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BRIEF ANALYSIS

LEGAL ISSUES AND RISKS IN THE REGULATION OF THE ESTABLISHMENT OF DANANTARA

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About CELIOS
Center of Economic and Law Studies (CELIOS) is a research institution focused on public policy, equitable economics, and regional capacity development. CELIOS carries the mission of promoting regulations that are in harmony with environmental governance, indigenous community rights, and higher-quality regional autonomy.

Key Findings

01

The appointment of Rosan Roeslani, Dony Oskaria, Erick Thohir, and Sri Mulyani Indrawati to strategic positions in Danatara contradicts Article 23 of the State Ministry Law and Article 7 paragraphs (1) and (2) letters b and c of the Government Administration Law.

02

Ministers are not allowed to hold other positions as state officials in accordance with the applicable legal provisions.

03

The exclusion of Danantara's losses from the category of state finances violates the Anti-Corruption Law and creates a loophole for corruption through moral hazard practices, where managers take high investment risks without clear legal consequences.

04

According to the Anti-Corruption Law, Danantara's profits and losses constitute state assets, either in a separated form or under the control, management, and accountability of State-Owned Enterprises.

05

The absence of risk mitigation regulations for Danantara increases the potential for default, threatens the stability of State-Owned Banks, creates trust issues, and poses a risk of triggering systemic impacts on the financial sector without clear mitigation mechanisms.

06

The removal of Danantara's organs and employees from the status of state administrators contradicts Article 2 of Law No. 28 of 1999 on State Administrators Who Are Clean and Free from Corruption, Collusion, and Nepotism.

07

Granting legal immunity to ministers, organs, and agency employees, making them immune from legal prosecution, removes the limits of criminal accountability, increases the risk of abuse of power, and contradicts Articles 2 and 3 of the Anti-Corruption Law.

08

The establishment of the oversight committee is optional rather than mandatory and lacks clear parameters regarding its composition, authority, as well as oversight duties and functions. The President can establish or dissolve it at any time.

THE ESTABLISHMENT PROCESS OF BPI DANANTARA

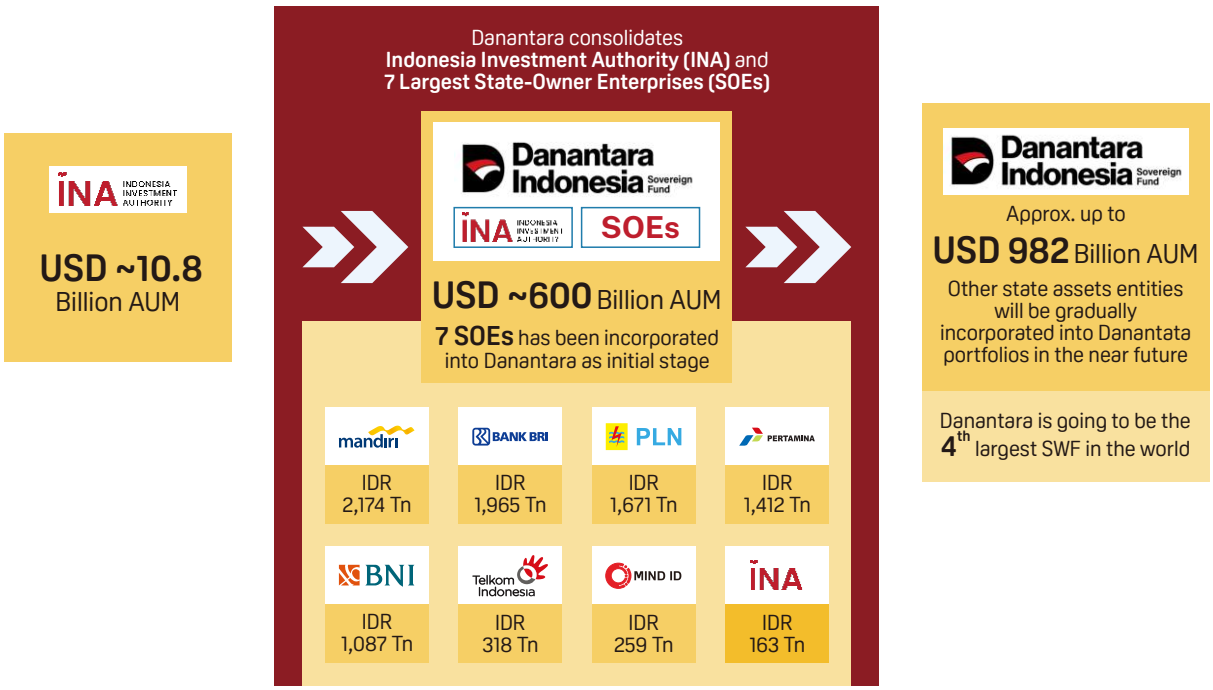
President Prabowo Subianto launched the Investment Management Agency (BPI) Daya Anagata Nusantara (Danantara) on February 24, 2025, as a strategic entity for managing national investments. Danantara integrates the functions of the Indonesia Investment Authority (INA) and the consolidation of State-Owned Enterprises (SOEs) assets, projecting itself as a super-holding company with managed assets estimated at more than IDR 15,000 trillion (equivalent to US$ 982 billion).

