

An Analytical Study of the Lex Favor Reo Principle in the Context of Corruption Case Resolution under the Third Amendment to the State Owned Enterprises Law in Indonesia

Fauzan Prasetya¹, Milda Istiqomah², Bambang Sugiri³, Aiden L. Moreau⁴

^{1,2,3}Faculty of Law, Universitas Brawijaya, Indonesia, ⁴School of Digital Humanities, InnovEdu Global Center, Paris, France

fauzanprasetya@student.ub.ac.id¹, milda.istiqomah@ub.ac.id², bambang.sugiri@ub.ac.id³,
aiden.moreau@innovedu.fr⁴

Article Info

Received: 2025-08-23

Revised: 2025-09-27

Accepted: 2025-10-01

Keywords:

*The Losses; State-Owned
Subsidiaries; Corruption;
Indonesia;*

Abstract

This study analyzes the implications of Law No. 1 of 2025—the Third Amendment to the SOE Law—on the application of the lex favor reo principle in corruption cases involving State-Owned Enterprises (SOEs) in Indonesia. Using a normative juridical approach with analytical and conceptual methods, the research reveals that the amendment redefines SOEs, limits the auditing authority of the Supreme Audit Agency, and removes the automatic classification of SOE losses as state losses. As a result, the legal interpretation of “state financial loss” in corruption cases has shifted significantly, potentially narrowing the scope of criminal liability for SOE officials. This change may lead to the re-evaluation of ongoing corruption prosecutions, including possible sentence reductions or acquittals. The study highlights the complex interaction between corporate reform and criminal accountability, emphasizing the need for doctrinal coherence, legal certainty, and the protection of substantive justice within Indonesia’s evolving post-reform legal framework.

I. Introduction

On 24 February 2025 the Republic of Indonesia enacted Law No. 1 of 2025, constituting the Third Amendment to Law No. 19 of 2003 on State Owned Enterprises (SOEs). The amendment signals a substantive reorientation of the legal architecture that governs SOEs an institutional reform with potential ripple effects far beyond corporate governance, extending into criminal responsibility for corruption. The statute’s principal reforms include: a reconfiguration of the definitional criteria for SOEs (removing the express

reference to “separated state assets” and introducing the notion of special state rights as a qualifying feature); the creation of the Danantara Investment Management Agency (BPI Danantara) and an embrace of holding company models; the explicit exclusion of SOE directors, commissioners and supervisory board members from the category of state administrators; the narrowing of the Audit Board of Indonesia’s (BPK) audit remit to ‘specific purpose’ engagements; and the elimination of the presumption that losses sustained by SOEs automatically constitute state losses.

This Introduction advances a central analytic claim: each of these legislative adjustments alters the factual and normative terrain upon which criminal liability in SOE corruption cases is established most notably the evidentiary and legal construction of the “state financial loss” element. In turn, those alterations engage the criminal law doctrine of *lex favor reo* (lex mitior), which requires courts to apply the law most favorable to the accused when a penal norm or its legal consequences change. The amendment therefore tests doctrinal consistency: will courts apply *lex favor reo* to relieve defendants of penal consequences arising from an earlier legal framework, or will interpretive strategies resist such retroactivity in the name of substantive accountability?

To sharpen these questions this study proceeds in three analytic moves. First, it reads each statutory change through the lens of criminal law theory to identify how the amendment may narrow or reconfigure the elements of corruption offenses that hinge on state loss attribution. For example, the redefinition of SOEs and the statutory decoupling of SOE profits/losses from “state” assets may arguably interrupt the causal nexus required to prove state financial loss; the restriction of BPK’s auditing competence and the removal of a presumption of state loss may shift the burden or nature of evidentiary proof in prosecutions. Second, the paper interrogates the normative force of *lex favor reo* within Indonesian criminal doctrine and comparative jurisprudence, assessing whether and how courts should give retroactive effect to the more lenient legal consequences produced by the Third Amendment. Third, the study offers doctrinal recommendations for judicial interpretation and prosecutorial practice to reconcile corporate autonomy with public accountability.

Methodologically, the article employs a normative juridical and doctrinal approach supported by qualitative comparative references to governance models (e.g., sovereign wealth fund practices) and prevailing criminal law principles. By linking corporate law reform with penal doctrine, the paper contributes to ongoing legal discourse in three ways: it (i) clarifies the interpretive stakes for judges confronting post amendment corruption cases; (ii) proposes principled criteria for applying *lex favor reo* where statutory reforms affect elements of criminal offenses; and (iii) situates Indonesian reform within a comparative frame that underscores the tension between managerial discretion

and criminal accountability. The subsequent sections will elaborate these arguments, present analytical findings, and conclude with practical recommendations for adjudication and legislative clarification.

