JLPH: Journal of Law, Politic and Humanities
E-ISSN: 2962-2816
P-ISSN: 2747-1985
DINASTI RESEARCH
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.v6i1

Constitutional Legitimacy, Limitations, and Strengthening of State-Owned Enterprise Monopoly Supervision in Economic Development and Protection of Healthy Business Competition in Indonesia

Budi Joyo Santoso[1*], Adnan Hamid[2]
[1] Universities Pancasila, Indonesia
[2] Universities Pancasila, Indonesia

[*]Corresponding Author: budi5224005@univpancasila.ac.id

Abstract: This study highlights the central role of State-Owned Enterprises (SOEs) in managing strategic sectors as a realization of the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia. This paper questions the legitimacy, constitutional limitations, and oversight mechanisms for monopoly rights granted by the President to SOEs, as well as the challenges of policy implementation in the context of national economic governance reform. The methodology used is a normative legal approach with conceptual analysis, legislation, and comparative studies with other countries. The study was conducted on key regulations such as Law No. 5 of 1999, Law No. 1 of 2025, and KPPU documents, supported by a review of Constitutional Court decisions. The analysis was conducted using legal hermeneutics and qualitative methods to interpret the constitutional limits and effectiveness of SOE monopoly supervision. The results of the discussion found that the constitutional legitimacy of SOE monopolies is indeed sourced from Article 33 of the 1945 Constitution, but their implementation must meet the requirements of efficiency, justice, and legal certainty. It was found that granting monopolies without periodic supervision and evaluation risks causing abuse of authority, market distortion, and discriminatory practices against other business actors. The KPPU's role as an independent supervisory body has proven strategic in preventing violations and correcting monopolistic policies inconsistent with the principles of fair competition. Strengthening oversight mechanisms, transparency of audit results, public involvement, and regular independent audits are needed as a foundation for adaptive and accountable governance. Recommendations for regulatory reform, effective KPPU involvement, and public participation are proposed to balance state interests and protection of business competition. The conclusion emphasizes that monopoly by state-owned enterprises is not an end in itself, but rather an instrument for realizing public welfare if implemented with transparency, strict oversight, and high accountability in accordance with the principles of constitutional economic democracy.

Keywords: BUMN, Monopoly, Article 33 of the 1945 Constitution, Supervision, KPPU

INTRODUCTION

In Indonesia, State-Owned Enterprises (SOEs) have a strategic role in managing vital sectors that form the backbone of the national economy, as mandated in Article 33 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) (Rasji & Darmansyah, 2025) . This article emphasizes that sectors that control the livelihoods of many people must be controlled by the state, and SOEs are the main instrument in realizing this mandate. In practice, the management of strategic sectors such as energy, telecommunications, and natural resources often involves the granting of monopoly rights to SOEs by the President, which is further regulated in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition and Law Number 1 of 2025 concerning strengthening the role of SOEs in strategic sectors. The granting of these monopoly rights aims to ensure economic stability, maintain the availability of essential goods and services, and protect the public interest (Ginting et al., 2013) . However, the President's authority to grant these monopoly rights has not escaped scrutiny, both in terms of constitutional legitimacy and the limitations governing its implementation. The urgency of evaluating the legitimacy and constitutional limitations of this authority is increasingly relevant amidst the dynamics of economic development and globalization, which demand a balance between the public interest, the operational efficiency of state-owned enterprises, and healthy business competition.

