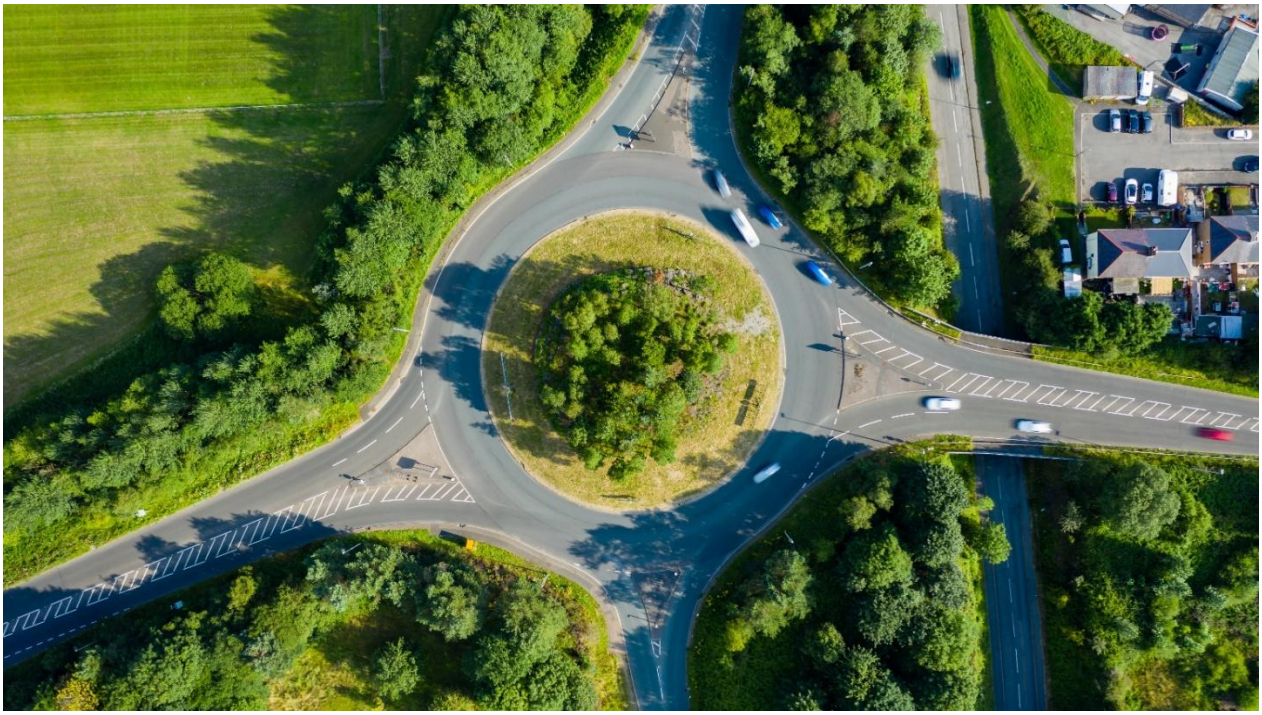


Client Alert October 2026

Reshaping SOE management in Indonesia

Government Regulation Number 38 of 2026 on Management of State-Owned Enterprises

Background

On 21 August 2026, the government issued Government Regulation Number 38 of 2026 on Management of State-Owned Enterprises (GR 38/2026) as the implementing regulation of Law Number 19 of 2003 on State-Owned Enterprises, as lastly amended by Law Number 16 of 2025 (SOE Law). GR 38/2026 further elaborates on the management of state-owned enterprises (SOEs).

Overview

This Client Alert covers the following salient points of GR 38/2026 pertaining to the management of SOEs:

- Division of roles in SOE management;
- Ownership structure of SOEs in the form of Persero;
- SOEs planning documents;
- Supervision and examination by BP BUMN;
- Decision-making by board of directors;
- Monopoly rights;

- Cut loss actions; and
- Dispute resolution between SOEs, SOE subsidiaries, and/or affiliated companies.

Key provisions

Division of roles in SOE management

GR 38/2026 provides that the president, as head of government, holds authority over the management of SOEs. This authority is delegated to both State-Owned Enterprises Regulatory Agency (*Badan Pengaturan Badan Usaha Milik Negara* (BP BUMN)) and *Badan Pengelola Investasi Daya Anagata Nusantara* (BPI Danantara) in their capacity as shareholders. Meanwhile, SOEs designated to carry out certain fiscal functions are under the authority of the Minister of Finance.

As the implementing regulation of the SOE Law, GR 38/2026 sets out the division of roles between BP BUMN and BPI Danantara with regard to the management of SOEs. BP BUMN is mainly responsible for managing SOEs in the form of public corporations (Perum), while BPI Danantara manages SOEs in the form of limited liability company (Persero). Notwithstanding this division, BP BUMN retains its role as the regulator for all SOEs and as the government's representative in the management of separated state assets.