2. Research Method

In this study, the author employs a normative juridical approach, focusing on the systematic examination of legal norms governing State Owned Enterprises (SOEs) and their intersection with criminal liability in corruption cases. This approach is complemented by a conceptual and comparative analysis to elucidate how doctrinal principles, particularly *Lex Favor Reo*, function within Indonesia's evolving statutory framework. To enhance analytical clarity, the discussion is divided into three thematic subsections each addressing a substantive dimension of the Third Amendment and its legal implications:

1) Governance Structure and Institutional Redefinition

This subsection analyzes the redefinition of SOEs and the creation of new institutional bodies such as the Danantara Investment Management Agency (BPI Danantara). The normative juridical approach is used to assess whether removing the "separated state assets" clause alters the legal identity of SOEs, thereby influencing their exposure to corruption related liability. Interpretative Link: By shifting SOEs toward a more autonomous corporate model, the amendment raises the question of whether corporate decisions that once implied potential "state losses" should still be criminalized. This change potentially activates *the Lex Favor Reo* principle by narrowing the scope of criminal liability retrospectively for decisions made under the old framework.

2) Financial Accountability and State Loss Doctrine

This section examines Article 4B of the Third Amendment, which stipulates that profits and losses incurred by SOEs are no longer classified as state profits or state losses. The study analyzes this provision using legal hermeneutics and doctrinal interpretation to determine its effect on corruption cases involving "state loss" as an essential element of the offense under the Anti Corruption Law. Interpretative Link: This redefinition challenges prior judicial precedents that treated SOE losses as state losses, potentially providing defendants with a more favorable interpretation under *Lex Favor Reo*. In corruption cases pending or decided under the earlier law, the amendment invites courts to reconsider whether state financial loss can still be presumed testing the commitment to fair trial principles in transitional legal contexts.

3) Legal Responsibility and Oversight Mechanisms

This subsection evaluates the change that SOE directors, commissioners, and supervisory board members are no longer classified as state administrators, and that

the Audit Board of Indonesia (BPK) may only conduct audits upon request from the House of Representatives. Using doctrinal reasoning, the study investigates whether these shifts limit the evidentiary tools available to establish corruption and alter the legal accountability of SOE officials. Interpretative Link: The exclusion of SOE officials from the definition of “state administrators” potentially diminishes their exposure under corruption statutes that hinge on the abuse of public office. This raises an interpretative dilemma: should the *Lex Favor Reo* principle mitigate liability for acts committed before the reclassification, or should the principle of legal continuity preserve accountability for past misconduct?

The theoretical foundation of this study *Lex Favor Reo* as a manifestation of fairness and human rights within criminal adjudication serves to anchor the entire analytical structure. By applying this principle to the evolving statutory landscape of SOE regulation, the research bridges theory and practice, demonstrating how the doctrine operates in real adjudicative contexts.

3. Result and Discussion

The Great Dictionary of the Indonesian Language defines the word *asas* as the basis, the basic ideals of an organization or association and basic law. The word “*asas*” is a translation of the Dutch word “*beginsel*” or in English “*principle*”, so that if the word “*asas*” is combined with “*law*” it will become ‘*asas hukum*’ meaning legal basis. The legal principle is something very fundamental from the legal basis itself. Bellefroid defines the legal principle as the sedimentation of positive law in society, further explaining that the legal principle is a basic norm elaborated from positive law and by legal science is considered to originate from more general rules, so that the legal principle is closely attached to the societal values in which the principle was born.

The Great Dictionary of the Indonesian Language defines the word *asas* (principle) as a foundation or basic ideal of an organization or association, as well as a basic law. Etymologically, *asas* derives from the Dutch term *beginsel* or the English *principle*, meaning a fundamental basis for law. In this sense, *asas hukum* (legal principle) refers to the foundational norms upon which legal systems are built.

Bellefroid views legal principles as the sedimentation of positive law in society normative essences derived from social values that guide legal evolution. Similarly, Sudikno Mertokusumo conceptualizes legal principles as general ideas underpinning concrete regulations, expressed through legislation and judicial interpretation. Van Eikema Hommes further emphasizes that legal principles function as abstract guidelines shaping the formulation and interpretation of law, not as concrete norms themselves.