Granting monopoly rights to state-owned enterprises (SOEs) not only reflects the state's role in managing strategic resources but also poses complex constitutional challenges. Article 33 of the 1945 Constitution of the Republic of Indonesia provides the ideological foundation that the state has a responsibility to control vital sectors for the prosperity of the people (Abizar Yusro et al., 2021) . However, the implementation of monopoly policies through SOEs often raises questions about the extent of the President's authority in determining which sectors are eligible for monopoly rights, how the decision-making process is carried out, and whether the mechanism meets the principles of good governance. Law No. 5 of 1999, which regulates the prohibition of monopolistic practices, provides an exception for SOEs that obtain monopoly rights from the government for the public interest. Meanwhile, Law No. 1 of 2025 strengthens the President's authority to designate SOEs as monopolists in strategic sectors, provided that the decision must consider the national interest and public welfare. However, both laws do not provide clear technical guidance regarding the criteria for implementing monopolies, oversight mechanisms, or sanctions for potential abuse of authority. This ambiguity poses risks to economic fairness, operational efficiency, and the potential for abuse of monopoly rights by state-owned enterprises, which could ultimately harm consumers and other business actors.

The problem formulation that is the focus of this research is: "What is the legitimacy and constitutional limitations of the President's authority in granting monopoly rights to SOEs in strategic sectors?" This question is relevant because it reflects the need to understand the legal basis and constitutional limitations that regulate the President's authority, while also evaluating whether the policy is in line with the principles of democracy, transparency, and accountability. This research aims to examine the extent to which the President's authority in granting monopoly rights to SOEs can be constitutionally justified, and how these limitations can prevent potential abuse of authority that can harm the public interest and healthy business competition.

Previous research has extensively addressed the issue of state-owned enterprise monopolies from various perspectives. Several studies have highlighted that granting monopoly rights to state-owned enterprises in strategic sectors, such as energy and telecommunications, has successfully ensured the stable supply of essential goods and services. For example, the monopolies of PT Pertamina in the oil and gas sector and PT PLN in the electricity sector are considered capable of maintaining affordable prices for the public (Yanto et al., 2023) . However, other research has shown that state-owned enterprise monopolies often lead to operational inefficiencies, a lack of innovation, and the potential for anti-competitive practices that harm private businesses. Law No. 5 of 1999 stipulates that monopolies granted to state-owned enterprises must meet certain requirements, such as not harming consumers and supporting the public interest. However, the implementation of this policy is often not accompanied by adequate oversight, thus creating the risk of abuse of monopoly rights (Imantaka et al., 2023) . Furthermore, several studies have also highlighted that the President's authority to establish monopoly rights tends to be discretionary, which can lead to legal uncertainty and the potential for abuse of authority. While these studies have provided important insights, there is still a lack of in-depth analysis of constitutional limitations, especially in the context of recent regulatory developments such as Law No. 1 of 2025.

A gap analysis shows that previous research has not comprehensively examined the multiple interpretations of the President's authority to grant monopoly rights to state-owned enterprises (SOEs). Clear criteria for which strategic sectors qualify for monopoly rights remain unclear, and technical regulations governing the decision-making process and oversight mechanisms are limited. Furthermore, the potential for economic inequality resulting from SOE monopolies, such as low efficiency and a lack of fair competition, has not been thoroughly analyzed within a constitutional context. The lack of strict oversight by independent authorities, such as the Business Competition Supervisory Commission (KPPU), also creates a loophole that could allow for the abuse of monopoly rights (Larassati et al., 2024) . This study seeks to fill this gap by critically analyzing the legitimacy and constitutional limits of the President's authority, while also evaluating the need for more robust oversight mechanisms to ensure that monopoly rights granted to SOEs truly support the public interest.

This research offers a state-of-the-art approach with a more progressive and constructive approach, highlighting a critical reading of the constitutional limits of the President's authority. This research not only refers to formal legal foundations, such as the 1945 Constitution of the Republic of Indonesia and related laws, but also integrates the principles of good governance, such as transparency, accountability, and public participation, into the decision-making process. Furthermore, this research emphasizes the importance of evaluation and oversight mechanisms by independent authorities, such as the KPPU, to ensure that the granting of monopoly rights does not give rise to anti-competitive practices or harm consumers. By considering the latest regulatory developments, such as Law No. 1 of 2025, this research seeks to provide relevant and contextual policy recommendations that can strengthen the constitutional legitimacy of the President's authority while minimizing the risk of abuse of authority. Thus, this research is expected to make a significant contribution to legal and public policy discourse, particularly in ensuring that the management of strategic sectors by State-Owned Enterprises can run efficiently, fairly, and support the goals of public welfare as mandated by the constitution.

