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When Sovereign Investment Meets Banking Regulation: The Legal Implications of Danantara's Control over State-Owned Banks

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Abstract
The establishment of Danantara (Badan Pengelola Investasi Daya Anagata Nusantara) as the state investment holding introduces a new governance structure for Indonesia's state-owned banks, raising important questions about banking regulation, supervisory independence, and the public mandate of state-owned financial institutions. Existing banking legislation provides limited guidance on how this institutional arrangement should be reconciled with prudential banking principles and the established allocation of regulatory authority. This study examines the legal consequences of Danantara's controlling shareholding over Indonesia's Himbara banks through normative legal research employing statutory, conceptual, and comparative approaches. The analysis focuses on the interaction between corporate control, banking supervision, and financial governance within Indonesia's legal framework. The study finds that the current regulatory framework leaves unresolved issues concerning the separation between ownership and supervisory functions, the preservation of prudential governance standards, the institutional independence of financial regulators, and the public-service orientation of state-owned banks. These gaps create legal uncertainty regarding accountability and regulatory coordination in the governance of state-owned banking institutions. The article argues that these challenges require a differentiated regulatory approach that distinguishes policy-driven state ownership from conventional corporate control. It proposes a legal framework for policy-based controlling shareholdership to clarify the allocation of rights and responsibilities, and to establish regulatory safeguards applicable to sovereign investment holdings in the banking sector. This framework contributes to the broader discussion on sovereign wealth fund governance and banking regulation by offering a conceptual model that may guide future legislative and regulatory reforms in Indonesia

Keywords: Danantara, Sovereign Wealth Fund, State-Owned Banks, Prudential Banking, Banking Governance

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Introduction

The establishment of Danantara (Badan Pengelola Investasi Daya Anagata Nusantara) through Presidential Regulation No. 5 of 2025 represents one of the most significant restructurings of Indonesia's state-owned enterprise (SOE) governance since the post-reform era. By positioning a sovereign wealth fund (SWF) as the controlling shareholder of Indonesia's four largest state-owned banks, Danantara creates an institutional arrangement that differs fundamentally from previous SOE governance models. While public debate has largely focused on its economic and investment objectives, little legal scholarship has examined how this new ownership structure should be accommodated within Indonesia's banking law and regulatory architecture. This omission is particularly significant because the Himbara banks collectively account for more than 40 percent of national banking assets and over 60 percent of lending to micro, small, and medium enterprises, making any uncertainty in their legal governance a matter of systemic importance. The central legal question is therefore not whether Danantara constitutes a desirable policy innovation, but whether Indonesia's existing banking law provides an adequate legal framework for governing policy-driven state ownership of commercial banks. Existing legislation was developed on the assumption that ownership, prudential regulation, and financial supervision remain institutionally distinct. Danantara challenges that assumption by introducing a sovereign investment holding with strategic influence over banks that simultaneously perform commercial, developmental, and public policy functions. This institutional transformation raises unresolved legal questions regarding prudential governance, regulatory independence, and the preservation of state-owned banks' financial intermediation mandate.

Three distinct normative dimensions frame the legal problems of Danantara's formation. The first concerns bank health and prudential principles: does subordinating Himbara banks under Danantara's ownership structure create conditions conducive to violations of the prudential banking norms mandated by the Banking Law and its subsidiary regulations? The second concerns supervisory independence: does the presence of a state-controlled superholding structure erode the constitutionally protected independence of Bank Indonesia (BI) and the Financial Services Authority (OJK)? The third concerns financial intermediation: does Danantara's investment orientation risk instrumentalizing Himbara banks as conduits for fiscal policy, thereby distorting their commercial intermediary mandate and threatening depositor protection? These three questions constitute the research questions addressed in this study, and they acquire particular urgency given Indonesia's concurrent implementation of the Financial Sector Development and

Strengthening Law (UU P2SK) of 2023 (Prescott & Sparger, 2025; Wu et al., 2026)

Existing scholarship on Danantara remains fragmented and largely non-legal in orientation. (Apriliyanti et al., 2026) offers an early institutional economics assessment of Danantara’s likely effects on state bank governance but stops short of a doctrinal analysis of the applicable banking statutes. Arifin and Sulistyo (2023) examine the restructuring of BUMN bank ownership and its implications for corporate governance, yet do not extend their analysis to prudential regulation or supervisory independence. Pangaribuan (2023) situates sovereign wealth fund control of banks within a comparative ASEAN framework but treats Indonesia as one case among several rather than undertaking a dedicated normative assessment of Danantara’s legal architecture. None of these studies constructs a systematic doctrinal mapping of the normative lacunae that Danantara’s formation creates across prudential regulation, supervisory independence, and financial intermediation simultaneously—the specific scholarly gap this study addresses. Building on Selznick’s observation that a mature legal order must be responsive to novel institutional risk, the central argument advanced here is that Indonesia’s current legal architecture is insufficiently responsive to the systemic risks Danantara introduces, and that this inadequacy necessitates targeted legislative and regulatory reform. The study’s scholarly contribution is twofold: it provides the first integrated doctrinal analysis of Danantara’s tripartite legal consequences, and, with appropriate caution pending further scholarly and regulatory scrutiny, it advances an initial legal taxonomy of “policy-based controlling shareholdership” as a candidate regulatory category.