The establishment of Danantara is based on Law No. 1 of 2025, which marks the third amendment to the State-Owned Enterprises Law, providing a legal foundation for restructuring state investment management. Additionally, Government Regulation No. 10 of 2025 on the Organization and Governance of the Investment Management Agency Daya Anagata Nusantara regulates Danantara's operational authority and governance structure. While these regulations grant Danantara legal legitimacy, several provisions raise concerns.

The appointment of the Head of the Danantara Executive Agency poses legal risks regarding leadership legitimacy and institutional stability, as it contradicts the State Ministry Law. Moreover, the policy that excludes Danantara's losses from the category of state financial losses may conflict with the Anti-Corruption Law. Danantara's broad authority in managing state assets is not balanced by strong oversight instruments, increasing the potential for immunity and conflicts of interest in its investment governance.

As a state investment entity, Danantara plays a strategic role in managing national assets. However, the existing legal issues require urgent evaluation. Stricter regulations are needed to clarify oversight mechanisms and legal accountability, both in civil and criminal aspects.

Graphic 1 **Danantara Asset Structure**



Source: Danantara, 2024.

REGULATORY ANALYSIS

The Appointment of Danantara's Executive Agency and Supervisory Board Faces Legal Issues

Dual Positions in Danantara	Government Regulation No. 10 of 2025 Danantara Organization	Law No. 1 of 2025 on State-Owned Enterprises	Law No. 39 of 2008 on State Ministries	Law No. 30 of 2014 on Government Administration
 **Rosan Roeslani** The Minister of Investment also serves asthe Chairman of Danantara's Executive Agency.  **Dony Oskaria** concurrently holds multiple positions as: • Deputy Minister of State-Owned Enterprises ; • Vice President Commissioner of PT Pertamina; and • Chief Operating Officer (COO) of Danantara.  **Erick Thohir** concurrently serves as the Minister of State-Owned Enterprises and the Chairman of Danantara's Supervisory Board.  **Sri Mulyani Indrawati** concurrently serves as the Minister of Finance and a Member of Danantara's Supervisory Board.	Allowing the Minister of Investment to Hold Multiple Positions	**Does Not Regulate Exceptions for Dual Positions for Officials in Danantara**	**Prohibits Ministers from Holding Multiple Positions** **Article 23** Ministers are prohibited from holding multiple positions as: 1. Other state officials as stipulated by statutory regulations; 2. Commissioners or directors in state-owned or private companies; or 3. Leaders of organizations funded by the State Budget (APBN) and/or Regional Budget (APBD).	**Officials Are Required to Conduct Government Administration in Accordance with the Law** **Article 7, Paragraph (1) and Paragraph (2), Letters b and c** - Officials are required to conduct Government Administration in accordance with statutory regulations, government policies, and the General Principles of Good Governance (AUPB): - Comply with AUPB and statutory regulations; - Adhere to the requirements and procedures for making Decisions and/or Actions.

