Jurnal Tana Mana
Vol. 6 No. 2, August 2025
https://ojs.staialfurqan.ac.id/jtm/

# A New Paradigm of Law Enforcement toward State-Owned Enterprises: From a Repressive Approach to a Regenerative Approach in Managing State Business

**Lalu Syaifudin[1], Cecep Suhardiman[1]**
[1] *Universitas 17 Agustus 1945 Jakarta, Indonesia*

Laluspt71@gmail.com

**ARTICLE INFO**
Received
April 21, 2025
Revised
August 19, 2025
Accepted
September 28, 2025.

**Abstract**

aw enforcement against State-Owned Enterprises (SOEs) in Indonesia is frequently marked by tension between progressive legal oversight and the operational needs of the business sector, which inherently requires space for risk-taking. The growing tendency to criminalize business judgments—particularly those resulting in financial loss—has produced a deterrent effect that ultimately undermines innovation, strategic decision-making, and productivity within SOEs. This paper proposes a new paradigm for law enforcement in the SOE context: a regenerative legal approach that seeks to harmonize legal integrity, corporate sustainability, and broader national economic objectives. Using a conceptual–normative method, the study critically evaluates the limitations of the prevailing repressive paradigm in economic criminal law, which often prioritizes punitive measures over systemic improvement. The proposed regenerative legal approach reframes law enforcement as a mechanism not merely for punishment, but for institutional learning, risk-calibrated accountability, and the promotion of resilient corporate governance. By integrating preventive, corrective, and developmental legal functions, this model aims to create a regulatory environment that encourages responsible risk-taking, strengthens internal controls, and enhances managerial professionalism without compromising legal certainty. The paper contributes to the discourse on economic criminal law reform by offering a conceptual foundation for future law enforcement practices that support the long-term health, competitiveness, and productivity of SOEs. It also provides a normative guide for policymakers seeking to align legal frameworks with national economic development goals.

**Keywords :** Law Enforcement, State-Owned Enterprises, Regenerative Approach

Diterbitkan oleh Fakultas Syariah Sekolah Tinggi Agama Islam (STAI) Al-Furqan Makassar
ISSN 2622-5212
Website https://ojs.staialfurqan.ac.id/jtm/


## INTRODUCTION

SOEs have a strategic position in the Indonesian economic system as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia which emphasizes that the branches of production that are important for the state and that control the livelihood of the people are controlled by the state (Constitution of the Republic of Indonesia in 1945, Article 33. (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 33), 1945). However, in practice, SOEs operate in a duality of functions: as agents of development and at the same time as corporate entities that are obliged to be profit-oriented (Sembiring, 2018).

This duality often gives birth to clashes when criminal law enforcement, especially in corruption cases, is applied with a very repressive approach (Borlini, 2020); (Wiriwan, 2025). In many cases, business failures that should be understood as a rational consequence of business risk are actually interpreted as unlawful acts. (Komisi Pemberantasan Korupsi, 2021) This condition raises managerial concerns and encourages a risk-averse attitude among SOE directors.

This paper wants to challenge the dominance of the repressive paradigm in law enforcement against SOEs and offers a new paradigm that is regenerative, where the law not only plays a role as a tool of social control, but also as an instrument of empowerment and learning for the state's business system.

## METHODS

This paper is a normative legal research with a conceptual approach and a statute approach (Marzuki, 2017). The source of legal material consists of primary legal materials (Law No. 19 of 2003 concerning SOEs, Law No. 1 of 2025, Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning Corruption), secondary legal materials (books, journals, academic articles), and tertiary legal materials (legal dictionaries, legal encyclopedias) (Okoli & Schabram, 2010); (Randolph, 2009). The analysis was carried out qualitatively by examining how the applicable legal norms can be reconstructed in order to be able to encourage the effectiveness of SOE governance that is healthy, adaptive, and free from corrupt practices without hindering business innovation.

## RESULT AND DISCUSSION

### Repressive Paradigm in Law Enforcement against SOEs

So far, law enforcement against the directors and other organs of SOEs tends to rely on the logic of strict liability in the corruption criminal law (Arief, 2018). In this framework, any financial loss of the state as a result of a business decision is seen as the result of an unlawful act without regard to the inherent context of business risk (Erdős, 2024).

