

Reconstructing Controlling Entity Liability to State-Owned Enterprise Creditors: A comparative Study of BPI Danantara, Faktischer Konzern, and the Rozenblum Doctrine

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ABSTRACT

The establishment of the Daya Anagata Nusantara Investment Management Agency (BPI Danantara) creates a gap in the legal protection of creditors of state-owned enterprises (SOEs) because its controlling authority derives from statutory delegation rather than share ownership. This study aims to reconstruct the framework governing BPI Danantara's liability to SOE creditors as a controlling entity. The study employs normative legal research and applies statutory, conceptual, historical, and comparative approaches, supported by grammatical, systematic, teleological, and functional comparative analysis. The study finds that Article 3(2)(d) of the Indonesian Company Law is structurally inadequate to address BPI Danantara's position because its requirement of an "unlawful act" does not encompass the lawful exercise of delegated authority. The proposed reconstruction introduces a special liability provision in the SOE Law by combining the German *faktischer Konzern* compensation mechanism with the French Rozenblum proportionality standard. This model establishes causation-based liability, proportional compensation, an insolvency ceiling, technical delegation, and direct creditor standing.

Keywords: BPI Danantara; controlling entity liability; State-Owned Enterprises; *faktischer Konzern*; Rozenblum doctrine

DOI: <https://doi.org/10.56442/ijble.v7i2.1572>

INTRODUCTION

Limited liability and separate legal personality constitute fundamental principles of modern company law. The recognition of a company as an independent legal entity separates corporate assets, rights, and obligations from those of shareholders, while limited liability generally restricts shareholder exposure to the amount of capital invested. These principles facilitate investment and risk allocation by allowing companies to operate as autonomous legal entities (Hansmann & Kraakman, 2000). However, the application of the principle of separate legal personality becomes increasingly complex within corporate groups, where legally independent entities may operate under centralized economic control. In such structures, the entity exercising actual strategic influence may not always be the entity formally responsible for corporate obligations (Petrin & Choudhury, 2018; Strasser & Blumberg, 2011).

Indonesian company law remains largely based on the traditional entity-based model. Law Number 40 of 2007 concerning Limited Liability Companies recognizes a company as a separate legal person and establishes limited liability as the general rule for shareholders (Republic of Indonesia, 2007). Nevertheless, Article 3 paragraph (2) provides exceptions where limited liability may be disregarded, including circumstances in which a shareholder directly or indirectly makes unlawful use of company assets, rendering those assets insufficient to satisfy corporate obligations (Republic of Indonesia, 2007). This provision reflects the statutory application of the doctrine of piercing the corporate veil, which functions as an exceptional mechanism to prevent misuse of corporate personality (Fuady, 2010; Widiyono, 2013).

The effectiveness of this mechanism becomes uncertain when control does not arise from conventional shareholder relationships. Although Indonesian company law

recognizes the existence of parent-subsidary relationships, it does not provide a comprehensive framework governing the liability of controlling entities within corporate groups. Earlier provisions on corporate groups in Law Number 1 of 1995 recognized indicators of control, such as majority ownership, voting control, and significant influence over management decisions, but these concepts were not developed into a comprehensive liability regime (Republic of Indonesia, 1995). Consequently, Indonesian law acknowledges corporate group structures without establishing clear mechanisms for assigning responsibility for entities exercising substantive control.

This limitation becomes particularly significant following the establishment of the Daya Anagata Nusantara Investment Management Agency (BPI Danantara). Law Number 16 of 2025 concerning State-Owned Enterprises introduces a distinctive governance structure in which the President delegates certain powers relating to SOE management to BPI Danantara, an Indonesian legal entity wholly owned by the Government of Indonesia (Republic of Indonesia, 2025). Unlike a conventional parent company, BPI Danantara's authority does not primarily derive from share ownership but from statutory delegation.

The scope of this authority demonstrates BPI Danantara's substantive position as a controlling entity. Article 3F of Law Number 16 of 2025 grants BPI Danantara authority over strategic matters, including investment policies, capital participation, asset management, debt-related decisions, governance policies, risk management, and other aspects of SOE management (Republic of Indonesia, 2025). Although BPI Danantara and individual SOEs remain separate legal entities, the statutory framework creates a centralized structure of strategic direction similar to the economic integration commonly found within corporate groups (Sulistiowati, 2021).