Ownership structure of Persero

The SOE Law provides that the Republic of Indonesia holds a 1% stake in Persero in the form of Series A Dwiwarna shares, held through BP BUMN, and a 99% stake in Series B shares, held through BPI Danantara. GR 38/2026 further clarifies that BPI Danantara will not directly carry out the administration and management of Persero. Instead, such administration and management will be carried out by:

- Investment holdings and operational holdings, all of which are wholly owned by BPI Danantara; and/or
- Persero acting as the parent entity.

Based on this framework, GR 38/2026 indicates that the management of Persero by BPI Danantara will be implemented through a layered management structure, in which the administration and management of Persero will be carried out through the investment holding, operational holding, and/or the relevant Persero parent entity. However, GR 38/2026 has yet to clarify the technical mechanism for this indirect administration and management of Persero.

SOE planning documents

The SOE Law provides that the head of BP BUMN, with the president's approval, has the authority to establish: (i) the general policy direction of SOEs; (ii) the SOE governance policy; and (iii) the SOE roadmap. GR 38/2026 then elaborates on each of these SOE planning documents.

General policy direction of SOEs

This document sets out the policy direction, objectives, and role of SOEs and is valid for a 20-year period. It is guided by the national long-term development plan (*Rencana Pembangunan Jangka Panjang Nasional* (RPJPN)) and is articulated through the formulation of the vision, mission, and overall direction for SOE management.

SOE governance policy

This document sets out the policy on the application of good corporate governance principles in conducting business activities across all levels of the organization.

SOE roadmap

The SOE roadmap elaborates on the general policy direction of SOEs, applies for a five-year period, and is guided by the national medium-term development plan (*Rencana Pembangunan Jangka Menengah Nasional* (RPJMN)).

The SOE governance policy is mandatory for all SOEs, with its technical implementation to be determined by BPI Danantara for Persero and by the head of BP BUMN for Perum. Meanwhile, the general policy direction of SOEs and SOE roadmap, along with the aspirations of shareholders/investors, will serve as the basis for preparing SOE strategic planning documents, including the long-term plan, work plan and budget, and annual management contract.

Supervision and examination by BP BUMN

The SOE Law provides that one of the authorities of the head of BP BUMN is to supervise SOEs' compliance with governance policies, key performance indicators, and government assignments. GR 38/2026 further provides that this supervisory mechanism is carried out through:

- Direct supervision, through on-site inspections; and
- Indirect supervision, through the examination of periodic reports, incidental reports, and/or other reports submitted by SOEs to BP BUMN.

The findings of BP BUMN's supervision must be followed by the relevant SOE, which is then required to report on the implementation of such follow-up measures to BP BUMN. If an SOE fails to implement the follow-up measures arising from BP BUMN's supervision, BP BUMN may impose administrative sanctions in the form of a warning and/or propose corrective action.

Supervisory findings may also serve as a basis for conducting a formal examination where the findings indicate or suggest:

- A potential failure to achieve government program targets, including special assignments, carried out by the SOE;
- Non-compliant management or use of government funds in carrying out a special assignment; and/or
- Failure to implement follow-up measures arising from supervision.

The authority to conduct an examination may be exercised after obtaining the president's approval.

Decision-making by board of directors

GR 38/2026 confirms that all decisions of the board of directors must be made either at a board of directors meeting or by circular resolution. For Persero, the regulation further provides that any action taken by a member of the board of directors must be approved by the other members. Hence, if a member of the board of directors takes an action without the approval of the other members and such action results in a loss to the company, the relevant member will be personally liable for such loss.

Monopoly rights

The SOE Law provides that the president may grant monopoly rights to an SOE or an SOE's subsidiary to produce and/or market goods and/or services:

- Relating to matters affecting the livelihood of the general public, as well as production sectors of importance to the state;
- In the interest of the state; and/or
- Based on other considerations determined by the president.

The granting of monopoly rights to SOEs or SOE subsidiaries will be stipulated by government regulation or presidential regulation. GR 38/2026 further provides the following provisions:

Purpose of granting monopoly rights

The granting of monopoly rights is intended to: (i) enhance public benefit; (ii) ensure that public needs are met; (iii) carry out governmental functions; and (iv) realize national defense and security. Accordingly, the justification for granting monopoly rights must cumulatively satisfy all four of these objectives.

Criteria for goods and/or services relating to the livelihood of the general public

GR 38/2026 describes goods and/or services relating to the livelihood of the general public as those serving the following functions:

- Allocation, referring to goods or services derived from natural resources controlled by the state, to be utilized for the greatest possible prosperity of the people;
- Distribution, referring to goods and/or services that are essential to the basic needs of the public but which, at certain times or on an ongoing basis, cannot be met by the market; and/or
- Stabilization, referring to goods and/or services that must be made available in the public interest, such as goods and/or services in the fields of defense and security, monetary policy, and fiscal policy, which require special regulation and supervision.