METHOD

This study uses a normative legal approach to examine the legitimacy and constitutional limitations of the President's authority in granting monopoly rights to State-Owned Enterprises (SOEs) in strategic sectors, focusing on conceptual, legislative, and comparative approaches. The normative approach was chosen because this study is oriented towards the analysis of legal norms contained in laws and regulations, court decisions, and relevant legal doctrines, without involving direct empirical data collection. The conceptual approach is used to outline the theoretical framework regarding the legitimacy of the President's authority and the concept of monopoly in a constitutional context, by referring to the theories of justice, utilitarianism, and law and economics as analytical tools. The theory of justice, particularly John Rawls's perspective, will be used to assess whether the granting of monopoly rights to SOEs reflects the principle of distributive justice that supports the interests of the wider community. The utilitarian approach will analyze the impact of granting monopoly rights on collective welfare, while the law and economics approach will evaluate the economic efficiency and market implications of the policy. The legislative approach is applied through an analysis of primary legal sources, namely the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), particularly Article 33, which regulates state control over strategic resources, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, and Law Number 1 of 2025, which regulates the management of State-Owned Enterprises (BUMN) in strategic sectors. Secondary legal sources, such as legal literature from journals, books, and scientific articles, will be used to enrich the conceptual analysis and provide a strong theoretical foundation. In addition, a comparative approach is carried out by comparing the practice of granting monopoly rights in Indonesia with other countries with similar constitutional systems, such as Malaysia and Singapore, to understand the variation in approaches and their impact on constitutional legitimacy. Additional data is obtained from a review of Constitutional Court decisions regarding disputes over the authority of the President and BUMN, as well as official documents of the Business Competition Supervisory Commission (KPPU) related to the supervision of monopolistic practices. A critical analysis of these sources was conducted using legal hermeneutics to interpret the meaning of legal norms in depth, as well as qualitative analysis to construct a coherent argument. With this approach, this study aims to produce a comprehensive understanding of the constitutional legitimacy of granting monopoly rights to state-owned enterprises, while also identifying legal boundaries that must be respected to maintain a balance between state interests, economic efficiency, and social justice.

RESULTS AND DISCUSSION

Constitutional Basis and Limitations regarding Monopoly Rights

A thorough analysis of the constitutional legitimacy of the President's authority in granting monopoly rights to State-Owned Enterprises (BUMN) in strategic sectors shows a strong foundation in Article 33 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which is the main foundation of the national economy. This article, after the fourth amendment, states that the economy is structured as a joint effort based on the principle of family, with branches of production that are important for the state and that affect the livelihood of many people controlled by the state, and the land and water and the natural resources contained therein controlled by the state and used for the greatest prosperity of the people (Rasji & Darmansyah, 2025) . Article (4) emphasizes that the national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental awareness, independence, and maintaining a balance of progress and national economic unity. The legitimacy of the President's authority is rooted in the constitutional mandate to manage natural resources and vital sectors for the public interest, where the state, through executive institutions such as the President, acts as the main authority to prevent private domination that has the potential to harm the wider community. This constitutional elaboration is realized through derivative regulations, specifically Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, where Article 51 explicitly recognizes exceptions to the prohibition on monopolies for SOEs. The article states that monopolies and/or concentration of activities related to the production and/or marketing of goods and/or services that affect the livelihoods of many people as well as branches of production that are important to the state are controlled by the state, and such monopoly rights can only be granted to SOEs or bodies/institutions established or appointed by the government based on law. This provision does not grant absolute power, but must be in line with the constitutional objective of Article 33, namely to ensure management that is oriented towards the welfare of the people, not the interests of certain individuals or groups (Yanto et al., 2023) .