This structure creates a fundamental legal problem regarding creditor protection. Creditors generally establish legal relationships with individual SOEs as separate debtors, not with the broader controlling structure behind them. Under the principle of privity of contract, contractual obligations generally bind only the parties to the agreement (Isnaeni, 2017). Therefore, creditors cannot automatically hold BPI Danantara responsible when financial difficulties arise from strategic decisions influenced by the controlling entity. This issue is particularly relevant for non-adjusting creditors, who have limited ability to anticipate or negotiate protections against risks generated by corporate control structures (Bebchuk & Fried, 1996).

At first glance, Article 3 paragraph (2) letter d of the Company Law appears to provide protection through piercing the corporate veil. However, its application to BPI Danantara encounters two fundamental limitations. First, the provision is framed in terms of shareholder liability, whereas BPI Danantara's authority does not originate from direct share ownership. Second, the provision requires unlawful conduct, while BPI Danantara exercises authority granted directly by legislation. Therefore, the central issue is not necessarily abusive corporate conduct but the absence of a liability mechanism capable of addressing the lawful exercise of substantial controlling influence.

Previous studies have examined corporate group liability, piercing the corporate veil, parent-company responsibility, and creditor protection. International scholarship has explored the relationship between control and liability within corporate groups (Hommelhoff, 2001; Petrin & Choudhury, 2018; Witting, 2018), while Indonesian scholarship has highlighted the absence of a comprehensive corporate group liability

regime (Sulistiowati, 2013, 2021). However, existing studies have not specifically examined the liability implications of a statutory controlling entity whose authority derives from legislative delegation rather than share ownership.

This study addresses this gap by reconstructing the framework governing BPI Danantara's liability to SOE creditors through a comparative analysis of the German *faktischer Konzern* framework and the French *Rozenblum* doctrine. Rather than expanding the traditional doctrine of piercing the corporate veil, this research proposes a control-based liability framework that connects controlling authority with responsibility through causation, proportional compensation, and creditor protection.

Accordingly, this study aims to answer the following research question: How should the framework governing BPI Danantara's liability to state-owned enterprise creditors as a controlling entity be reconstructed by drawing on the German *faktischer Konzern* framework and the French *Rozenblum* doctrine?

METHOD

This study employed prescriptive normative legal research, focusing on the analysis of legal norms, principles, doctrines, and authoritative legal materials rather than empirical data obtained through field research (Marzuki, 2017; Irwansyah, 2022). The prescriptive approach was selected because the study aimed not only to examine the adequacy of the existing liability framework applicable to BPI Danantara but also to formulate a revised legal framework governing controlling entity liability to state-owned enterprise (SOE) creditors.

The study applied four approaches: statutory, conceptual, historical, and comparative. The statutory approach examined the Indonesian legal framework governing limited liability, corporate control, SOE governance, and creditor protection, particularly Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 16 of 2025 concerning State-Owned Enterprises (Republic of Indonesia, 2007, 2025). The historical approach was used to examine the development of corporate group recognition in Indonesian company law, particularly the earlier recognition of parent–subsidiary relationships under Law Number 1 of 1995 concerning Limited Liability Companies (Republic of Indonesia, 1995).

The conceptual approach analyzed relevant legal concepts, including separate legal personality, limited liability, piercing the corporate veil, controlling entities, corporate groups, and creditor protection. The comparative approach examined the German *faktischer Konzern* framework under the Aktiengesetz and the French *Rozenblum* doctrine to identify legal principles applicable to situations in which a controlling entity exercises influence over a legally separate company and that influence may cause financial disadvantage (Federal Republic of Germany, 1965; Cour de Cassation, 1985).

The legal materials consisted of primary and secondary sources. Primary legal materials included Indonesian legislation, the German Aktiengesetz, and relevant judicial decisions. Secondary materials consisted of academic books and peer-reviewed journal articles concerning corporate group liability, parent-company responsibility, creditor protection, and comparative corporate law. These materials were analyzed through grammatical, systematic, teleological, and functional comparative interpretation. These methods were used to examine the limitations of Article 3 paragraph (2) letter d of the Company Law and to construct a liability

framework that balances controlling authority, corporate autonomy, and creditor protection.