Criteria for production sectors of importance to the state

GR 38/2026 explains that production sectors of importance to the state are those that are:

- Strategic in nature, i.e., production sectors involving goods and/or services that directly protect the interests of national defense and safeguard national security; or
- Related to national economic stability, i.e., production sectors closely connected to the production of goods and/or services for monetary stability and tax assurance, as well as the financial services sector, to the extent utilized in the public interest.

Other provisions relating to monopoly rights of SOEs or SOE subsidiaries

Monopoly rights are granted for a limited period and scope. An SOE or SOE subsidiary granted such rights is also required to achieve targets in accordance with performance indicators. In exercising its monopoly rights, an SOE or SOE subsidiary must observe the principles of fair business competition and is prohibited from delegating, in whole or in part, its monopoly rights to any other party.

Cut loss actions

GR 38/2026 defines cut loss as an action to dispose of assets, including recorded rights or claims to be received by the company, at a value below their carrying value, and/or to cease collecting receivables that have been written off in order to prevent greater losses. A cut loss action by an SOE or SOE subsidiary may be carried out through:

- Write-off accompanied by the disposal of SOE assets;
- Write-off without the disposal of SOE assets; and/or
- Cessation of collection of receivables that have already been written off.

Furthermore, GR 38/2026 provides certain requirements for conducting a cut loss action involving SOE assets, as follows:

- An adequate analysis has been conducted, as evidenced by analysis working papers, demonstrating that a greater potential loss would arise if the cut loss were not carried out;

- The decline in value or loss in respect of SOE assets subject to cut loss is not the result of an error or negligence on the part of the person carrying out the cut loss action; and
- The person carrying out the cut loss action has no conflict of interest.

The above matters must be assessed by an independent consultant or a government institution, in accordance with its duties, functions, and competencies.

GR 38/2026 also sets out that any loss arising from a cut loss action constitutes a loss of the SOE. However, no liability may be imposed for such loss in respect of a cut loss action, provided that:

- The decline in value or loss in respect of SOE assets is not the result of an error or negligence;
- The action was carried out in good faith and with due care, in accordance with the purpose and objectives of the investment and with good business governance;
- There is no direct or indirect conflict of interest; and
- No personal gain was obtained from the cut loss action.

Dispute resolution

GR 38/2026 provides that any dispute between SOEs, SOE subsidiaries, and/or affiliated companies must first be resolved through deliberation (*musyawarah*) to reach consensus. If such deliberation fails to result in a resolution, BPI Danantara and/or the operational holding may facilitate resolution of the dispute through discussions among the disputing parties. If the dispute remains unresolved, the disputing parties may agree to pursue mediation through a mediator. If the parties are unable to agree on the appointment of a mediator within 14 calendar days, BP BUMN will appoint the mediator.

Where an existing agreement contains a dispute resolution clause providing for arbitration or court proceedings, the disputing parties may request BPI Danantara and/or the operational holding to facilitate resolution of the dispute through discussions between the parties, in an effort to reach a settlement before initiating arbitration or court proceedings.

Key takeaways

- GR 38/2026 marks a substantial step in reorganizing Indonesia's SOE governance framework by formalizing BPI Danantara's role in the management of SOEs in the form of Persero, while preserving BP BUMN's regulatory oversight across the SOE sector. BPI Danantara is the main entity that is responsible for the management of Persero, while BP BUMN is responsible for the management of Perum.
- The management of Persero by BPI Danantara is carried out through a layered management structure involving investment holdings, operational holdings, and/or relevant Persero parent entities.
- SOE strategic planning documents must be prepared based on the general policy direction of SOEs, the SOE roadmap, and the aspirations of shareholders/investors.
- BP BUMN may conduct formal examinations of SOEs where certain indications specified in GR 38/2026 are present.
- Any action taken by a member of the board of directors must be approved by other members. Without such approval, a member whose action results in a loss to the company may be held personally liable for such loss.
- Monopoly rights may be granted to SOEs and SOE subsidiaries through a government regulation or presidential regulation. These monopoly rights are granted for a limited period and scope, and the recipient is prohibited from delegating such rights, in whole or in part, to another party.
- SOEs and SOE subsidiaries are may carry out cut loss actions if certain requirements are met. Any loss arising from a cut loss action constitutes a loss of the relevant SOE or SOE subsidiary.

- BPI Danantara and/or the operational holding may facilitate the resolution of disputes between SOEs, SOE subsidiaries, and/or affiliated companies.

Several implementing details remain outstanding, notably the technical mechanism for indirect administration and management of Persero under this holding structure. We will continue to monitor developments in this area and provide further updates as implementing regulations or guidance are issued.

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