The latest regulatory developments through Law Number 1 of 2025 concerning State-Owned Enterprises strengthen the President's authority in determining monopoly rights. This law, which was passed in early 2025, specifically authorizes the President to delegate the management of SOEs to a special body established by law, including granting monopoly rights to SOEs or their subsidiaries through Government Regulations to produce or market goods related to the livelihoods of many people in strategic sectors such as energy, transportation, and natural resources. This determination must be based on clear national interests, with objective criteria such as the vitality of the sector for national security, economic resilience, and the fulfillment of basic community needs (Samawati, 2018) . In practice, these monopoly rights have been applied to SOEs such as Pertamina in the oil and gas sector or PLN in the electricity sector, where the President, as head of government, holds the power to manage state finances, including SOEs, as stipulated in Article 86M of Law No. 1/2025. This legitimacy is not without conditions; The President's authority is only legitimate if it is limited by constitutional principles, where monopoly rights must be temporary and proportional, not permanent or arbitrary, to avoid abuse of power that is contrary to the spirit of economic democracy.

Although Article 33 of the 1945 Constitution of the Republic of Indonesia provides a basis for legitimacy, the President's authority cannot be absolute because it must be subject to the principles of the rule of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which demands a balance between state interests and individual rights and healthy business competition (Abizar Yusro et al., 2021) . The main limitations include the requirement for objective conditions, such as empirical evidence that a monopoly is necessary to protect the public interest from market failures or external threats, as well as transparency in the determination process through a consultation mechanism with the House of Representatives (DPR) and the publication of the reasons for the decision. Accountability is a crucial element, where the President must ensure that SOEs granted monopoly rights are subject to independent audits and regular reports to supervisory bodies, to prevent corruption or inefficiencies that harm the people. The Business Competition Supervisory Commission (KPPU) plays a role as an independent supervisory institution, which is based on Law No. Law No. 5/1999 has the authority to provide guidelines for the implementation of Article 51, receive reports of alleged violations, and provide policy advice to the government to ensure that state-owned enterprise monopolies do not create unfair business competition (Guidelines for the Implementation of the Provisions of Article 51, 2009) . The KPPU can monitor the behavior of state-owned enterprises to prevent discriminatory practices against private business actors, although state-owned enterprise holdings are exempt from some anti-monopoly provisions, as emphasized in the 2020 KPPU guidelines (Kusumawardana & Apriani, 2025) . The potential for multiple interpretations of the relevant articles is a significant issue; Article 51 of Law No. 5/1999 is often interpreted broadly by the executive to extend monopolies to non-vital sectors, while Law No. 1/2025 has the potential to create ambiguity in the definition of "strategic sectors" that could be abused without strict oversight from the Constitutional Court. Without technical limitations such as provisions on the duration of monopolies or periodic evaluation mechanisms, the President's authority risks violating the principles of fair competition mandated by the constitution, which could ultimately hinder economic innovation and public welfare.

Overall, the legitimacy of the President's authority to grant monopoly rights to state-owned enterprises (SOEs) in strategic sectors is conditional, dependent on alignment with Article 33 of the 1945 Constitution of the Republic of Indonesia and its derivative regulations, where the primary objective is to protect national interests without sacrificing the principles of democracy and justice. Strengthening multiparty oversight mechanisms, including a more active role for the Commission for the Protection of the Public Investigative Commission (KPPU) in providing legal opinions prior to monopoly determination, as well as amending regulations to reduce the possibility of multiple interpretations, is necessary to ensure that state monopolies truly contribute to the prosperity of the people rather than simply being a tool of power. This approach not only enriches the discourse on Indonesian economic law but also provides guidance for policymakers in balancing state control with the dynamics of the free market in the era of globalization.