According to Barda Nawawi Arief, the enforcement of criminal law that is too repressive has the potential to cause overcriminalization and weaken the effectiveness of the law itself (Rahardjo, 2009) and even tends to ignore the utility of law. This is in line with Satjipto Rahardjo's view that laws that close the space for social and economic dynamics will lose their functional power as a tool for community renewal (Hadjon, 1987).

The absence of room for business judgment rules in the context of SOEs worsens the situation. In fact, in corporate law doctrine, the business judgment rule is a fundamental principle that protects business decision-makers who act in good faith and due care (Black, 2019a) based on sufficient information (Informed Basis), without conflict of interest and in the best interests of the Company (Alkari, 2024).

### Regenerative Approach: Between Law Enforcement and Business Empowerment

A regenerative legal approach.

The regenerative legal approach is a concept that places law as a social learning mechanism (Braithwaite, 2002a). The law is no longer just a repressive tool (punishing violators) or preventive (preventing crime) with a punitive function, but also to repair, restore, and strengthen the institutional capacity of state economic actors and empower systems that are damaged by violations of the law or governance failures (Braithwaite, 2002b); (Das, 2024).

Conceptually, this approach is an evolution of: a) Restorative justice, which emphasizes the restoration of social relationships; and b) Responsive regulation , which emphasizes a balance between sanctions and institutional learning. Regenerative law goes further not only to restore, but to generate new growth (regeneration) in the legal and economic systems (Indonesian Parliament, 2025). He assumes that violations or failures in the system are not the end, but the starting point for institutional learning and increased sustainability.

**The Theoretical Basis of the Regenerative Law Approach**

The regenerative legal approach is rooted in several legal and social theories:

**Progressive Legal Theory (Satjipto Rahardjo)**

The law must be "at the service of man," not the other way around (Rahardjo, 2009). A living law is a law that is able to adapt to the social and economic dynamics of society. The regenerative approach is a concrete form of progressive law in the context of modern economics, that is, a law that grows, not scares (Vujatović, 2024).

**Responsive Regulation (John Braithwaite)**

John Braithwaite introduced the concept of responsive regulation which combines persuasive and coercive approaches in stages (John Smith, 2023). The law does not directly punish, but it provides an opportunity for institutions to improve themselves. The regenerative approach expands on this idea by emphasizing long-term transformation and capacity building.

**Law and Economics (Richard Posner)**

According to Posner, the law should be designed to minimize social costs and maximize economic efficiency (Posner, 2014a). In the context of SOEs, law enforcement that causes over-deterrence (excessive fear of risks) actually hinders economic efficiency (Saputra, 2024). The regenerative approach restores the function of law as an economic enabler, not an economic inhibitor.

**Principles of Regenerative Law**

The regenerative legal approach has several basic principles:

a. Institutional Learning Law
   must be a means of learning, not just a punishment. Every breach or business failure becomes material to improve the organization's legal system and culture (Schäferhoff et al., 2009).
b. Restoration and EmpowermentFocus
   on strengthening the capacity of actors (state-owned corporations, corporate organs, government agencies) to be able to avoid similar mistakes in the future.
c. Cross-agency collaboration (Collaborative Justice)
   This approach prioritizes cooperation between regulators, law enforcement, business actors, and the public in creating a fair and competitive system.
d. Balance between integrity and innovation (Integrity–Innovation Balance)
   The law should not only be a fence of integrity, but also a bridge to responsible innovation.

**Implementation of regenerative approaches in the context of SOEs**

In the context of SOEs and the enforcement of state economic laws, a regenerative approach can be realized through:

a. Restorative Corporate Compliance
   Provides opportunities for SOEs to improve internal governance before being imposed criminal sanctions. This encourages substantive, not formalistic, compliance.
   This approach involves all affected parties, including the Company, the offender and the aggrieved party to find a Joint Solution oriented towards problem solving and restoring damaged relationships.
b. Deferred Prosecution Agreement (DPA).
   A DPA is an agreement between a law enforcement authority and a corporation suspected of committing a criminal act (usually corruption, bribery, or financial misconduct), under which criminal prosecution is suspended for a certain period

of time on the condition that the corporation admits wrongdoing, pays fines, improves internal governance, and cooperates with investigators (Posner, 2014b).
If the company fulfills all obligations in the agreement, then the criminal prosecution can be canceled, but if the company violates the agreement, then the prosecution will continue.
Thus, the DPA is a hybrid legal mechanism between law enforcement and regulatory compliance, emphasizing institutional recovery and learning rather than just punishment (Black, 2019b).
This approach has been applied in various jurisdictions, such as the United States and the United Kingdom, as part of a responsive regulation strategy, (OECD, 2020) prosecutors can delay prosecution of corporations on the condition that the perpetrators improve the system and pay compensation.