RESULTS AND DISCUSSION

1. The inability of the doctrine of piercing the corporate veil to address BPI Danantara's statutory control

The first finding of this study indicates that Article 3 paragraph (2) letter d of the Indonesian Company Law is structurally insufficient to address BPI Danantara's position as an entity controlling state-owned enterprises (SOEs). The limitation does not arise because BPI Danantara lacks controlling influence, but because the existing liability mechanism is based on a different concept of control: shareholder control accompanied by unlawful misuse of corporate assets.

Under Article 3 paragraph (2) letter d of Law Number 40 of 2007 concerning Limited Liability Companies, limited liability may be disregarded when a shareholder directly or indirectly makes unlawful use of the company's assets, rendering them insufficient to satisfy its obligations (Republic of Indonesia, 2007). This provision reflects the traditional function of the doctrine of piercing the corporate veil, which operates as an exceptional mechanism to prevent shareholders from abusing separate legal personality and limited liability protection (Fuady, 2010; Widiyono, 2013).

However, the structure of this provision creates two fundamental limitations when applied to BPI Danantara. First, the provision identifies shareholders as the parties subject to liability, whereas BPI Danantara's controlling authority does not originate from share ownership. Second, the provision requires unlawful conduct, whereas BPI Danantara exercises authority granted directly by legislation.

The distinction between ownership-based control and statutory control is essential. In conventional corporate groups, a parent company generally exercises influence through share ownership, voting rights, or contractual arrangements. By contrast, BPI Danantara derives its authority from Law Number 16 of 2025, which delegates authority over strategic SOE management to the institution (Republic of Indonesia, 2025). Therefore, although BPI Danantara exercises substantial influence over SOE policies, its legal position differs from that of the shareholder contemplated in Article 3 paragraph (2) letter d of the Company Law.

This finding highlights the limitations of relying solely on formal ownership as the basis for corporate liability. Contemporary corporate groups frequently exhibit a separation between legal ownership and economic control, in which an entity may determine strategic decisions without directly owning the controlled company (Strasser & Blumberg, 2011; Petrin & Choudhury, 2018). Consequently, corporate law that links liability exclusively to shareholder status may fail to address situations where control exists outside conventional ownership structures.

The second limitation concerns the requirement of unlawful conduct. The doctrine of piercing the corporate veil traditionally responds to abuse of corporate personality, such as fraud, bad faith, or improper use of the company to serve personal interests (Fuady, 2010). In contrast, BPI Danantara exercises legally recognized delegated authority. From the perspective of administrative law, authority derives from a legal basis and cannot automatically be categorized as unlawful merely because its exercise produces adverse consequences for a controlled entity (Hadjon, 2011).

Accordingly, the problem presented by BPI Danantara is not a conventional case of abusive shareholder behavior. Rather, it concerns the absence of a liability mechanism capable of addressing the lawful exercise of substantial controlling influence. This distinction demonstrates that the existing veil-piercing framework is unable to provide adequate protection when economic control and legal responsibility are separated.

The study therefore finds that expanding the interpretation of Article 3 paragraph (2) letter d of the Company Law would not provide a sustainable solution. Such expansion would require transforming a shareholder-based exception into a general controlling entity liability rule, which would exceed the original normative scope of the provision. A different framework is required—one that recognizes control as a source of responsibility while preserving the legitimacy of separate legal personality and limited liability.

2. The need for a control-based liability framework for protecting SOE creditors

The second finding of this study indicates that the absence of a specific liability mechanism for controlling entities creates a structural imbalance between decision-making authority and legal responsibility. In the context of BPI Danantara, the entity with substantial authority to influence SOE governance remains legally insulated from the financial consequences arising from the exercise of such authority. This separation produces a form of authority shielding, in which control exists without a corresponding mechanism of accountability.

Separate legal personality and limited liability remain fundamental principles of corporate law because they provide certainty in business organization, facilitate investment, and enable the efficient allocation of commercial risks (Hansmann & Kraakman, 2000). However, within corporate groups, these principles may generate tension when economic control is concentrated in one entity while legal responsibility remains attached to another formally independent entity. Corporate groups demonstrate that legal independence does not always correspond to economic independence, as subsidiaries may operate under centralized strategic direction from a controlling entity (Strasser & Blumberg, 2011; Petrin & Choudhury, 2018).