Thus, law originates from societal values, crystallized into legal principles and realized through positive law and judicial decisions. This sociological grounding underscores that every principle including *Lex Favor Reo* reflects the balance between legal certainty and justice within a dynamic social order.

1) The Lex Favor Reo Principle: Normative Foundation

The principle of *Lex Favor Reo* mandates that when a change in legislation occurs, the rule most favorable to the accused must be applied. As a universal principle of criminal law, it operates as a limitation of the legality principle, ensuring that legal change benefits rather than penalizes the accused retroactively.

This principle is explicitly recognized in Article 1(2) of the current Indonesian Criminal Code (KUHP) and reaffirmed in Article 3 of the new Criminal Code (Law No. 1 of 2023). Both provisions affirm that if a change in law occurs after an act has been committed, the most favorable provision must apply to the defendant. Jonkers expands this interpretation by explaining that the term “favorable” includes not only sentencing but also procedural rights during prosecution.

Eddy O.S. Hiariej further defines *Lex Favor Reo* also known as the transitoir principle as a transitional doctrine ensuring that in cases of legislative change, the lightest or most beneficial sanction must be applied to the accused. In this sense, it operates as a bridge between old and new legal orders, ensuring the continuity of justice during normative transition.

2) Theories of Legislative Change and Their Relevance

Three major theories illuminate how legislative change interacts with the *Lex Favor Reo* principle:

- a) Formal Theory (Formele Leer – Simons): A change in law occurs only if there is a change in the wording or formulation of the criminal norm itself.
- b) Limited Material Theory (Beperkte Materiële Leer – Van Ganse): A change in law arises from a shift in legislative belief or policy direction, not merely textual alteration.

- c) Unlimited Material Theory (Onbeperkte Materiële Leer – Hoge Raad, 1921): A change includes all legal norms that materially affect criminal liability, even if the alteration arises in non-criminal statutes.

Of these, the unlimited material theory provides the strongest conceptual link to the present study. It recognizes that changes in non-criminal laws, such as the Third Amendment to the SOE Law (Law No. 1 of 2025), can affect criminal responsibility particularly in corruption cases involving allegations of “state financial loss.”

3) Application of *Lex Favor Reo* in SOE Corruption Context

The Third Amendment to the SOE Law (Law No. 1 of 2025) introduced a fundamental shift by declaring that SOE losses are no longer state losses. Under Article 4B, the profits and losses of SOEs belong to the enterprises themselves, not to the state. This legislative change directly affects the interpretation of “state financial loss”, an essential element in corruption offenses under the Anti-Corruption Law (Law No. 31 of 1999 jo. Law No. 20 of 2001).

In light of the unlimited material theory, this statutory shift constitutes a “change in law” within the meaning of *Lex Favor Reo*. Consequently, individuals prosecuted for alleged corruption in SOEs whose actions caused corporate, but not state, losses may now invoke this principle to seek acquittal or sentence reduction.

For example, in hypothetical alignment with cases such as PT Jiwasraya or Garuda Indonesia, where corporate mismanagement was once equated with state loss, the post-2025 legal landscape demands reevaluation. Applying *Lex Favor Reo*, the judiciary must determine whether the revised SOE definition invalidates the “state loss” element previously established under the older statutory interpretation.

This creates a doctrinal tension:

- a) If *Lex Favor Reo* is applied consistently, defendants should benefit from the new interpretation, and prosecutions based solely on corporate losses should no longer stand.
- b) However, if courts prioritize legal certainty and continuity of past rulings, they might resist retroactive reinterpretation potentially undermining the principle’s protective function.

4) Integrating *Lex Favor Reo* with the Research Objective

The inclusion of *Lex Favor Reo* in the New Criminal Code (2023) and its implicit application through Law No. 1 of 2025 represents Indonesia’s evolving commitment to substantive justice. The principle operates as a normative safeguard ensuring that the modernization

of corporate and financial regulation does not retroactively criminalize business decisions made under legitimate corporate risk.

Theoretically, this integration confirms that changes in SOE governance law are not merely administrative but materially affect the scope of criminal liability. Practically, it calls for judicial reinterpretation of corruption statutes to ensure that only genuine state losses those directly diminishing public assets remain within the purview of criminal law.

Thus, the *Lex Favor Reo* principle bridges theory and adjudication: it requires courts to weigh the evolving meaning of “state assets” and “state losses” within the framework of fair criminal adjudication. This ensures that legal evolution aligns with justice, protecting defendants from retrospective penalization while reaffirming judicial integrity in the face of legislative transformation.