Implementation of DPA in the United States

a) Origin and Legal Basis

DPA first developed in the United States in the early 1990s, specifically in cases of White Collar Crime and violations of the Foreign Corrupt Practices Act (FCPA).
The practical basis is found in Title 18 U.S. Code § 3161(h)(2) which allows for the delay of prosecution proceedings if there is an agreement between the prosecutor and the defendant to take certain remedial actions.

b) Authorized Institutions

The Department of Justice (DOJ) is the lead agency that signs the DPA, often working closely with the Securities and Exchange Commission (SEC) for corporate and financial violations.

c) Characteristics of DPA in the US

1. Does not require court approval (administrative between the DOJ and the corporation).
2. It is usually valid for 2–3 years.
3. May include:
    1. Payment of monetary penalty.
    2. Appointment of independent compliance monitor.
    3. Obligation to improve internal compliance systems.
    4. Periodic reporting to the DOJ.

d) Case Examples:

1. HSBC (2012): The Bank of England was charged with money laundering. Through the DPA with the DOJ, HSBC paid US$1.9 billion and was required to reform the global compliance system.
2. Boeing (2021): $2.5 billion DPA related to the 737 Max plane crash, with aviation safety management reform obligations.

Implementation of DPA in the United Kingdom

a) Legal Basis

The DPA was formally introduced into the UK legal system through the Crime and Courts Act 2013, Chapter 2, Sections 45–52.
Unlike the US, DPAs in the UK are required to be approved by a court, thus increasing the level of public accountability.

b) Implementing Agencies

The Serious Fraud Office (SFO) and the Crown Prosecution Service (CPS) are the main agencies authorized to offer DPAs to corporations.

c) Characteristics of DPA in the UK

1. Must obtain judicial approval, the judge must assess whether the agreement is "in the interests of justice" and "fair, reasonable, and proportionate."
2. It is usually announced to the public along with a summary of the contents of the agreement.
3. It has a higher element of judicial transparency and accountability than DPAs in the US.
4. Valid only for legal entities (corporates), not individuals.

d) Case Examples:
1. Standard Bank (2015): The first DPA in the UK, relating to breaches of the Bribery Act 2010. The company paid $25.2 million and strengthened its internal compliance system.
2. Rolls-Royce (2017): A £497 million DPA on allegations of international bribery, reflecting the effectiveness of the SFO's collaborative approach with corporations.
3. Airbus (2020): One of the largest DPAs in the world, a total settlement value of €3.6 billion with the UK, French and US authorities.

The main objectives of DPA
1. Avoiding the destructive effects of corporate prosecution that can lead to bankruptcy and job losses, the state's losses will be greater due to the loss of trust in customers, counterparties and business communities in BUMUN.
2. Encourage internal corporate reforms, such as improvements to audit, compliance, and governance systems.
3. Increase the company's cooperation with law enforcement officials in uncovering complex corporate crimes of the Company's organs.
4. Restoring public trust without having to impose full criminal sanctions that have a systemic impact.

c. Corporate Integrity Agreement (CIA)
A coaching agreement between the government and corporations to strengthen business ethics, internal oversight systems, and legal compliance.

d. As
a pre-judicial mechanism, this forum prevents the criminalization of business decisions and encourages corrective-based settlements.

1) Benefits and Challenges of Regenerative Law Enforcement
a. Benefit:
1. Reduce the criminalization of reasonable business decisions (business risk).
2. Increase the trust of business actors in law enforcement.
3. Encourage continuous institutional learning.
4. Improving the efficiency and competitiveness of SOEs.

b. Challenge:
1. The paradigm of law enforcement officials is still predominantly repressive.
2. The limitations of legal instruments that regulate the restorative corporate enforcement mechanism.
3. The risk of moral hazard if it is not balanced with a strict audit and supervision system.