The appointment of several ministers and deputy ministers to hold concurrent positions through Government Regulation No. 10 of 2025 has sparked controversy, as it contradicts the Law on State Ministries, which explicitly prohibits ministers from holding other positions in government or state-owned enterprises. This regulation allows Rosan Roeslani to serve as both the Minister of Investment and the Chairman of Danantara's Executive Board, Dony

Oskaria to concurrently hold the positions of Deputy Minister of State-Owned Enterprises, Vice President Commissioner of PT Pertamina, and COO of Danantara, and Erick Thohir and Sri Mulyani Indrawati to take on additional roles in Danantara's Supervisory Board. This policy raises concerns about conflicts of interest and weakens the principle of checks and balances in state governance, as the same officials act as both regulators and investment managers. Furthermore, by altering the substance of the prohibition on dual office-holding through a regulation lower than the law, the government sets a precedent that could undermine the supremacy of law. This policy presents several legal issues, including:

a. Article 23 of Law No. 39 of 2008 on State Ministries prohibits ministers from holding multiple positions

A minister is prohibited from holding multiple positions to avoid conflicts of interest and ensure that their duties are carried out with full responsibility. Ministers are not allowed to hold other positions as state officials in accordance with the applicable legal provisions. Additionally, they are not permitted to serve as commissioners or directors in state-owned or private companies to prevent conflicts of interest in policymaking. Another restriction is holding leadership positions in organizations funded by the State Budget or Regional Budget to maintain the independence of these organizations. This regulation aims to ensure that ministers work professionally, transparently, and remain focused on the public interest.

b. The Position of Government Regulations Below Laws

In the hierarchy of laws and regulations in Indonesia, Government Regulations (PP) are positioned below Laws (UU), as stipulated in Article 7, Paragraph (1) of Law Number 12 of 2011 on the Formation of Legislation (as amended by Law Number 13 of 2022). Since they are subordinate to Laws, Government Regulations function to implement or further regulate provisions within a Law, as outlined in Article 5, Paragraph (2) of the 1945 Constitution. This is also reinforced by the legal principle lex superior derogat legi inferiori, which states that a higher law overrides a lower law. Because Laws hold a higher position than Government Regulations, any conflict between the two results in the Law prevailing, rendering the conflicting Government Regulation inapplicable.

c. The President is required to formulate decisions in accordance with the law and the General Principles of Good Governance (AUPB)

Article 7, Paragraph (1) and Paragraph (2), Letters b and c of Law No. 30 of 2014 on Government Administration mandate that state officials must administer governance in accordance with statutory regulations, government policies, and the General Principles of Good Governance (AUPB). Their decisions and actions must adhere to the principles of legal certainty, transparency, and lawful procedures to prevent abuse of power. However, the appointment of Rosan Roeslani as both Minister of Investment and Chairman of the Executive Board of Danantara constitutes a violation of these principles. The government issued Government Regulation (PP) No. 10 of 2025 to create an exception that contradicts existing legal norms. Instead of upholding the law, the government has manipulated regulations to serve specific interests.

The Exemption of Danantara's Losses from the Category of State Finances Violates the Anti-Corruption Law and Creates Opportunities for Corruption

Article 3H paragraph (2) of Law No. 1 of 2025 on State-Owned Enterprises stipulates that "The profits or losses incurred by the Agency in carrying out investments are the profits or losses of the Agency." By excluding Danantara's losses from the category of state finances, the government is essentially creating a legal loophole that weakens oversight of potential misuse of public funds.