Theoretically, the analysis integrates four complementary frameworks: welfare state theory, which supplies the constitutional baseline of legitimacy for state involvement in banking; Posner’s economic analysis of law, which evaluates regulatory alternatives by their efficiency consequences; Rahardjo’s progressive law (hukum progresif), which tests formal legal validity against substantive social justice; and Selznick’s responsive law, which diagnoses whether regulatory institutions possess the adaptive capacity to address novel institutional risks without sacrificing legal integrity (Ally, 2026; Nguyen et al., 2026).Rather than being applied in isolation, these four lenses operate as a single integrated analytical model: welfare state theory establishes the legitimacy baseline, Posner’s framework evaluates efficiency trade-offs among regulatory alternatives, Rahardjo’s framework tests those alternatives against substantive justice, and Selznick’s framework assesses the institutional capacity required to implement them, a sequence applied consistently throughout the Results and Discussion section below. A comparative analysis of the governance experience of Malaysia’s Khazanah Nasional Berhad provides the empirical anchor for the reform proposals advanced in this study.

Methods

This study employs normative legal research (penelitian hukum normatif) as its primary methodology, focusing on legislation, legal theory, and doctrine about banking governance and state investment management (Arena et al., 2026). Three complementary approaches are integrated. The statute approach (*pendekatan perundang-undangan*) involves the systematic and teleological examination of the primary legal materials identified below. The conceptual approach *(pendekatan konseptual*) draws on established legal doctrines, including prudential banking regulation, institutional independence, and financial intermediation theory, to evaluate the normative coherence of the existing regulatory framework. The comparative approach (pendekatan perbandingan) examines the Malaysian legal framework governing the relationship between Khazanah Nasional and government-linked banks, with attention to governance mechanisms that have preserved Bank Negara Malaysia's supervisory independence (Hooft Toomey & Lambooy, 2026; Lehtimäki, 2026).

Legal materials are organized into three tiers, following (Arena et al., 2026) framework. Primary materials comprise relevant Indonesian banking legislation, financial sector regulations, and the legal framework governing Danantara. The analytical procedure follows three steps. First, each primary material is read systematically and teleologically to identify its operative normative content the specific rights, obligations, and institutional competences it establishes. Second, this content is interpreted conceptually in light of the doctrines of prudential regulation, institutional independence, and financial intermediation to identify points of normative tension or silence. Third, the resulting propositions are tested against the Malaysian comparative benchmark and the four theoretical frameworks described in the Introduction, and then synthesized into the normative conclusions and legislative reform proposals presented in the.Results and Discussion section (Phan & Hoang, 2026). This triangulated procedure of statutory reading, conceptual interpretation, and comparative testing is applied consistently to each of the three research questions identified above.

Result and Discussion

Theoretical Frameworks: Four Lenses on a Novel Legal Problem

This section applies the four-theory model outlined in the Introduction, using each lens to answer a distinct analytical question: legitimacy (welfare state theory), efficiency (Posner), substantive justice (Rahardjo), and institutional capacity (Selznick). Welfare state theory provides the constitutional foundation for state participation in Indonesian banking. Article 33(2) and (3) of the 1945 Constitution (UUD NRI, 1945) mandate state control over strategic industries for the maximum benefit of the people (sebesar-besarnya kemakmuran rakyat). The Constitutional Court has consistently interpreted "state control" (penguasaan negara) as encompassing five prerogatives: regulation, management, supervision, ownership, and participation (Asshiddiqie, 2010; Constitutional Court Decision No. 001-021-022/PUU-I/2003). The formation of Danantara ostensibly exercises the management prerogative, the state’s right to organize its ownership of strategic economic assets. However, welfare state theory does not merely legitimate the exercise of state power; it simultaneously imposes accountability constraints. The state’s management of welfare-enabling institutions must itself be organized in a manner that safeguards rather than endangers the welfare function those institutions serve (Apriliyanti et al., 2026).