This problem becomes more significant in the case of BPI Danantara because its authority extends beyond passive supervision. Law Number 16 of 2025 grants BPI Danantara strategic powers relating to SOE management, including investment decisions, capital participation, asset management, debt-related policies, governance arrangements, and other strategic matters (Republic of Indonesia, 2025). Such authority indicates that BPI Danantara has the capacity to influence the economic position of SOEs, even though the affected SOEs remain separate legal entities responsible for their own obligations.

The separation between controlling authority and legal responsibility creates particular risks for creditors. Creditors generally establish legal relationships with individual SOEs as separate debtors rather than with the broader economic structure behind them. The principle of privity of contract limits contractual claims to the parties involved in the agreement, meaning that creditors cannot automatically impose obligations on a controlling entity that is not a party to the relevant transaction (Isnaeni, 2017).

This limitation is especially relevant for non-adjusting creditors, who generally lack the ability to negotiate contractual protections or adjust their behavior in response

to changes in corporate control structures. Unlike sophisticated creditors that may require collateral, covenants, or higher risk premiums, non-adjusting creditors often depend on the continued financial stability of the company with which they directly interact (Bebchuk & Fried, 1996). Therefore, when strategic decisions originating from a controlling entity negatively affect the financial condition of an SOE, these creditors may ultimately bear the resulting losses.

The current legal framework provides limited protection against this risk. Internal corporate mechanisms, including shareholder supervision and governance procedures, primarily regulate relationships among corporate organs and do not directly protect external creditors. Article 3 paragraph (2) letter d of the Company Law is designed as an exceptional remedy against abusive shareholder conduct rather than as a general mechanism for addressing disadvantages caused by the lawful exercise of controlling influence (Fuady, 2010; Widiyono, 2013).

This finding demonstrates that the central legal problem is not the existence of control itself, but the absence of a proportional relationship between control and responsibility. A controlling entity should not be liable merely because it exercises influence over another company. However, where the exercise of such influence causes measurable disadvantage to the controlled entity and adversely affects creditor interests, the legal system requires a mechanism for allocating responsibility to the entity with actual decision-making power.

Comparative corporate law supports the development of such a control-based approach. German corporate group law recognizes that controlling influence may generate compensatory obligations when it causes disadvantage to a dependent company under the *faktischer Konzern* framework (Federal Republic of Germany, 1965; Hommelhoff, 2001). This approach does not eliminate separate legal personality but acknowledges that the exercise of economic power may create corresponding responsibilities. Similarly, the French *Rozenblum* doctrine recognizes the legitimacy of group-oriented decisions while requiring proportionality to prevent excessive sacrifice by individual companies (Conac, 2013; Langenbucher, 2017).

Accordingly, the study finds that the liability framework applicable to BPI Danantara should be reconstructed to shift from a fault-based model to a control-based model of responsibility. The assessment should not be limited to whether the controlling entity committed an unlawful act; it should also examine whether the entity exercised decisive influence, whether such influence caused identifiable disadvantage, and whether adequate balancing mechanisms existed to prevent the unfair transfer of risk to SOEs and their creditors.

Such reconstruction provides a more balanced approach to two competing interests. On the one hand, it preserves the legitimacy of centralized SOE governance and recognizes BPI Danantara's statutory role. On the other hand, it prevents a situation in which economic control produces benefits at the group level while the associated risks are transferred exclusively to legally separate SOEs and their creditors. Therefore, a control-based liability framework represents a more appropriate legal response to the governance structure introduced by BPI Danantara.

3. Reconstruction of controlling entity liability through a synthesis of *faktischer Konzern* and the *Rozenblum* doctrine

The third finding of this study is that the framework governing BPI Danantara's liability should be reconstructed through a specialized controlling entity liability mechanism under the State-Owned Enterprises Law. The reconstruction is necessary because the existing piercing the corporate veil mechanism under Article 3 paragraph (2) letter d of the Company Law is unable to accommodate a controlling relationship based on statutory delegation rather than share ownership. The appropriate legal response is therefore not to expand the meaning of shareholder liability, but to develop a framework that directly addresses the relationship between controlling authority and responsibility.