In contrast, Article 3G of the State-Owned Enterprise Law explicitly regulates the sources of Danantara's capital, which come from:

Table 1.1 **Danantara's Capital in the Revision of State-Owned Enterprise Law 1/2025**

Category	Explanation
Legal Basis	Article 3G of the State-Owned Enterprises Law
Sources of Capital Danantara	**State Capital Participation**, which may include: - Cash funds - State-owned assets - State-owned shares in State-Owned Enterprises **Other sources** not specifically mentioned in the law
Minimum Capital	IDR 1,000 trillion
Capital Increase	**- State Capital Participation** **- Other Sources**

With this provision, all forms of financial management and accountability should remain within the framework of state finances. Excluding Danantara's losses from the category of state finances risks creating a legal gray area in the management of public funds (including taxpayers' money), which could be exploited for certain interests without adequate oversight.

This situation contradicts Law No. 31 of 1999 on the Eradication of Corruption, which explicitly states in its general explanation that state finances include all state assets in any form, whether separated or not, including all parts of state wealth.

Table 1.2 **Scope of State Finances in the Anti-Corruption Law**

Category	Explanation
Definition of State Finance	All state assets in any form, whether separated or not, including portions of state wealth as well as rights and obligations arising from management by various parties.
Sources of State Finance	State assets originate from various sources, including direct management by state institutions and involvement of third parties.
State Finance Managers	- Officials of state institutions at the central and regional levels. - State-Owned Enterprises (SOEs) / Regionally-Owned Enterprises (ROEs). - Foundations, legal entities, and companies that include state capital. - Companies that include third-party capital based on agreements with the state.
Scope of State Finance	- Assets under the control, management, and accountability of state institutions. - Assets under the control, management, and accountability of SOEs/ROEs and other legal entities involving state capital.

This is also in accordance with the provisions of Article 1 point 1 of Law No. 17 of 2003 on State Finance, which reinforces that the scope of state finances includes all rights and obligations of the state that can be valued in monetary terms. Therefore, the profits or losses incurred by Danantara in carrying out investments are essentially state profits or losses that cannot be separated.

This exemption has the potential to serve as a shield of immunity for Danantara officials or managers in the event of irregularities in investment management, as legally, any resulting losses would not be classified as state losses subject to investigation or prosecution under corruption laws. Furthermore, this regulation opens the door for moral hazard practices, where Danantara's management could undertake high-risk investments without clear legal consequences in the event of losses. Under the guise of business judgment, Danantara's directors—who would enjoy immunity—could expose taxpayer funds to financial harm. In the worst-case scenario, this policy could be exploited to channel public funds into non-transparent projects or those with conflicts of interest, without adequate accountability mechanisms.

The Absence of Systemic Risk Regulation in the Management of State-Owned Bank Assets by Danantara

Danantara manages the assets of state-owned banks such as Bank Mandiri, Bank BNI, and Bank BRI, which hold large-scale assets and play a strategic role in the financial system. However, there is currently no specific regulation governing the potential impact of this asset management on financial sector stability, particularly in the context of default risks that may arise if Danantara fails to meet its obligations to creditors. This risk could have widespread systemic consequences, as state-owned banks are classified as systemic banks closely linked to various financial sectors. Any liquidity or solvency disruption in Danantara could spill over to state-owned banks, threatening national financial stability.

The absence of specific regulations from the Central Bank (Bank Indonesia), the Financial Services Authority (OJK), and the Deposit Insurance Corporation (LPS) further amplifies this risk. Existing regulations remain outdated and have yet to be adjusted to accommodate Danantara's asset management model. One of the main weaknesses in the current regulatory framework is the lack of clear protection mechanisms for Third-Party Funds (DPK) managed by state-owned banks. If an asset management disruption occurs, there are no established guidelines on how risk mitigation schemes will be implemented or who will be responsible for addressing the resulting impacts. This regulatory gap creates uncertainty, potentially affecting the confidence of depositors, investors, and business partners of state-owned banks.