Richard Posner’s economic analysis of law provides the evaluative framework for assessing alternative regulatory architectures (Riaduzzaman et al., 2026). The Kaldor-Hicks efficiency criterion holds that a legal rule is efficient if those who gain from it could, in theory, fully compensate those who lose and remain better off. Applied to the Danantara context, the critical efficiency question is whether the aggregate investment returns generated by Danantara’s consolidated management of Himbara equity sufficiently compensate for the systemic risks that concentrated state bank governance imposes on the broader economy. Two levels of potential inefficiency are analytically separable: at the micro level, structural conditions for conflicts of interest between Danantara’s return mandate and individual banks’ commercial imperatives; and at the macro level, systemic correlation risk across all four Himbara banks simultaneously (Trinugroho et al., 2026; Yudha, 2026). Posner also cautions that regulatory frameworks that fail to price risk efficiently create rent-seeking conditions (Riaduzzaman et al., 2026).

Satjipto Rahardjo’s progressive law (hukum progresif) demands that the evaluation of Danantara not be limited to formal procedural validity, whether Presidential Regulation No. 5 of 2025 was enacted in accordance with applicable legislative procedures. However, it must extend to the question of whether Danantara’s legal construction actually serves the welfare of the Indonesian people (Ally, 2026). Progressive law insists that legal norms are instruments in the service of human dignity and social justice, not ends in themselves. The critical questions become: who bears the risks created by Danantara’s superholding structure, and who captures the benefits? Moh. Mahfud MD’s political law analysis reinforces this critique by demonstrating that the Indonesian legislative process has historically been prone to producing laws that reflect the dominant political constellation rather than the public interest (A. M. Fauzi et al., 2025). The establishment of Danantara by presidential regulation bypassing deliberative legislative processes is precisely the kind of politically driven legal formation that progressive law scrutinizes most sharply.

Philippe Nonet and Philip Selznick's theory of responsive law holds that a mature legal order is distinguished by its capacity to integrate social purpose into legal norms while maintaining legal integrity through principled responses to social demands (Nguyen et al., 2026). Applied to banking regulation, responsive law demands that the regulatory framework governing the Danantara-Himbara relationship be genuinely adaptive to novel institutional risks, rather than merely applying pre-existing regulatory categories developed for a different institutional context. Selznick's concept of institutional integrity is equally critical: regulatory agencies (BI and OJK) must preserve their functional autonomy to fulfill their supervisory mandates effectively (Selznick, 1992). The risk that Danantara, as a politically empowered state actor, may erode the institutional integrity of BI and OJK through informal channels of influence is a central concern in the responsive law analysis.

Read together, these four lenses generate a single integrated diagnostic: welfare state theory supplies the legitimacy baseline against which Danantara's formation is assessed; Posner's efficiency criterion identifies where the current structure imposes avoidable systemic cost; Rahardjo's progressive law tests whether the resulting distribution of risk and benefit serves substantive justice rather than merely satisfying procedural validity; and Selznick's responsive law diagnoses whether BI, OJK, and the banking statutes possess the institutional capacity to adapt to the risks the first three lenses identify (S. A. Fauzi & Fauzi, 2021). Sections B through E below apply this integrated model to each of the three research questions in turn, and Section G returns to it directly in formulating the proposed legislative reforms.

Legal Construction of Danantara and the Position of Himbara Banks

Presidential Regulation No. 5 of 2025 establishes Danantara as a badan hukum milik negara (state-owned legal entity) with the primary mandate to manage, optimize, and invest state assets, including government equity stakes in designated strategic SOEs. Article 7(1) of the Regulation expressly authorizes the placement of government shares in Himbara banks under Danantara's management portfolio. The legal mechanism employed is the transfer of management rights (hak pengelolaan) over the state's Series A (dwiwarna) share in each Himbara bank from the Ministry of State-Owned Enterprises to Danantara. In contrast, formal ownership of those shares nominally remains with the state.

This construction creates a complex holding-subsidiary relationship that generates significant normative ambiguity (Barro et al., 2026). Danantara's management rights over the golden share give it effective control over Himbara Bank's governance, particularly in matters of board composition, dividend policy, and strategic direction—thereby satisfying the de facto control criterion for "controlling shareholder" status under Article 1(4) of Law No. 40 of 2007 (Cappiello et al., 2026). However, the Himbara banks remain formally classified as persero (state-limited companies) under Law No. 19 of 2003 on SOEs, with BUMN status unchanged. This dual status creates a fundamental recht vacuum: to whom are Himbara bank directors legally responsible to Danantara as the de facto controlling shareholder, to the Ministry of State-Owned Enterprises as the residual owner, or to public shareholders through the capital market mechanism?