Monopoly Rights, Public Efficiency, and the Risk of Abuse

Granting monopoly rights to State-Owned Enterprises (SOEs) in strategic sectors, such as energy, telecommunications, or natural resources, is a practice often justified by the need to maintain public efficiency, economic stability, and national interests. In a constitutional context, the legitimacy of the President's authority to grant monopoly rights to SOEs rests on the legal framework governing executive authority in managing strategic resources for the public interest, as stipulated in the constitution and relevant laws. This study found that this legitimacy is valid as long as the monopoly rights are granted in accordance with the principles of efficiency, distributional justice, and legal certainty. However, without adequate oversight, these monopolistic practices can pose a risk of abuse of authority that is detrimental to the public and other business actors, necessitating a strong checks and balances mechanism to ensure accountability and transparency (Patul et al., 2024) .

Monopoly rights granted to state-owned enterprises (SOEs) in strategic sectors are often based on the argument that state management through SOEs can ensure public efficiency. This efficiency refers to the SOE's ability to provide strategic goods or services at affordable prices, with equitable access, and guaranteed quality, particularly in sectors that directly impact public welfare, such as electricity, clean water, or fuel (Muhammad et al., 2025) . In practice, SOEs granted monopoly rights can reduce production costs through economies of scale, avoid unnecessary duplication of investment, and ensure supply stability in the domestic market. For example, a SOE monopoly in the energy sector can guarantee electricity supply to remote areas that are uneconomical for private businesses. Furthermore, granting monopoly rights is also considered to support distributional justice, as SOEs can be directed to prioritize the public interest over mere commercial gain. In other words, SOEs can perform social functions, such as providing cross-subsidies to ensure low-income communities' access to basic services. Legal certainty is also an important pillar in this legitimacy, where the granting of monopoly rights must be based on clear laws and regulations, including permits, contracts, or policies that have gone through a legislative process or public consultation.

However, granting monopoly rights without adequate oversight also poses several real risks. The risk of abuse of power by state-owned enterprises (SOEs) is a major challenge, particularly when monopolies are not balanced by independent and effective oversight mechanisms. Without oversight, SOEs can abuse their dominant position to set unfair prices, stifle innovation, or hinder the entry of other business actors into the market. This can harm consumers, who are forced to face high prices or poor service quality, as well as private businesses, who lose opportunities for fair competition. For example, in some cases, SOEs with monopoly rights in certain sectors tend to be slow to adopt new technologies due to a lack of competitive pressure, thus hampering the progress of those sectors (Aprilly et al., 2025) . Furthermore, the risk of corruption and collusion also increases when SOEs operate without transparency, especially if there is political involvement in strategic decision-making. This abuse not only harms economic efficiency but can also undermine public trust in state institutions.

To address these risks, this study emphasizes the need to strengthen oversight and accountability mechanisms for granting monopoly rights. Oversight can be conducted through independent bodies, such as competition authorities or supervisory commissions, which have the authority to monitor the performance of state-owned enterprises (SOEs), ensure compliance with regulations, and prevent detrimental monopolistic practices (Filza Yunas, 2025) . Furthermore, transparency in the decision-making process, including the publication of performance reports and independent audits, is crucial for maintaining public trust. The government also needs to ensure that monopoly rights are granted for a specific period and are periodically evaluated to ensure that their objectives of efficiency and fairness are achieved. In a constitutional context, the President's authority to grant monopoly rights must be exercised in accordance with the principles of good governance, including consultation with the House of Representatives (DPR) and consideration of the broader public interest. Thus, granting monopoly rights to SOEs can be a legitimate and effective tool for achieving national goals, as long as it is balanced with strict oversight and a commitment to the public interest.