Concrete steps are needed to update regulations to be more adaptive to evolving asset management models. New regulations must include DPK protection measures, intervention mechanisms in the event of a default, and systemic risk mitigation strategies for the financial sector. Without clear regulations, Danantara's role in managing state-owned bank assets could become a latent risk that threatens the stability of Indonesia's financial system.

JIBI/Bisnis

Danantara Eliminates Criminal Liability Limits and Increases the Risk of Abuse of Power

Table 1.3 **Legal Immunity and Potential Issues**

Category	Requirements for Immunity from Legal Liability
Legal Basis	Article 3Y of the State-Owned Enterprises (SOE) Law
Relevant Parties	Ministers, organs, and agency employees
Conditions for Exemption from Liability	- **Not due to errors or negligence** in management. - **Management is carried out in good faith and with caution,** in accordance with the purpose of investment and principles of good governance. - **No conflict of interest**, whether directly or indirectly, in investment management. - **No unlawful personal gain.**

Elements of Protection	Explanation	Potential Issues
No errors or negligence	Officials must prove that the incurred loss was not a result of their actions or negligence.	Officials must prove that the incurred loss was not due to their actions or negligence.
Good faith and prudence	Investment management must be carried out in good faith and with due diligence.	The principle of prudence is often used as a pretext to avoid responsibility.
No conflict of interest	Officials must not have any conflicts of interest, whether direct or indirect, in the investments they manage.	Conflicts of interest are often difficult to prove in a complex system.
Not obtaining personal gain unlawfully	Officials must not receive personal benefits from the investments made.	Proof often relies on a weak oversight system, allowing the potential for abuse to persist.

Article 3Y of the State-Owned Enterprise Law grants legal immunity to ministers, bodies, and employees of the Agency if they can prove that the losses incurred were not due to their fault or negligence and that they acted in good faith. This provision has the potential to weaken anti-corruption efforts, especially when compared to Articles 2 and 3 of the Anti-Corruption Law, which emphasize accountability for actions that harm state finances.

Article 2 of the Anti-Corruption Law stipulates that anyone who unlawfully enriches themselves, others, or a corporation and causes losses to state finances can be prosecuted for corruption. Meanwhile, Article 3 of the Anti-Corruption Law states that the abuse of authority to benefit oneself or others at the expense of state finances also constitutes corruption.

Article 3Y of the State-Owned Enterprise Law provides protection for state officials from legal liability as long as they claim to have acted in good faith. This could hinder legal proceedings and obstruct anti-corruption efforts, as it allows officials to evade accountability based on subjective reasoning. This provision also weakens the element of abuse of authority as stipulated in Article 3 of the Anti-Corruption Law. Under the Anti-Corruption Law, abuse of authority that causes financial losses to the state can be prosecuted regardless of whether the official acted in good or bad faith. However, with the existence of Article 3Y of the State-Owned Enterprise Law, officials can shield themselves behind the justification that their decisions were made in good faith.

This creates a loophole for actions that could harm the state without clear legal consequences. In some cases, this mechanism could even be used as a means of avoiding criminal liability or as deliberate obfuscation of liability, where officials intentionally obscure their legal responsibility under the guise of administrative or procedural justifications.

The Removal of State Official Status in Danantara Contrary to the Law

Article 3X(1) of the State-Owned Enterprise Law, which states that the organs and employees of Danantara are not state officials, constitutes a legal status removal that contradicts the principles of transparency, accountability, and public oversight. This provision violates Article 2 of Law No. 28 of 1999 on State Officials Who Are Clean and Free from Corruption, Collusion, and Nepotism, which clearly establishes that officials with strategic functions related to state administration fall under the category of state officials.

In the context of Danantara, the Supervisory Board and Executive Body hold strategic functions closely tied to state administration, particularly in managing state finances and state-owned enterprise assets. Therefore, removing their status as state officials not only contradicts higher legal provisions but also effectively eliminates control and oversight mechanisms over them.