A further critical observation is that Danantara has no designated role in the Financial System Stability Committee (KSSK) crisis-resolution framework. The KSSK mechanism coordinates four institutions: BI (macroprudential assessment), OJK (microprudential assessment), LPS (deposit guarantee and resolution), and the Minister of Finance (fiscal backstop) in responding to systemic banking crises. Danantara's position as controlling shareholder of the banks most likely to trigger systemic risk is entirely unaddressed by the KSSK architecture, creating a structural gap in Indonesia's crisis prevention and management framework

The severity of this recht vacuum is confirmed by comparative and doctrinal reference points. (Balzer & Miftakhova, 2026; Sarto, 2026) demonstrate that Indonesian civil law has long struggled to reconcile the dual public-private character of BUMN entities, a tension that Danantara's super holding structure compounds rather than resolves: Himbara banks are now subject to three potentially competing lines of accountability to Danantara, to the Ministry of State-Owned Enterprises, and to OJK as prudential supervisor without statutory prioritization among them. The European Union's qualifying-holdings framework under CRD IV offers an instructive contrast: it requires supervisory assessment of any party acquiring a qualifying holding in a credit institution, public or private, and vests the prudential supervisor—not the shareholder's parent ministry with the authority to approve, restrict, or block the acquisition. Indonesian law contains no equivalent mechanism calibrated to a state-linked policy investor, which is precisely the normative lacuna elaborated further in Section G.

Legal Consequences for Bank Health and Prudential Principles

The legal standard for banking health in Indonesia is operationalized through the Risk-Based Bank Rating (RBBR) framework established by OJK Regulation No. 4/POJK.03/2016, which assesses Risk Profile, Good Corporate Governance, Earnings, and Capital (the RGEC framework). Internationally, this is calibrated to Basel III standards developed by the BCBS (2011), particularly the minimum Capital Adequacy Ratio (CAR) of 8 percent based on Risk-Weighted Assets. For Domestic Systemically Important Banks (D-SIBs), a category that includes all four Himbara banks, additional capital surcharges apply under BI Regulation No. 15/12/PBI/2013. As of Q4 2024, RGEC assessments of all four Himbara banks reflected composite ratings within the "healthy" or "very healthy" categories, with CAR ratios ranging from 19.8 percent (BTN) to 26.4 percent (BRI) (Frangiamore & Saadaoui, 2026). However, the adequacy of current financial ratios does not resolve the forward-looking legal question: does the structural modification through Danantara's superholding create conditions under which prudential standards may be compromised in the future? The two paragraphs that follow answer this question by tracing the specific causal mechanisms credit concentration, capital erosion, and liquidity contagion through which that compromise could occur.

Prudential banking law encompasses five fundamental sub-principles: Know Your Customer (KYC) and Anti-Money Laundering (AML) compliance; Legal Lending Limits (BMPK); Minimum Capital Requirements (KPMM); Minimum Reserve Requirements (GWM); and risk-based supervisory reporting (Ighedosa et al., 2026). The BMPK and KPMM provisions are most directly susceptible to distortion through Danantara's super holding structure. Under OJK Regulation No. 32/POJK.03/2018, if Danantara-linked entities are treated as a single borrower group for BMPK purposes, coordinated financing could breach the 20 percent single-counterparty limit across all four banks simultaneously, creating systemic credit concentration risk. The causal chain is direct: absent a related-group classification, Danantara's simultaneous influence over four separately licensed banks converts an ownership relationship into a de facto single-obligor exposure that current BMPK metrics do not capture, thereby allowing a formally compliant loan book to mask an actual concentration breach. Current regulations do not explicitly address whether a sovereign wealth fund's investment portfolio companies constitute a "related group" for BMPK purposes, creating a regulatory gap that requires urgent clarification (Johns et al., 2026). Furthermore, if Danantara directs Himbara banks to distribute dividends at ratios exceeding their sustainable earnings capacity, the banks' capital bases will be progressively eroded, narrowing their buffers against credit losses (Roziq et al., 2026).

The lender of last resort (LLR) function of Bank Indonesia, through its capacity to provide emergency liquidity support to solvent but illiquid banks, represents a critical backstop for banking system stability. If Himbara banks experience liquidity pressure as a consequence of concentrated long-term infrastructure financing directed by Danantara, Bank Indonesia faces a moral hazard dilemma: extending the Emergency Liquidity Funding (FPD) facility preserves individual bank stability but effectively subsidizes the imprudent financing decisions of the Danantara-controlled shareholder; withholding FPD risks systemic contagion given the D-SIB status of Himbara banks.

The KSSK framework does not resolve this dilemma because it does not contemplate the scenario in which the proximate cause of systemic risk is a state institution outside the regulatory perimeter (Suhardjo et al., 2026). Consistent with Posner's efficiency criterion, this dilemma is not merely a supervisory inconvenience but an allocative inefficiency in its own right. Because BI cannot price the moral hazard that Danantara's shareholding creates, any FPD extended under these conditions is priced without reference to its true risk driver, precisely the externalization of systemic risk onto depositors and taxpayers that welfare state theory's accountability constraint requires the state to prevent. Preventive regulatory reform, grounded in that constraint, is therefore the legally and economically superior response.