Role and Supervisory Mechanism by KPPU

In this study, the main findings regarding the constitutional legitimacy of the President's authority in granting monopoly rights to State-Owned Enterprises (BUMN) in strategic sectors indicate that its legal foundation is directly derived from the 1945 Constitution of the Republic of Indonesia, specifically Article 33 paragraph (2) and paragraph (3). Article 33 paragraph (2) expressly states that "branches of production that are important to the state and that affect the livelihood of many people are controlled by the state," while paragraph (3) emphasizes that "the land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The meaning of these articles is not merely a normative declaration, but a constitutional mandate that requires the state through instruments such as BUMN to control vital sectors such as energy, transportation, food, and basic infrastructure, in order to prevent exploitation by private interests that have the potential to harm the public interest (Disyon & Sibarani, 2023) . This legitimacy is strengthened by Law Number 19 of 2003 concerning State-Owned Enterprises, which in Article 2 paragraph (1) outlines that State-Owned Enterprises play a role as implementers of strategic public services, as well as Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, specifically Article 51, which explicitly permits the granting of monopoly rights to State-Owned Enterprises over goods or services that affect the lives of many people or important production branches for the state, as long as they are carried out in accordance with the law and do not give rise to unfair business competition. Empirical findings from the analysis of policy documents and Constitutional Court decisions, such as Constitutional Court Decision Number 36/PUU-X/2012 concerning the Oil and Gas Law, confirm that the concept of "state control rights" in Article 33 of the 1945 Constitution must be interpreted broadly as collective public oversight, not absolute domination, so that the President's authority as regulated in the Presidential Regulation regarding sectors such as iron, steel, or electricity is a legitimate constitutional extension, but is limited by the principle of economic democracy that emphasizes the balance between state efficiency and consumer protection.

Further research reveals that these constitutional limitations are not absolute, but rather dynamic and dependent on the effectiveness of the monopoly's implementation. Analysis of case data from the Business Competition Supervisory Commission (KPPU) for the 2016-2025 period shows that of the 119 corruption cases within state-owned enterprises recorded by Indonesia Corruption Watch, the majority (around 65%) involved abuse of monopoly positions in strategic sectors such as oil and gas distribution or electricity, resulting in state losses reaching trillions of rupiah and price inflation that is detrimental to the public (Primayoga &

Aulisa, 2022) . This confirms that the constitutional legitimacy of the President's authority, although strong, is vulnerable to degradation if monopolies are implemented without strict supervision, as warned in KPPU Decision Number 15/KPPU-I/2019 against a state-owned airline company found to have engaged in unfair competition through predatory pricing, which contradicts Article 17 of Law No. 5/1999 which prohibits monopolies that result in unfair control of production or marketing (Permadani, 2024) . This limitation, critically, reflects the tension between the constitutional mandate of Article 33 of the 1945 Constitution which demands state control for the prosperity of the people with the principle of fair competition guaranteed by Article 27 of the 1945 Constitution concerning the right to work and a decent living for every citizen. Without clear limitations, the President's authority has the potential to become an instrument of state oligarchy, where SOEs are no longer protectors of the livelihoods of the people, but rather entities that monopolize the personal profits of officials, as seen in the case of non-transparent SOE synergies, such as direct appointments in the procurement of goods/services based on the Regulation of the Minister of SOEs Number 2 of 2023 Article 155 paragraph (2) letter j, which was criticized by the KPPU for inhibiting private participation and creating artificial entry barriers (Yanto et al., 2023) .

This is where the central role of the Business Competition Supervisory Commission (KPPU) emerges as a crucial constitutional counterbalance, as outlined in the analysis of KPPU Regulation No. 4 of 2023 concerning the Provision of Advice and Considerations on Government Policies Resulting in Monopolistic Practices. The KPPU, as an independent institution under Article 30 of Law No. 5/1999, is tasked with conducting pre- and post-monopoly policy assessments to ensure alignment with the principles of fair competition, defined as competition that is honest, fair, and does not harm consumers or small business actors (Aprilly et al., 2025) . Research findings indicate that the KPPU's involvement in overseeing strategic monopolies of SOEs has proven effective in preventing market distortions; for example, since 2020, the KPPU has submitted six policy suggestions to the Ministry of SOEs, including mitigating concurrent positions and strengthening competition compliance programs, which have successfully reduced violation cases by 20% in the energy sector. The importance of this involvement lies in its ability to prevent constitutionally justified state monopolies from turning into tools of exploitation, by integrating rule of reason analysis in the assessment, where the KPPU evaluates not only structural impacts (such as market concentration) but also behavioral ones (such as abuse of dominant position as per Article 25 of Law No. 5/1999) (Humairah, 2025) . Critically, without the KPPU, the President's authority risks exceeding the constitutional limits of Article 33, as unchecked monopolies tend to lead to inefficient resource allocation, such as irrational electricity tariff increases or corrupt food distribution, which contradict the mandate of the people's prosperity.

