned Enterprises, n.d.).

Indonesia operates under a two-tier board system that structurally separates corporate governance into a Board of Directors (BoD), which acts as the executive body managing daily operations, and a Board of Commissioners (BoC), which strictly supervises and advises the BoD without participating in management. In the context of agency theory, this dual-board structure is designed to mitigate conflicts by physically separating the agents (management) from the monitors acting on behalf of the principals (shareholders), theoretically preventing executives from dominating their own oversight.

However, because Indonesia's corporate environment is heavily characterised by highly concentrated ownership, specifically powerful family conglomerates and SOEs, the system predominantly suffers from the Type II agency problem. Despite the structural separation, controlling shareholders wield enough voting power to appoint loyalists to both the BoD and the BoC, effectively neutralising the supervisory tier and enabling them to prioritise their own interests or extract wealth at the direct expense of minority shareholders. Based on information from a sample of 22 state-owned Indonesian enterprises, it is found that a boardroom decision

outcome is influenced by three factors: the motivation and decision-making approach of individual board members, as well as the distribution of power in the boardroom. In several cases, board members are powerless decision makers, as the decision-making process in the boardroom is controlled by the government and politicians (Apriliyanti & Randøy, 2018) .

In Indonesian SOEs, the government acts as the controlling principal, which distorts the two-tier board structure and creates a severe accountability gap driven by the Type II agency problem. Because the state holds the majority of voting rights, standard corporate governance mechanisms are bypassed to serve sovereign, social, or political interests over corporate equity. There are three ways the accountability gap may manifest in Indonesian SOEs. Firstly, the government possesses the voting power to dictate the appointment of both the management BoD and BoC. Because Commissioners often owe their positions to political patrons, state ministries, or military affiliations, they act as state representatives rather than impartial corporate monitors. This neutralises the structural separation of the two-tier system, leaving minority shareholders without an independent check on executive actions.

Secondly, conflicting mandates exist between commercial and political objectives, whereby SOEs are tasked with maximising shareholder wealth while simultaneously executing national development agendas, providing subsidised goods, or absorbing politically driven infrastructure projects. When the state forces an SOE to undertake unprofitable mandates, wealth is effectively transferred away from minority shareholders to the public or political allies. Finally, there is a lack of market discipline. Private firms can go bankrupt if mismanaged, which forces boards to hold executives accountable. SOEs, however, often receive state bailouts, capital injections, or regulatory monopolies when they underperform. As such, the state-backed safety net eliminates the financial consequences of poor decision-making, giving the BoD little incentive to operate efficiently and the BoC little urgency to enforce strict oversight.

Indonesia's judicial treatment of state ownership further demonstrates the importance of distinguishing corporate legal personality from public financial accountability. In Constitutional Court Decisions Nos. 48/PUU-XI/2013 and 62/PUU-XI/2013, delivered in 2014, the Court addressed the constitutional treatment and audit implications of state assets separated for investment in state-owned enterprises. These decisions are relevant to the relationship between corporate ownership arrangements and public financial supervision, although their application must be viewed alongside subsequent legislative developments. The amended SOE framework under Law No. 16 of 2025 expressly addresses the examination of SOEs finance by the Supreme Audit Board (*Badan Pemeriksa Keuangan*). Accordingly, Indonesia's accountability framework cannot be evaluated solely by reference to the private-law duties of directors and commissioners. It also requires examination of how corporate management responsibilities interact with public audit and state ownership supervision, particularly within the restructured Danantara arrangements.

6.2 Conventional RPT safeguards may not adequately address policy channelling

Policy channelling is the state's use of an SOE (as opposed to regulation or taxation) to achieve a public policy or political objective. Policy channelling is not in the financial interests of private investors in the SOE when it diverts financial and managerial resources to projects that are not designed to maximise profits in the short or long term (Milhaupt & Pargendler, 2018). States may engage in policy channelling because it generates a distinctive type of non-pecuniary private benefit of control; what we will call political private benefits of control. When the government acts as the controlling shareholder, it frequently steers the company to serve its own political agenda. The state is simply a different kind of investor. While it certainly seeks a financial return like any private owner, it is ultimately driven by political motives. It is highly tempting for a government to use a state-owned enterprise and the capital chipped in by minority shareholders, to quietly fund public policy initiatives.

Running these projects through a corporation acts as a convenient workaround. It lets the government push its plans forward while avoiding the strict transparency rules, public debates, and accountability checks that usually restrict official government actions.