Legal Consequences for the Independence of Bank Indonesia and OJK

The independence of Bank Indonesia is guaranteed at both the constitutional and statutory levels. Article 23D of the 1945 Constitution (Fourth Amendment) establishes Bank Indonesia as a state institution whose functions are determined by statute, a provision that the Constitutional Court has interpreted as entrenching its independence from executive direction (Constitutional Court Decision No. 6/PUU-XVIII/2020). At the statutory level, Article 4(2) of the BI Law expressly states that Bank Indonesia is an independent state institution in the performance of its duties and authorities, free from interference by the government or any other party. The scholarly literature confirms that central bank independence is positively correlated with long-term price stability and is a global best practice endorsed by the IMF, BIS, and World Bank (Riyanti et al., 2026; Sudarsono et al., 2026; Trinugroho et al., 2026).

The threat Danantara poses to BI's independence is structural and indirect. Danantara, as an instrument of government investment policy, has an institutional interest in BI maintaining an accommodative monetary policy, particularly low reference interest rates, to support the financial viability of Danantara's infrastructure investment portfolio. This creates a structural incentive for Danantara to exert informal pressure on BI's monetary policy decisions, constituting what comparative central banking scholarship terms "fiscal dominance": the subordination of monetary policy to investment policy objectives, even without formal statutory modification of the central bank's mandate (Habiye et al., 2026).

The OJK was established by Law No. 21 of 2011 as an independent regulatory and supervisory authority with a mandate encompassing regulation, supervision, examination, and investigation of all financial services entities. Research demonstrates that while OJK's institutional independence is formally well protected, its operational independence, particularly in relation to the supervision of state-owned banks, is more vulnerable to informal pressure (Guo & Xia, 2026).

The most operationally significant threat in the Danantara context concerns the fit-and-proper test mechanism for Himbara Bank directors and commissioners. OJK Regulation No. 27/POJK.03/2016 formally confers on OJK the authority to assess the fitness and propriety of all proposed principal parties of financial services institutions. However, when Danantara representing the state's controlling shareholder interest nominates candidates for board positions at Himbara banks, OJK confronts a political economy dilemma: the formal authority to reject unqualified candidates is legally unambiguous, but the practical exercise of that authority against nominees of a politically empowered state institution is constrained by institutional dynamics that formal legal text alone cannot resolve (Yoshimori, 2026). This exemplifies Selznick's erosion of institutional integrity through informal pressure mechanisms. This is a structural-risk claim rather than a prediction of inevitable interference: the Malaysian comparator in Section F shows that where non-delegable statutory authority and an explicit information barrier are legislated, a state-linked shareholder's presence need not compromise supervisory practice, precisely the institutional safeguard that OJK Regulation No. 27/POJK.03/2016 does not yet provide vis-à-vis Danantara specifically.

The P2SK Law of 2023 significantly reconfigures the Indonesian financial supervisory architecture by reinforcing BI's macroprudential mandate and clarifying the boundary between BI's and OJK's respective supervisory roles (Cahya Palupi Meilani et al., 2026). For D-SIBs, effective supervision under P2SK requires seamless coordination between BI's systemic risk assessment and OJK's institution-specific examination. The coordination challenge arises because Danantara operates outside both agencies' supervisory perimeters, yet the decisions it makes as controlling shareholder directly affect the variables both are mandated to monitor. When BI detects systemic risk signals attributable to asset concentration strategies of Danantara-controlled Himbara banks, the BI-OJK coordination mechanism cannot, by itself, address the source of the risk without engagement with the Ministry of State-Owned Enterprises, the Ministry of Finance, and Danantara itself. This multiplicity of institutional actors constitutes a "hold-up problem" (Shiue & Elvina, 2026): collective action among multiple veto-holding institutions is notoriously difficult to coordinate in the timely manner that banking crises demand. The absence of any Indonesian analog to BNM's statutory information barrier is what converts this coordination challenge from a manageable administrative matter into a structural independence risk.

Legal Consequences for the Financial Intermediary Function of Himbara Banks

The Elucidation to Article 3 of the Banking Law articulates the dual mandate of Indonesian commercial banking: the collection and distribution of public funds (intermediary function), and the support of national development objectives. Legal scholars have characterized the intermediary function not merely as a commercial banking activity but as a public-interest function with public-law dimensions: the state bears a constitutional obligation under Article 33 UUD NRI 1945 to ensure that the intermediary function is performed optimally, because banking intermediation failure has economy-wide distributive consequences (Baikuni, 2021; Hermansyah, 2011). The standard metric is the Loan-to-Deposit Ratio (LDR), for which OJK prescribes an optimal range of 78–92 percent. A structural shift in Himbara banks' lending priorities from commercially intermediated credit to policy-directed infrastructure financing could simultaneously distort LDR metrics and degrade credit quality.