The KPPU's corrective mechanism for monopolies that are carried out ineffectively or detrimentally is the most in-depth element of discussion in this study, because it represents a bridge between constitutional legitimacy and operational law enforcement. Based on Articles 35 and 36 of Law No. 5/1999, the KPPU has the authority to conduct investigations on its own initiative or based on public reports into alleged monopoly violations, followed by examinations involving witnesses, experts, and documentary evidence, up to the imposition of administrative sanctions such as a minimum fine of IDR 1 billion, cancellation of agreements, or orders to stop activities (Articles 47-48). A concrete example is KPPU Decision Number 07/KPPU-L/2007 against Temasek Holdings, where this corrective mechanism successfully dismantled cross-ownership that reduced competition in the telecommunications sector, with sanctions forcing share restructuring to restore market dynamics (Suparji & Ikraam, 2015) . If a state-owned enterprise monopoly is proven ineffective, for example, through indicators such as chronic financial losses or failure to achieve public service targets, the KPPU can recommend periodic evaluations through the Business Competition Policy Checklist

(DPKPU), which includes independent audits of state-owned enterprise performance and pre-policy consultations with the President or Minister of State-Owned Enterprises (Ningtias et al., 2025) . A deep criticism of this mechanism is the potential weakness in execution, where KPPU decisions require court fiat for criminal enforcement (Article 41), which is often delayed due to political intervention, as seen in the 2016-2021 state-owned enterprise corruption cases where only 40% of administrative decisions were fully executed. However, the KPPU's success in the Google LLC case (2023 Decision) with a fine of IDR 202.5 billion for the monopolistic implementation of Google Play Billing shows that this mechanism, if strengthened with technology such as AI for early detection, can be an effective correction that aligns state monopoly with the constitutional principle of Article 33, namely, control is not for domination, but for collective welfare (Adzkia et al., 2025) .

Overall, this discussion underscores that the constitutional legitimacy of the President's authority to grant monopoly rights to state-owned enterprises (SOEs) in strategic sectors, while robust, must be tempered by strict external oversight to prevent detrimental deviations. The KPPU's role is not merely administrative, but constitutional, as a gatekeeper between the mandate of Article 33 of the 1945 Constitution and dynamic market realities. These findings suggest further reforms, such as the KPPU's integration into the monopoly legislation process through a Government Regulation derived from the SOE Law, to ensure that strategic monopolies remain a tool for economic emancipation, not a source of injustice. Thus, this research contributes to a more mature discourse on Indonesian economic law, in which the balance between state power and healthy competition is a key prerequisite for sustainable development.

Evaluation, Correction and Policy Implications

The President's legitimacy in granting monopoly rights to state-owned enterprises (SOEs) in strategic sectors is firmly rooted in the constitutional mandate as formulated in Article 33 of the 1945 Constitution of the Republic of Indonesia, and is supported by an explicit exception in Article 51 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The Constitution mandates that important branches of production and those that affect the livelihoods of many people must be controlled by the state for the prosperity of all the people. The institutional implementation of this norm is evident in articles strengthening SOE monopoly rights in strategic sectors through presidential discretion, such as in Law Number 1 of 2025 and related implementing regulations.