The proposed reconstruction maintains the principles of separate legal personality and limited liability as essential foundations of corporate law. These principles should not be disregarded merely because one entity exercises significant influence over another. However, limited liability should not operate as a mechanism that enables a controlling entity to obtain the benefits of centralized decision-making while transferring the negative consequences of such decisions exclusively to the controlled entity and its creditors. Therefore, the reconstructed framework seeks to establish a proportional connection between the power to control and the obligation to compensate.

The first conceptual basis of this reconstruction derives from the German *faktischer Konzern* framework. German corporate group law recognizes that a controlling enterprise may influence a dependent company without eliminating that company's separate legal personality. Under Sections 17, 18, and 311 of the Aktiengesetz, the existence of dominant influence creates legal consequences when the controlling enterprise uses such influence to cause disadvantage to the dependent company (Federal Republic of Germany, 1965). The central principle is that control generates responsibility when the exercise of such control produces an identifiable disadvantage requiring compensation (Hommelhoff, 2001; Reich-Graefe, 2005).

This principle is relevant to BPI Danantara because the fundamental issue is not whether BPI Danantara formally owns SOEs, but whether it has the ability to determine strategic decisions affecting the economic condition of those entities. Through Law Number 16 of 2025, BPI Danantara obtains authority over significant aspects of SOE governance, including investment policy, capital participation, asset management, and strategic governance decisions (Republic of Indonesia, 2025). Such authority represents a form of substantive control that should generate corresponding responsibility when its exercise causes measurable disadvantage.

However, the German model alone is insufficient because BPI Danantara is not an ordinary private parent company. Its authority originates from statutory delegation, creating a hybrid relationship between corporate governance and public authority. Therefore, imposing liability for every disadvantage suffered by an SOE could undermine legitimate government coordination and strategic SOE management. A balancing mechanism is required to distinguish between legitimate group-oriented policies and excessive interference that unfairly transfers risks to individual SOEs.

For this reason, the second conceptual basis of the reconstruction derives from the French *Rozenblum* doctrine. Unlike a strict compensation model, *Rozenblum* recognizes that a company within a corporate group may accept certain disadvantages

where the relevant decisions serve a broader group interest, provided that the group relationship is genuine, the policy reflects a coherent economic strategy, and the sacrifice remains proportionate to the expected benefits (Cour de Cassation, 1985; Conac, 2013).

The relevance of the *Rozenblum* doctrine lies in its ability to accommodate the strategic nature of SOE governance. BPI Danantara may legitimately implement policies requiring coordination among SOEs to achieve broader economic objectives. Therefore, a disadvantage suffered by an individual SOE should not automatically result in liability. Instead, the legal assessment should examine whether the disadvantage forms part of a rational group strategy and whether adequate mechanisms exist to balance the resulting benefits and burdens.

Nevertheless, proportionality cannot become an unlimited justification for transferring losses from the group level to individual SOEs and their creditors. The protection of creditors requires a clear limit on sacrifices made for strategic purposes. Therefore, the reconstructed framework must combine the German compensatory principle with the French proportionality safeguard. The result is a model in which control creates responsibility, but responsibility is limited by legitimate group interests and financial sustainability.

Based on this synthesis, the reconstructed liability framework consists of five essential elements.

First, a liability trigger based on controlling influence and causation

Liability should arise when the controlling entity exercises decisive influence over an SOE's strategic decisions and such influence directly causes measurable financial disadvantage. The trigger should not depend on proving unlawful conduct as required under Article 3 paragraph (2) letter d of the Company Law. Instead, the assessment should focus on the existence of control, the causal relationship between the decision and the disadvantage, and the absence of adequate justification or compensation.

This approach reflects the logic of the *faktischer Konzern*, where responsibility arises from the exercise of dominant influence rather than merely from formal ownership status (Federal Republic of Germany, 1965).

Second, a proportional compensation defense

The controlling entity should have access to a defense based on proportionality. BPI Danantara should not be liable where it can demonstrate that a disadvantageous decision formed part of a legitimate SOE-wide strategy and that the affected SOE received reasonable economic offsets or stood to benefit from the policy.

This mechanism incorporates the principle underlying *Rozenblum*, ensuring that liability does not obstruct legitimate coordination within a corporate group (Conac, 2013; Langenbucher, 2017).