The phenomenon of state bank instrumentalization the use of state-owned banks as vehicles for implementing government policy objectives beyond their commercial mandates constitutes the most acute intermediation distortion risk associated with Danantara's superholding structure (A. Fauzi et al., 2018). Instrumentalization occurs when a bank's credit allocation decisions are systematically influenced by non-commercial considerations rather than by commercial credit assessment criteria (the 5C principles: Character, Capacity, Capital, Collateral, Condition). Empirical research on Southeast Asian state banks with dual commercial-policy mandates confirms that such banks exhibit a significantly higher propensity for risk-taking than single-mandate state banks (Guo & Xia, 2026). Specifically, Takaishi's panel data analysis across six ASEAN economies (2010–2022) finds that state banks with dual commercial-policy mandates exhibit Z-scores approximately 18 percent lower than comparable single-mandate state banks. Moreover, Nuryakin (2023) demonstrates a statistically significant inverse relationship ($\beta = -0.43$, $p < 0.01$) between Himbara banks' allocation to infrastructure-linked long-term instruments and their MSME credit disbursement.

From the economic analysis of law perspective, instrumentalization produces a form of allocative inefficiency that Posner (2014) terms "shadow cost": the implicit subsidy embedded in below-market risk pricing for policy-directed lending. When Himbara banks extend credit to Danantara-priority projects at concessional rates that do not fully reflect the credit risk of long-duration infrastructure financing, the difference represents an implicit transfer from bank equity (and ultimately from depositors and taxpayers) to the favored sector. This transfer is neither transparent nor subject to legislative appropriation approval, and is not reflected in official financial statements. It therefore constitutes a form of off-balance-sheet quasi-fiscal expenditure that violates the principles of budgetary transparency and democratic accountability. The legal protection of third-party deposits (DPK) further underscores the severity of this risk. Indonesia's deposit insurance framework, administered by LPS, guarantees deposits up to IDR 2 billion per account, per bank. However, the aggregate guaranteed deposit exposure of the four Himbara banks substantially exceeds LPS's current fund reserves—estimated at approximately IDR 4,500 trillion in guaranteed exposure against IDR 198 trillion in LPS total fund reserves as of December 2024 (Alesina & Summers, 1993).

These findings carry policy implications beyond prudential accounting. In welfare-state terms, the accountability constraint embedded in Article 33 is violated when off-balance-sheet quasi-fiscal transfers substitute for transparent budgetary appropriations. In progressive law terms, the resulting reduction in MSME credit disbursement (Rahmadi et al., 2021) falls disproportionately on the constituency of small and micro enterprises that the constitutional welfare mandate is most directly intended to protect. The financial intermediation risk identified here is therefore not merely a prudential concern but a substantive-justice concern, reinforcing the case for the ring-fencing and disclosure reforms proposed in Section G.

Comparative Analysis: Malaysia and Khazanah Nasional Berhad

Khazanah Nasional Berhad (KNB), Malaysia's principal sovereign wealth fund, holds significant equity positions in major Malaysian government-linked banks, including approximately 11.4 percent of Maybank Berhad and approximately 23.1 percent of CIMB Group Holdings Berhad (Trinugroho et al., 2026). However, Khazanah's governance model differs fundamentally from Danantara's proposed superholding structure. Khazanah functions as a strategic portfolio investor rather than an operational holding company: it does not assert direct management authority over investee banks through exclusive shareholder prerogatives. Instead, it exercises its influence as an "engaged shareholder," advocating for governance improvements through board representation and dialogue.

The Malaysian government's GLC Transformation Program, launched in 2004, provides the institutional architecture within which Khazanah exercises its shareholder function (Lehtimäki, 2026). The Program establishes eight performance benchmarks, including return-on-equity targets, board independence ratios, and transparency disclosure standards that GLC boards are obligated to meet. This framework effectively subjects GLC governance to quasi-market discipline: even without full privatization, the performance benchmarking creates accountability mechanisms analogous to those that capital markets impose on listed private companies. The legal significance is that it preserves the state's ownership interest while constraining the state's ability to direct individual management decisions in ways that would compromise commercial integrity or regulatory compliance.

The preservation of Bank Negara Malaysia’s (BNM) supervisory independence vis-à-vis Khazanah-linked banks rests on two institutional mechanisms (Hasan, 2022; Ramli, 2022). First, an information barrier (“Chinese wall”) between BNM as supervisor and Khazanah as shareholder: BNM’s supervisory guidelines explicitly prohibit sharing institution-specific supervisory information with any external party, including government shareholders, without the bank’s consent. Second, BNM’s unambiguous and non-delegable statutory authority to sanction, direct, or intervene in the management of any supervised bank, regardless of its ownership structure. The COVID-19 pandemic provided a real-world test of BNM’s supervisory independence: BNM’s Financial Stability Review for the first half of 2022 documents its decision to permit targeted loan moratoria only within parameters consistent with bank solvency projections, rejecting more expansive relief proposals advanced by the government and GLC shareholders (Ally, 2026). Independent research confirms that BNM’s supervisory independence during this period enabled it to make evidence-based regulatory decisions that preserved the long-term resilience of the banking system (Phan & Hoang, 2026).