The theoretical discussion of *Lex Favor Reo* when directly connected to the Third Amendment of the SOE Law reveals that the principle is not merely a doctrinal abstraction but a living mechanism of justice. It mandates that when the law evolves to reflect modern governance realities, the courts must evolve as well, aligning legal interpretation with fairness and proportionality.

By situating *Lex Favor Reo* within the shifting paradigm of SOE accountability, this study demonstrates how legislative change, theoretical principle, and judicial practice converge to redefine the limits of criminal liability in Indonesia’s anti-corruption regime.

4. CONCLUSION

Changes introduced by Law No. 1 of 2025 (the Third Amendment to Law No. 19 of 2003 on State-Owned Enterprises) may influence the application of the *lex favor reo* (or *lex mitior*) principle in corruption cases involving state-owned enterprises (SOEs). Under this principle, the law most favorable to the accused must apply when legal changes occur after the commission of an offence. This influence is not confined to amendments in criminal statutes but can, under certain conditions, extend to non-criminal legislation that substantively affects the elements of a criminal offence or the scope of criminal liability.

From a doctrinal perspective, this broader reading draws support from theories of material legality and corporate attribution, which recognize that modifications in corporate governance or administrative regulation may alter how *mens rea* and causation are attributed to corporate actors. In the SOE context, several provisions in the 2025 Amendment may bear directly on the assessment of criminal liability: (1) the reclassification of directors and commissioners as non state officials, potentially affecting the “public official” element in corruption offences; (2) the refined distinction between

state financial losses and corporate losses, which may affect the proof of “losses to state finances” under Articles 2 and 3 of the Anti-Corruption Law; (3) the codification of the business judgment rule, which safeguards good-faith business decisions from retrospective criminalization; and (4) the establishment of a new *superholding* structure that complicates the evidentiary linkage between corporate acts and state control.

Comparative administrative criminal hybrids suggest that when legislators introduce alternative administrative sanctions or mandatory recovery mechanisms, such frameworks may mitigate or substitute for criminal prosecution. However, Indonesian jurisprudence particularly Constitutional Court Decisions No. 48/PUU-XI/2013 and No. 62/PUU-XI/2013 has maintained that capital “separated” into SOEs remains part of state finances. This line of reasoning limits the extent to which the amended SOE Law can be invoked to negate the “state loss” element altogether.

Accordingly, judges must carefully evaluate whether the legislative changes materially alter the substantive elements of corruption offences or merely restructure administrative governance. The *lex favor reo* principle may justify the application of the new provisions only where the amended norms demonstrably reduce criminal liability or redefine the legal capacity of the accused. Beyond protecting the rights of defendants, such judicial prudence also safeguards the integrity and accountability of the judiciary itself in adapting to evolving legislative frameworks.

Reference

- Adrianus Herman Henok, ‘Konstruksi Motif Dalam Pembuktian Perkara Pidana’ (2023) 33(2) *Honeste Vivere Journal*
- Amir Ilyas, *Asas-Asas Hukum Pidana: Memahami Tindak Pidana dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan* (Rangkang Education 2012)
- Andi Hamzah, *Asas-Asas Hukum Pidana* (Rineka Cipta 2010)
- Andi Muhammad Sofyan, *Hukum Pidana Ekonomi: Suatu Kajian Teoretis dan Praktis* (Prenadamedia Group 2020)
- Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Citra Aditya Bakti 2012)
- Barda Nawawi Arief, *Perbandingan Hukum Pidana* (RajaGrafindo Persada 2018)
- Carlos D. Ramirez and Ling Hui Tan, *Singapore Inc. Versus the Private Sector: Are Government-Linked Companies Different?* (IMF Working Paper, IMF Institute 2003)
- Damos Dumoli Agusman, *Treaty Law and Practice in Indonesia* (Cambridge Scholars Publishing 2014)
- Dewa Gede Atmaja, ‘Asas-Asas Hukum Dalam Sistem Hukum’ (2018) 12(2) *Kertha Wicaksana*
- Eddy O.S. Hiariej, *Asas Legalitas dan Penemuan Hukum Dalam Hukum Pidana* (Erlangga 2009)
- Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Cahaya Atma Pustaka 2015).
- Fitrianto, I. (2024). Critical Reasoning Skills: Designing an Education Curriculum Relevant to Social and Economic Needs. *International Journal of Post Axial: Futuristic Teaching and Learning*,

245-258.