With this status, Danantara officials are not required to report their assets to the State Officials' Wealth Report (LHKPN), are not bound by the ethical code for state officials, and evade oversight from institutions such as the Corruption Eradication Commission (KPK), the Attorney General's Office, and the Supreme Audit Agency (BPK), which function to prevent abuse of power. This policy creates a dangerous legal loophole, allowing officials managing significant public funds and state assets to escape public accountability obligations. Substantively, this policy opens the door to corruption, conflicts of interest, as well as collusion and nepotism practices—directly contradicting the core purpose of establishing Danantara as a state investment institution.

Without a Clear Oversight Mechanism, Danantara Is Above the Law

The widely circulated information regarding Danantara's oversight by a Supervisory Committee consisting of the Corruption Eradication Commission (KPK), the Attorney General's Office, the Audit Board of Indonesia (BPK), the Financial and Development Supervisory Agency (BPKP), and the Financial Transaction Reports and Analysis Center (PPATK) lacks a strong legal foundation in the revised State-Owned Enterprise Law (Law No. 1 of 2025). Instead, the existing regulations grant full control to the President without an independent and binding oversight mechanism.

Article 24 of Government Regulation No. 10 of 2025 explicitly grants the President full authority to establish the Oversight and Accountability Committee. However, the formation of this committee is optional rather than mandatory and lacks clear parameters regarding its composition, authority, and supervisory duties and functions. This means the President can create or dissolve the committee at any time, determine its members, and limit its oversight scope according to prevailing political interests.

The absence of a robust check-and-balance mechanism in Danantara's oversight creates serious structural vulnerabilities. With oversight entirely dependent on the President's discretion, there is no guarantee of genuine transparency and accountability. The supervisory committee can be altered at will, with minimal or purely symbolic authority. Rather than serving as an effective oversight instrument, this regulation instead paves the way for the consolidation of executive power without adequate control.

RECOMMENDATIONS

1. The President should revoke and revise the appointments of Rosan Roeslani, Dony Oskaria, Erick Thohir, and Sri Mulyani Indrawati in their concurrent positions at Danantara, as they violate the Law on State Ministries. This step is necessary to ensure legal compliance and prevent conflicts of interest.

2. Repeal Article 33 of Government Regulation No. 10 of 2025, which allows the Minister of Investment to concurrently serve in Danantara's Executive Body.

3. The President must revoke Article 3X(1) of Law No. 1 of 2025 on State-Owned Enterprises and designate Danantara's governing bodies as state officials.

4. The President should ensure that the selection process for Danantara's Supervisory Board and Executive Body is conducted in an open, objective, and conflict-free manner. The selection should be competency-based and transparent to prevent domination by officials holding multiple positions.

5 Revise and repeal Article 3H(2) of Law No. 1 of 2025 on State-Owned Enterprises, which excludes Danantara's losses from being classified as state finances.

6 Revise and repeal Article 3Y of Law No. 1 of 2025 on State-Owned Enterprises, which grants legal immunity to ministers, governing bodies, and employees, preventing them from being prosecuted.

7 Law No. 1 of 2025 on State-Owned Enterprises should explicitly regulate the Oversight and Accountability Committee, including its composition, authority, and supervisory duties. This regulation should not be delegated to a Presidential Regulation, as it would lack sufficient oversight.

8 Ensure the independence of the Committee, a transparent selection process, and mandatory periodic public reporting to prevent political interference and uphold accountability.

9 The government and parliament must swiftly formulate regulations to mitigate risks associated with Danantara, including investment risk limits, liquidity reserve requirements, and financial transparency through periodic audits by the Supreme Audit Agency (BPK).

10 Bank Indonesia and the Financial Services Authority (OJK) should mandate stress tests and a Crisis Management Plan (CMP) to assess Danantara's resilience to defaults and limit state-owned banks' exposure to prevent systemic financial risks.

11 Ensure meaningful public participation, particularly as taxpayers and citizens, in the governance of Danantara Investment Authority.

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