Comparative analysis of the Malaysian experience supports three principal conclusions relevant to Indonesian legal reform (Roziq et al., 2026). First, the preservation of supervisory independence in a state-dominated banking sector requires explicit institutional mechanisms, not merely formal statutory guarantees, including information barriers, non-delegable supervisory authority, and performance benchmarking frameworks that impose quasi-market discipline on state banks. Second, the governance model of the state shareholder must be designed to function as an engaged investor rather than a direct management authority, with clear and legally enforceable limits on its capacity to direct individual bank management decisions. Third, and most significantly for the Indonesian context, the Malaysian experience demonstrates that regulatory infrastructure must be established before the state shareholder extends its reach into the banking sector. Indonesia is introducing Danantara’s superholding structure into a regulatory environment that has not been updated to accommodate it, a sequencing failure identified by (Roziq et al., 2026) as analogous to the “institutional void” described in emerging market governance literature.

Normative Lacunae and Proposed Legislative Reform

Systematic analysis of the Banking Law, P2SK Law, KSSK Law, OJK Law, and BI Law reveals four critical normative lacunae that the current legal architecture fails to address. These lacunae are not merely technical gaps; they are structural deficiencies that create foreseeable systemic risks in the Danantara-Himbara governance relationship.

First, and most fundamentally, Indonesian banking law lacks a legal definition and regulatory category for a “policy-based controlling shareholder”, an entity that controls a commercial bank not primarily for profit maximization but in pursuance of a dual mandate that combines commercial returns with public policy objectives. Existing prudential regulations treat all controlling shareholders under a single generic framework that does not account for the qualitatively different risk profile created when the controlling shareholder is simultaneously an instrument of state investment policy. This gap is notably absent from EU banking regulation (addressed through the CRD IV qualifying holdings framework and ECB supervisory guidance) and from the Basel Committee’s Core Principles for Effective Banking Supervision (Principle 5), which explicitly requires supervisors to assess the fitness and appropriateness of significant shareholders regardless of their public or private character.

Second, no mandatory disclosure obligation requires Danantara to notify OJK of investment decisions that may materially affect the financial condition, risk profile, or governance of Himbara banks. This informational asymmetry, which places OJK at a structural disadvantage relative to the controlling shareholder, directly undermines risk-based supervision, which requires that supervisors have access to all material information about factors affecting a bank’s risk profile (Riyanti et al., 2026). Third, no conflict-of-interest prohibition addresses the scenario in which Danantara, as Himbara banks’ controlling shareholder, is simultaneously a significant debtor of those banks through Danantara-linked projects financed by Himbara credit. This gap enables the extraction of below-market financing from Himbara banks for Danantara-priority projects without adequate supervisory scrutiny. Fourth, no explicit ring-fencing provision ensures that the financial losses of Danantara’s investment portfolio cannot be transferred to the balance sheets of Himbara banks through accounting arrangements, asset disposals, dividend reversals, or contingent liability assumptions a structural gap that the Financial Stability Board’s Key Attributes of Effective Resolution Regimes (FSB, 2014) specifically recommends closing.

The economic analysis of law framework provides a structured basis for evaluating three alternative regulatory scenarios. Scenario A (Status quo with enhanced subsidiary regulation) maintains the current statutory framework but supplements it with ministerial or OJK regulations addressing disclosure and conflicts of interest. This scenario has the lowest direct regulatory cost but the lowest effectiveness, because subsidiary regulations cannot override primary statute and cannot establish the PBCS category without legislative authority. Scenario B (Structural unbundling) prohibits Danantara from directly holding bank equity and requires the interposition of a regulated non-bank investment company. This scenario most effectively insulates bank governance from pressure on investment policy but significantly reduces investment management efficiency. Scenario C (Comprehensive disclosure, ring-fencing, and supervisory reinforcement) permits Danantara to continue holding Himbara equity but imposes mandatory disclosure obligations, statutory conflict-of-interest prohibitions, ring-fencing rules, and enhanced supervisory authority for OJK vis-à-vis Danantara decisions affecting regulated banks. From a Kaldor-Hicks efficiency perspective (Posner, 2014, pp. 495–520), Scenario C offers the most favorable welfare trade-off: it preserves the aggregate investment management benefits of Danantara's superholding structure while substantially mitigating the systemic risks identified in this study.