Third, an insolvency limitation as an absolute safeguard

The recognition of group interest should not permit a controlling entity to impose sacrifices that threaten the financial survival of an SOE. The reconstructed framework should therefore establish an insolvency ceiling preventing strategic decisions from reducing the controlled company's ability to fulfill its obligations to creditors.

This limitation is particularly important for protecting non-adjusting creditors, who generally lack sufficient bargaining power to anticipate risks created by decisions at the controlling-entity level (Bebchuk & Fried, 1996).

Fourth, a technical delegation mechanism

Because BPI Danantara's authority originates from statutory delegation, the legal framework must clearly distinguish between legitimate strategic direction and excessive operational intervention. A technical delegation mechanism is required to define:

1. the scope of BPI Danantara's authority;
2. the responsibility of SOE management;
3. the circumstances in which controlling influence creates liability.

Such clarification reduces uncertainty while preserving the effectiveness of SOE governance.

Fifth, limited direct standing for creditors

The reconstructed framework should recognize limited direct standing for creditors when they can demonstrate that the controlling entity's decision caused financial disadvantage to the SOE and impaired the creditor's repayment prospects.

This mechanism should not transform BPI Danantara into a general guarantor of SOE obligations. Instead, it functions as an exceptional remedy when the creditor can establish a direct causal connection between controlling influence and financial harm.

The proposed reconstruction therefore establishes a liability model based on bounded rather than unlimited responsibility. BPI Danantara would not be liable simply because it exercises authority over SOEs. Liability would arise only when controlling authority produces identifiable disadvantage without sufficient justification, compensation, or proportional limitation.

This model represents a synthesis of two complementary approaches. The German *faktischer Konzern* contributes the principle that control generates compensatory responsibility, while the French *Rozenblum* doctrine provides proportionality safeguards to preserve legitimate group interests. Through this synthesis, Indonesian SOE governance can maintain the benefits of centralized management while ensuring that creditors are not required to bear the consequences of decisions made by entities outside their contractual relationships.

Accordingly, this study concludes that the appropriate legal reform for addressing BPI Danantara's position is the establishment of a specialized controlling entity liability regime within the SOE Law. Such a regime would bridge the current gap between economic control and legal responsibility by recognizing that the exercise of significant authority must be accompanied by a proportionate form of accountability.

CONCLUSION

This study demonstrates that the existing liability framework under Indonesian company law is insufficient to address BPI Danantara's position as a statutory entity controlling state-owned enterprises (SOEs). The limitation primarily arises from the structure of Article 3 paragraph (2) letter d of the Company Law, which is based on shareholder liability and unlawful misuse of corporate assets. Since BPI Danantara exercises control through statutory delegation rather than direct share ownership, and its authority is legally recognized under Law Number 16 of 2025, the existing mechanism for piercing the corporate veil cannot adequately address the potential consequences of its controlling influence.

The study finds that the legal problem concerning BPI Danantara is not the existence of control itself, but the absence of a proportional relationship between control and responsibility. A controlling entity may legitimately exercise strategic authority over legally separate companies; however, such authority should be accompanied by an accountability mechanism when its exercise causes measurable disadvantage to the controlled entity and affects creditor interests.

To address this gap, this study proposes a reconstruction of controlling entity liability through a specialized provision within the State-Owned Enterprises Law. The proposed framework combines the compensatory principle of the German *faktischer Konzern* with the proportionality standard of the French *Rozenblum* doctrine. The reconstructed model establishes that liability should be determined by reference to controlling influence, the causal contribution to financial disadvantage, the availability of compensation or balancing mechanisms, and the protection of creditors against excessive risk transfer.

This reconstruction does not eliminate the principles of separate legal personality and limited liability. Instead, it establishes a balanced approach in which centralized SOE governance remains possible and the economic consequences of controlling decisions are not disproportionately transferred to SOEs and their creditors. The proposed framework therefore shifts liability from a fault-based shareholder model to a control-based model of responsibility.

This study is limited by its normative and comparative character. It does not empirically examine the implementation of BPI Danantara's authority or judicial responses to potential disputes arising from its governance structure. Future research may further explore the practical application of the proposed liability model, including its interaction with insolvency law, the regulation of SOE governance, and creditor protection mechanisms.

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