From a corporate governance research perspective, conventional RPT safeguards are systematically ill-equipped to detect or restrain policy channelling. The fundamental issue is a typological mismatch: RPT frameworks were designed to prevent traditional "tunnelling", where corporate insiders extract financial wealth to affiliated private entities through unfair contracts. Another RPT scheme is propping (assisted RPTs). Policy channelling, however, involves bending the firm's broader corporate strategy to achieve macroeconomic, social, or political objectives.

In Malaysia, according to Chapter 10 of Bursa Malaysia Listing Requirements , RPT framework is only promulgated to detect tunnelling and not the policy-bending policy of the SOEs. None in the LR requires the company to obtain shareholders' approval for indulging in policy channelling activities.

The same can be said for Indonesia's RPT law. Nothing in No 42 /POJK.04/2020 on the Affiliated Party Transaction and the Conflict-of-Interest Transactions requires any disclosure of policy channelling. The regulation emphasises identifying a material transaction if the transaction has a value of 20% or more of the publicly listed company's equity. In Indonesia, RPT is known as an affiliated-party transaction (*transaksi afiliasi*) and a conflict-of-interest transaction (transaksi benturan *kepentingan)*. Affiliation Transaction is activities and/or transactions conducted by a publicly listed company or controlled company with its affiliates or affiliates of the Board of Directors, Commissioners, or ultimate/controlled shareholders, including activities and/or transactions for the benefit of the affiliate. Meanwhile, a conflict-of-interest transaction is a transaction conducted by a publicly listed company or controlled company with any parties, both affiliates and parties other than Affiliates, that contain conflicts of interest. Therefore, it is argued that the existing RPT safeguard does not address policy-channelling.

6.3 Comparative Doctrinal Findings

The comparative analysis reveals four distinctions relevant to the allocation of accountability within state-controlled corporate groups. First, Malaysia and Indonesia have a different approach in the institutional organisation of state ownership. Malaysia's ownership arrangements involve several government investment and ownership institutions operating under distinct legal mandates. In contrast, Indonesia's amended SOE legislation establishes a more expressly structured allocation of state ownership, supervisory and operational functions. This distinction does not necessarily make either framework more accountable. It changes the legal questions that must be addressed: Malaysia requires particular attention to coordination and responsibility across multiple ownership institutions, while Indonesia requires examination of the allocation of powers among the state, its designated ownership institutions and the relevant holding entities.

Second, the two jurisdictions establish different corporate governance structures but retain legal responsibilities at the level of individual corporate organs. In Malaysia, sections 211 and 213 of the Companies Act 2016 assign management powers and statutory duties to directors, while section 217 specifically prevents nominee directors from subordinating the company's interests to those of their nominators. In Indonesia, Articles 92 and 97 of Law No. 40 of 2007 establish management responsibilities and standards of conduct for directors, whereas Articles 108 and 114 regulate the supervisory functions and responsibilities of commissioners. The doctrinal significance is that neither government ownership nor the creation of an intermediary holding company automatically replaces these corporate responsibilities. The relevant accountability issue, therefore, concerns the circumstances in which ownership influence is exercised outside or in tension with the legally prescribed decision-making responsibilities of the corporate organs.

Third, both jurisdictions possess transaction-based safeguards, although their regulatory structures might differ. Malaysia regulates relevant conflicts and transactions through company law provisions and, for listed issuers, through Bursa Malaysia's Listing Requirements. Indonesia adopts specific affiliated-party and conflict-of-interest transaction requirements under OJK Regulation No. 42/POJK.04/2020. These arrangements provide important protections against certain forms of value transfer and conflicted decision-making. However, their adequacy in addressing policy channelling depends on whether the relevant governmental intervention constitutes a regulated transaction or otherwise falls within applicable legal duties and disclosure requirements. Consequently, the existence of RPT regulation does not necessarily establish comprehensive accountability for all state-directed corporate activities.

Fourth, accountability for non-commercial public-policy mandates presents a distinct legal question. Although both jurisdictions may legitimately employ SOEs to pursue national development and other public objectives, the relevant corporate law provisions do not necessarily provide a uniform mechanism for identifying the source, financial implications, and responsibility for each such mandate. This creates a potential discontinuity between the government's authority to formulate policy and the operating company's responsibility to implement it. The comparative findings therefore support a more precise accountability-gap thesis: the ultimate concern is not the absence of directors' duties or RPT safeguards, but the possibility that materially influential ownership decisions may be insufficiently connected to identifiable legal responsibilities and mechanisms of scrutiny.

7.0 RECOMMENDATIONS

To address the accountability gap in the governance of SOEs, this article proposes an integrated accountability framework focused on board independence, enhanced transaction oversight, and comprehensive disclosure mandates.

