

Third SOE Act Amendment: Affirmation of Non-State Administrator Status for SOE Officials and Its Implications for the Prosecution of Corruption Offenses

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On 24 February 2025, the Government of the Republic of Indonesia enacted Law No. 1 of 2025 concerning the Third Amendment to Law No. 19 of 2003 on State-Owned Enterprises ("**2025 SOE Act**"). The substance of the 2025 SOE Act has significant implications for the governance of state-owned enterprises ("**SOE**") as it affirms that members of an SOE's board of directors, board of commissioners, supervisory board, and employees do not qualify as state administrators. This article will further discuss the affirmation of the non-state administrator status and its implications for the prosecution of corruption offences under the prevailing laws and regulations.

Non-State Administrator Status of Members of the Board of Directors, Board of Commissioners, Supervisory Board, and Employees of SOEs

The term "state administrator" is defined in the laws and regulations as follows:

Article 1(1) of the State Administration Act¹

"A State Administrator is a state official who carries out executive, legislative, or judicial functions, and other officials whose principal duties and functions relate to state administration in accordance with the prevailing laws and regulations."

Article 1(2) of the CEC Act²

"A State Administrator is a state official who carries out executive, legislative, or judicial functions, and other officials whose principal duties and functions relate to state administration in accordance with the prevailing laws and regulations."

According to the above provisions, a state administrator is understood as a public official responsible for the administration of state functions. Furthermore, the elucidation of Article 2(7) of the State Administration Act explicitly includes members of an SOE's board of directors, board of commissioners, and structural officials within the scope of state administrators.

However, this differs from the provisions of Articles 9G and 87(5) of the 2025 SOE Act, which clearly affirm that members of an SOE's board of directors, board of commissioners, supervisory board, and employees ("**SOE Official**") do not qualify as state administrators ("**Non-State Administrator Status**").

In addressing the legal norm divergence between these regulations, we follow the legal preference principle "*lex posterior derogat legi priori*" — the more recent regulation prevails over the earlier one.³ Therefore, the currently applicable legal provision is the Non-State Administrator Status under the 2025 SOE Act, rendering Article 2(7) of the State Administration Act no longer legally binding.

Implications of Non-State Administrator Status for the Prosecution of Corruption Offences

From a theoretical perspective, the affirmation of Non-State Administrator Status under the 2025 SOE Act has significant implications for law enforcement under the Anti-Corruption Act⁴, particularly in relation to bribery and gratification offences involving state administrators.

¹ Abbreviation of Law No. 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion, and Nepotism.

² Abbreviation of Law No. 30 of 2002 concerning the Corruption Eradication Commission, as amended by Law No. 1 of 2015 and Law No. 19 of 2019.

³ Aaron X. Fellmeth and Maurice Horwitz, *Guide to Latin in International Law*, Oxford University Press, 2009, p. 174.

⁴ Abbreviation of Law No. 31 of 1999 concerning the Eradication of the Criminal Act of Corruption, as amended by Law No. 20 of 2001 and Law No. 30 of 2002.

In this context, bribery⁵ and gratification⁶ offences under the Anti-Corruption Act require that the recipient of the bribe or gratification hold the status of a state administrator.

Accordingly, it may be interpreted that if the recipient — of any form of gifts, including goods, money, facilities, discounts, commissions, or other benefits — is an SOE Official, then such conduct would not qualify as bribery or gratification offences under the Anti-Corruption Act.

This is because — under Articles 9G and 87(5) of the 2025 SOE Act — SOE Officials are not considered state administrators, thereby failing to satisfy all the elements required to constitute a bribery or gratification offence.

Nevertheless, it is important to note that the 2025 SOE Act does not provide absolute protection or immunity for SOE Officials from potential prosecution under the Anti-Corruption Act.

The reason is that not all corruption offences under the Anti-Corruption Act require the involvement of a person with state administrator status. Some offences may apply to any person — including a non-state administrator — such as Article 2(1) and Article 3 of the Anti-Corruption Act, which state:

Article 2(1) of the Anti-Corruption Act
<i>“Any person who unlawfully enriches themselves or another person or a corporation, causing loss to the state finances or the state economy [...]”</i>
Article 3 of the Anti-Corruption Act
<i>“Any person who, with the intent of benefiting themselves or another person or a corporation, abuses their authority, opportunity, or means available to them due to their position or role, causing loss to the state finances or the state economy [...]”</i>

With the continued existence of several such provisions, this opens the possibility for law enforcement authorities to still bring charges against and carry out the prosecution of SOE Officials under the Anti-Corruption Act.

Conclusion

- Following the enactment of the 2025 SOE Act, it is affirmed that members of the board of directors, the board of commissioners, the supervisory board, and employees of SOEs (SOE Official) do not hold the status of state administrators.
- Theoretically, this affirmation of Non-State Administrator Status renders any receipt of benefits by an SOE Official not classifiable as bribery or gratification offences.
- Nevertheless, law enforcement authorities may still prosecute any SOE Official under provisions of the Anti-Corruption Act that do not require the involvement of state administrator(s).

⁵ Articles 5, 11, and 12 of the Anti-Corruption Act.
⁶ Article 12B of the Anti-Corruption Act.

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The article above was prepared by Dentons HPRP's lawyers

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