- Fitrianto, I. (2024). Innovation and Technology in Arabic Language Learning in Indonesia: Trends and Implications. *International Journal of Post Axial: Futuristic Teaching and Learning*, 134-150.
- Fitrianto, I. (2024). Strategi Guru Pai Dalam Mengatasi Kesulitan Belajar Pada Mata Pelajaran Hadis Kelas 8 MTS Ibadurrahman Subaim. *IJER: Indonesian Journal of Educational Research*, 356-363.
- Fitrianto, I. (2025). Beyond Competence: Rethinking Education for Holistic Well-Being and Happiness. *International Journal of Post Axial: Futuristic Teaching and Learning*, 1-11.
- Fitrianto, I., & Abdillah, F. M. (2018). MODEL PEMBELAJARAN PROGAM PEMANTAPAN BAHASA ARAB DAN SHAHSIAH (KEMBARA) KE 4 MAHASISWA KOLEJ UNIVERSITI ISLAM ANTAR BANGSA SELANGOR (KUIS) TAHUN 2018. *University of Darussalam Gontor* 15-16 September 2018, 121.
- Fitrianto, I., & Farisi, M. (2025). Integrating Local Wisdom into 21st Century Skills: A Contextual Framework for Culturally Relevant Pedagogy in Rural Classrooms. *International Journal of Post Axial: Futuristic Teaching and Learning*, 109-121.
- Fitrianto, I., & Layalin, N. A. (2025). The Paradigm of Physical Punishment from the Perspective of Islamic Education and Its Implementation in Indonesia and Malaysia. *International Journal of Post Axial: Futuristic Teaching and Learning*, 147-156.
- Fitrianto, I., & Saif, A. (2024). The role of virtual reality in enhancing Experiential Learning: a comparative study of traditional and immersive learning environments. *International Journal of Post Axial: Futuristic Teaching and Learning*, 97-110.
- Fitrianto, I., Al-Faruqi, M. R., & Hanifah, N. A. (2025). The Contributions of Ibn Malik to Arabic Language Education: A Historical and Pedagogical Analysis. *IJAS: International Journal of Arabic Studies*, 1-11.
- Fitrianto, I., Hamid, R., & Mulalic, A. (2023). The effectiveness of the learning strategy" think, talk, write" and snowball for improving learning achievement in lessons insya'at Islamic Boarding School Arisalah. *International Journal of Post Axial: Futuristic Teaching and Learning*, 13-22
- Henny Saida Flora, Fradhana Putra Disantara, Mac Thi Hoai Thuong, 'Lex Favour Reo Principle After New Penal Code: A Corrective Justice Perspective' (2023) 22(2) *Pena Justisia: Jurnal Media Komunikasi dan Kajian Hukum*
- Hikmahanto Juwana, 'Kebijakan Hukum dalam Penegakan Hukum Ekonomi' (2005) *Jurnal Hukum & Pembangunan*
- H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia* (Djambatan 1992)
- Jimly Asshiddiqie, *Perihal Undang-Undang* (Konstitusi Press 2006)
- John M. Echols and Hassan Shadily, *Kamus Inggris Indonesia: An English-Indonesian Dictionary* (24th edn, PT Gramedia 2005)
- Khibran Nadhir and Hery Firmansyah, 'Perlindungan Hak Individu Melalui Pendekatan Lex Favor Reo di Sistem Hukum Pidana' (2023) 6(2) *UNES Law Review*
- Lilik Mulyadi, *Hukum Pidana: Teori dan Praktek* (PT Citra Aditya Bakti 2015)
- M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP* (Sinar Grafika 2019)
- Moeljatno, *Asas-Asas Hukum Pidana* (Rineka Cipta 2008)
- Muladi, *Lembaga Pidana Bersyarat* (Alumni 1992)

- R. Wiyono, *Hukum Acara Pidana dalam Praktek* (Sinar Grafika 2018)
Roeslan Saleh, *Segi Lain Hukum Pidana* (Ghalia Indonesia 1983)
Satjipto Rahardjo, *Hukum Progresif: Hukum yang Membebaskan* (Kompas 2009)
Soehino, *Hukum Tata Negara* (Liberty 2003)
Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* (Rajawali Pers 1983)
Sudikno Mertokusumo, *Penemuan Hukum: Suatu Pengantar* (2nd edn, Cahaya Atma Pustaka 2014)
Sutan Remy Sjahdeini, *Pertanggungjawaban Pidana Korporasi* (Rajawali Pers 2017)
Utrecht, *Pengantar dalam Hukum Indonesia* (Ichtiar Baru Van Hoeve 1961)
Yenti Garnasih, *Tindak Pidana Pencucian Uang dan Pembalikan Beban Pembuktian* (RajaGrafindo Persada 2014).