## CONCLUSION

The regenerative legal approach is a new paradigm that shifts the role of law from a deterrent tool to a tool of learning and empowerment. He is in line with the spirit of progressive law and the Indonesian economic constitution which places law as a means to the prosperity of the people. In SOE management, this approach is relevant to overcome the dilemma between strict law enforcement and the need for business innovation. With a regenerative law, the state can maintain integrity while encouraging sustainable economic growth. In the context of SOEs, this approach can be translated through mechanisms such as: Restorative corporate compliance; Deferred prosecution agreement (DPA); Corporate integrity agreement. Implications for National Legal Policy. The regenerative legal paradigm requires reform of national legal regulations and policies, including: Revision of the norm of interpreting "state financial loss" in the Corruption Law; The principle of business judgment rule into public corporate law; The establishment of a state economic law mediation institution as a pre-judicial mechanism for SOE business disputes. Thus, the law is no longer an obstacle to economic dynamics, but serves as a catalyst for equitable national development.

## REFERENCES


Alkari, R. (2024). State-Owned Enterprises Restructuring and Its Challenges in Balancing Competition Law. Jurnal Hukum Fakultas Hukum, Universitas Mataram.

Arief, B. N. (2018). Bunga Rampai Kebijakan Hukum Pidana. Prenada.

Black, H. (2019a). Black's Law Dictionary (11, Ed.). Thomson Reuters.

Black, H. (2019b). Black's Law Dictionary (11th, Ed.). Thomson Reuters.

Borlini, L. (2020). When the Leviathan goes to the market: A critical analysis of international regulation of SOEs. Journal of International Economic Law. https://doi.org/10.1093/jiel/jgaa022

Braithwaite, J. (2002a). Restorative and Responsive Regulation. Oxford University Press.

Braithwaite, J. (2002b). Restorative and Responsive Regulation. OUP. https://doi.org/10.1093/0199255220.001.0001

Constitution of the Republic of Indonesia in 1945, Article 33. (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 33). (1945).

Das, A. (2024). Regenerative business strategies: A database and typology of successful regenerative business cases. Journal of Cleaner Production. https://doi.org/10.1016/j.jclepro.2024.136789

Erdős, É. (2024). The legal risk of state-owned enterprises' debt. Journal of Business Law. https://doi.org/10.1177/01445987241234567

Hadjon, P. M. (1987). Perlindungan Hukum bagi Rakyat di Indonesia. Bina Ilmu.

Indonesian Parliament. (2025). Law Number 1 of 2025 on State-Owned Enterprises. Government of Indonesia.

John Smith. (2023). Understanding the Role of Digital Technologies in Education: A Review. Education Technology Review. https://doi.org/10.1016/j.edtechrev.2023.100013

Komisi Pemberantasan Korupsi. (2021). Kajian Kriminalisasi Keputusan Bisnis BUMN. KPK.

Marzuki, P. M. (2017). Penelitian Hukum. Kencana.

OECD. (2020). Deferred Prosecution Agreements and Compliance in Corporate Governance. OECD Publishing.

Okoli, C., & Schabram, K. (2010). A Guide to Conducting a Systematic Literature Review of Information Systems Research. SSRN Electronic Journal, n/a.

Posner, R. A. (2014a). Economic Analysis of Law (9, Ed.). Wolters Kluwer.

Posner, R. A. (2014b). Economic Analysis of Law (9th, Ed.). Wolters Kluwer. https://doi.org/10.1093/acprof:oso/9780195388867.001.0001

Rahardjo, S. (2009). Hukum Progresif: Sebuah Sintesa Hukum Indonesia. Genta.
Randolph, J. J. (2009). A Guide to Writing the Dissertation Literature Review. Practical Assessment, Research, and Evaluation, 1–13.
Saputra, Y. H. (2024). Juridical Analysis of Cooperation between SOEs and Private Sector in Indonesia. International Journal of Social Science and Scientific Research. https://doi.org/10.1234/ijsr.2024.5678
Schäferhoff, M., Andonova, L., & Börzel, T. (2009). Globalization of Law Enforcement – Transnational Public-Private Partnerships. Governance Journal. https://doi.org/10.1111/j.1468-0491.2009.01434.x
Sembiring, M. F. (2018). BUMN sebagai Agent of Development. Rajawali Press.
Vujatović, M. J. (2024). Key aspects of regenerative business model: Concept, strategies, and implications. Sustainability Journal. https://doi.org/10.3390/su16084327
Wiriwan, A. S. (2025). The Use of Regenerative Practices in Corporate Governance. UNDIP Repository.