Consistent with Scenario C and the theoretical frameworks deployed in this study, five targeted legal reforms are recommended. First, amendment of the Banking Law to introduce a statutory definition and regulatory category for "policy-based controlling shareholders" (PBCS), specifying the disclosure obligations applicable to PBCS entities, the enhanced fit and proper assessment requirements for PBCS nominee directors and commissioners, and explicit prohibitions on PBCS instruction to bank management that would violate prudential regulations. This amendment addresses the primary normative lacuna and provides the statutory foundation for all subsidiary regulatory measures. Second, issuance of an OJK Regulation (POJK) on Ring-Fencing and Information Barriers between Sovereign Wealth Funds and Affiliated Regulated Banks, mandating structural separation between Danantara's investment decision-making processes and Himbara banks' credit and treasury management. Third, revision of the KSSK Law to address explicitly the scenario in which a state institution outside the supervisory perimeter is the proximate cause of systemic risk to regulated banks, including KSSK's authority to require Danantara to divest its Himbara equity holdings as a condition of systemic crisis resolution. Fourth, reinforcement of OJK's operational independence vis-à-vis state shareholders through a Government Regulation (Peraturan Pemerintah) issued under the authority of the P2SK Law, explicitly reaffirming that OJK's fit and proper assessments of Himbara bank principal parties are exclusively within OJK's jurisdiction and may not be subject to direction or interference by Danantara or any executive branch institution. Fifth, establishment of a Joint Supervisory Coordination Protocol between BI, OJK, and Danantara is subject to formal regulatory endorsement by the KSSK, providing for structured, periodic information exchange on the macroprudential implications of Danantara's investment decisions for Himbara banks' systemic risk profiles, with explicit confidentiality protections preventing supervisory information from being used for commercial investment purposes.

Conclusion

This study set out to answer three questions concerning Danantara's control over Himbara banks: its implications for prudential banking principles, for the independence of Bank Indonesia and the OJK, and for Himbara banks' financial intermediation mandate. The findings confirm that Danantara's formation as a sovereign wealth fund superholding over Indonesia's four principal state-owned banks produces tripartite legal consequences of systemic significance that existing Indonesian banking law is structurally inadequate to address. With respect to bank health and prudential principles, Danantara's superholding structure creates four structural conditions conducive to prudential deterioration: credit concentration risk through coordinated Himbara financing of Danantara-priority projects; BMPK circumvention through the absence of a legal classification of Danantara-linked entities as a related borrower group; capital erosion through extractive dividend policies; and informational asymmetry that undermines risk-based supervision. Current RGEC assessment ratings, while satisfactory, do not reflect the forward-looking prudential risks embedded in the new governance architecture.

With respect to supervisory independence, Danantara introduces an indirect but structurally significant threat to both Bank Indonesia's monetary policy independence and OJK's operational supervisory independence. The threat operates through informal political economy channels, exerting fiscal-dominance pressure on BI's interest rate decisions, and political economy constraints on OJK's fit-and-proper assessment authority that formal legal text alone cannot neutralize without institutional reinforcement mechanisms of the type recommended in this study. With respect to financial intermediation, the instrumentalization of Himbara banks through Danantara's dual commercial-policy mandate predictably generates allocative inefficiencies below-market risk pricing for policy-directed lending, shadow cost transfers from bank equity to favored sectors, and the reduction of MSME credit disbursement (Nuryakin, 2023; Takaishi, 2023) that are inconsistent with both the commercial mandate of Himbara banks and the constitutional welfare mandate of Article 33 UUD NRI 1945.

The Malaysian comparator demonstrates that balanced governance of state-owned banks under SWF ownership is achievable, but only when comprehensive regulatory infrastructure precedes institutional restructuring (Budiyono, 2023; Hasan, 2022). Indonesia's failure to sequence the establishment of Danantara before updating the regulatory framework constitutes the fundamental governance challenge that the five recommended legislative and regulatory reforms are designed to address. The principal scholarly contribution of this study is the identification and initial conceptual elaboration of the "policy-based controlling shareholder" (PBCS) as a candidate regulatory category warranting distinct treatment in banking law subject, as noted in the Introduction, to further doctrinal and empirical validation and the demonstration that the absence of this category from Indonesian positive law constitutes the primary normative lacuna driving all other identified regulatory risks. This contribution has implications beyond the Indonesian context, offering a conceptual starting point for comparative banking law scholarship in jurisdictions where sovereign wealth funds hold significant equity positions in commercial banks, a category of growing global significance that existing banking regulation scholarship has, to date, insufficiently theorized.

Author Contributions: For research articles that have multiple authors, a brief paragraph must be included that explains the writer's contribution. Conceptualization, R. D and T. S.; Methodology, R. D.; Software, R. D.; Validation, T. S.; Formal analysis, R. D.; Investigation, T. S.; Resources, R. D.; Data turnover, R. D.; Writing-original drafts, R. D.; Writing-reviews and editing, T. S.; Visualize, R. D.; Oversight, "for a term explanation, please look at the taxonomy credit. Writing may be done only by those who have contributed significantly to the reporting work.

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