7.1 Implement Mechanisms for Genuine Board Independence

Both Malaysia's unitary board system and Indonesia's two-tier system suffer from Type II agency problems, where the state leverages its majority voting power to appoint political loyalists. To prevent controlling shareholders from compromising directors' objectivity and neutralising oversight, legal frameworks must introduce independent nomination processes that separate board appointments from political interference, thereby protecting minority shareholders.

7.2 Expand RPT Safeguards to Regulate Policy Channelling

Conventional related-party transaction (RPT) frameworks, such as Chapter 10 of the Bursa Malaysia Listing Requirements and Indonesia's POJK No. 42/2020, are systematically ill-equipped to address policy channelling because they were designed solely to prevent financial tunnelling and propping. Corporate law should be reformed to specifically define and regulate policy channelling, requiring SOEs to disclose and seek shareholder approval when corporate strategies are diverted to fund non-commercial, macroeconomic, or political objectives.

7.3 Enhance Transparency and Shareholder Engagement

Institutional investors consistently face obstacles such as a lack of corporate disclosure and resistance from companies regarding shareholder engagement. SOEs must be subjected to the same high-quality accounting, compliance, and auditing standards as private listed companies. Furthermore, legal regulations should mandate strict transparency regarding material financial matters, public service obligations, and the specific costs associated with executing state-directed mandates.

7.4 Implementation of the proposed Accountability Allocation Framework

The proposed Accountability Allocation Framework should be implemented through a combination of statutory clarification, regulatory supervision, and internal corporate governance arrangements, rather than by creating a uniform legal obligation indiscriminately applicable to all state-controlled institutions.

Reform of the legislation should focus on identifiable shortcomings in the allocation of ownership authority and the enforceability of related duties. In Malaysia, this may mean articulating the governance duties that apply to certain state-owned entities, whilst preserving the current statutory duties of directors under the Companies Act 2016 and other legislation. In Indonesia, implementation should start with an examination of the existing powers and accountability mechanisms under Law No. 16 of 2025 and the Danantara governance regulations, and further statutory clarification should only be considered if specific gaps remain.

At the regulatory level, the Securities Commission Malaysia, Bursa Malaysia and Indonesia’s Financial Services Authority should continue to apply the existing transaction and disclosure frameworks and evaluate

whether additional guidance is needed on material state-directed arrangements that are not adequately addressed by typical RPT categories. Such guidance could distinguish commercial affiliated transactions from non-commercial public-policy directives, and specify circumstances in which additional disclosure, independent evaluation, or shareholder involvement is required. First, reform should not require minority-shareholder consent for each legitimate governmental objective, as the legal nature, commercial consequences and ownership structure of the entity may vary.

At the corporate governance level, parent companies and their affiliates should have formal protocols for ownership and accountability that specify reserved shareholder decisions, assigned board duties, communication procedures for significant ownership expectations, and systems for recording conflicts between business and public-policy goals. Where relevant, non-commercial mandates for materials should specify the legal basis, expected financial implications and funding mechanisms. An independent board committee should review critical decisions, internal audit processes and appropriate escalation procedures, without unduly undermining the commercial responsibilities of operating company directors.

The framework should also be implemented through an accountability review process that can trace material decisions from the originating ownership institution to the corporate body responsible for their approval and execution. Such review would examine whether the decision was authorised, whether directors and commissioners discharged their applicable duties, whether transaction safeguards were triggered and whether the resulting obligations were adequately disclosed. The objective is not to eliminate legitimate state ownership control, but to ensure that the exercise of such control remains legally identifiable, reviewable and consistent with corporate autonomy.

8.0 CONCLUSION

The effectiveness of state-owned holding companies should be assessed not solely by their ability to consolidate ownership and coordinate investments, but also by the legal mechanisms that make the exercise of state control transparent, accountable, and consistent with corporate governance obligations. This comparative doctrinal analysis demonstrates that concentrated state ownership in both Malaysia and Indonesia generates principal-principal (Type II) agency conflicts.

Whether a unitary board in Malaysia or a two-tier system in Indonesia, the state's dual role as market regulator and controlling shareholder inherently compromises standard corporate governance mechanisms. Because the state holds the majority of voting rights, it can dictate board appointments and force companies to prioritise political and social mandates over commercial independence, effectively transferring wealth away from minority shareholders. Furthermore, political connections within these corporate structures can enable the misuse of related-party transactions. Because existing RPT legal safeguards are typologically mismatched and fail to capture policy channelling, governments are able to quietly utilise SOE capital to fund public policy initiatives while bypassing standard accountability checks. Ultimately, state ownership consolidation alone is insufficient to ensure effective accountability. To properly balance commercial autonomy with public accountability, these jurisdictions must adopt an integrated framework that enforces board independence, expands transaction oversight to include policy channelling, and mandates clear disclosures of all non-commercial state objectives.

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