However, beyond legitimacy, crucial challenges arise regarding constitutional limits, discretionary space, and the evaluation of the implementation of these monopolies. Monopolistic practices by state-owned enterprises (SOEs) in Indonesia tend to create a dilemma between protecting national interests and the risk of market distortion and bureaucratic inefficiency. Various evaluation and audit studies, both by state institutions (such as the National Agency for National Development Planning (BAKN), the Commission for the Comptroller of the Republic of Indonesia (KPPU), and the Supreme Audit Agency (BPK), as well as independent researchers, have found recurring phenomena such as weak governance, potential corruption (KKN), and minimal policy transparency, particularly due to the absence of a disciplined review mechanism and effective independent audit-based oversight (Larassati et al., 2024) . State authorities and the public often only become aware of failures or negative excesses after significant losses emerge in the social, economic, and public financial spheres.

The dynamics of public needs and the global economic order demand that state-owned enterprise monopoly management no longer be justified solely by constitutional authority. Periodic, adaptive, and accountable policy evaluation and reform are required, as follows:

1. Confirmation of the criteria and limitations of BUMN monopolies: Monopoly rights are only granted in areas that are truly strategic, based on real public needs, proven for their efficiency and economic utility, and supported by a track record of good governance.
2. Independent audit-based oversight: SOE audits are not solely conducted by internal audit staff or the supervising ministry, but involve independent audit committees, professional external auditors, and ensure public transparency regarding audit results. As a minimum, audit committees and boards of commissioners should ideally consist of at least 30% independent members who are free from owner interference, prevent potential bias, and maintain public trust in the independence of audit results.
3. Regular and adaptive mechanism review: Every monopoly policy must be evaluated at least annually through a comprehensive audit, encompassing not only financial feasibility testing but also an analysis of the policy's impact on fair redistribution, business competition, and sectoral relevance to evolving needs and technology. Evaluation results must be made public and reported to legislative bodies to maintain transparency and social oversight.
4. Stakeholder participation and public testing: The process of determining a monopoly must open up space for public participation, fit-and-proper testing, and consultation with sector experts and the public service community.
5. Strict sanctions against abuse: Violations of procedures, fictitious reports, or manipulation of audit results need to be accompanied by strict administrative sanctions, a review of monopoly status, and if necessary, gradual demonopolization of sectors that fail to support fairness, efficiency, or innovation.

Empirical studies on the sustainability and governance of state-owned enterprise monopolies in strategic sectors show that the hybrid policy principle is often the solution to reform initiatives. State-owned enterprises remain central players in vital sectors, but private sector participation is opened proportionally to ensure a balanced acceleration of innovation, efficiency, and adaptation to market changes (Putu, 2019) . Real-world examples include limited demonopolization of the oil and gas and communications sectors, which have been shown to boost efficiency and service delivery without diminishing the state's role as a guarantor of national sustainability and stability.

In its implementation, the hybrid policy is reinforced by a commitment to a disciplined review mechanism: audits are conducted not only on financial accounting but also on socio-economic performance and the quality of public services, so that monopolies do not become a tool for maintaining bureaucratic power or stifling healthy competition. Academic and international research confirms the importance of an audit committee, an adequate number of evaluation meetings, and the active participation of an independent board of commissioners as key indicators of the quality of state-owned enterprise governance. The more frequent audits and reviews are conducted by objective and transparent parties, the greater the opportunity for reform, minimizing agency costs, and preventing irregularities (Ash Shidiq et al., 2024) .

With a foundation of periodic evaluation, strict oversight, and public-oriented governance reform, the President's authority to grant monopoly rights to state-owned enterprises (SOEs) can remain constitutionally valid, while also being protected by strong checks and balances. Through a combination of evidence-based policies, independent audits, and adaptive responses to the dynamics of the times, state monopolies in strategic sectors can be safeguarded, directed, and reformed to truly realize justice, efficiency, and sustainable prosperity for the wider community, rather than simply becoming normative dogma without effective oversight.

CONCLUSION

Based on the results of journal studies that focus on BUMN monopolies from the aspects of constitutional legitimacy, conditions and limits for granting monopolies, as well as the urgency of adequate supervision and correction mechanisms, it can be concluded that the existence of monopolies by State-Owned Enterprises is always within the corridor of national interests and public welfare, but must always be subject to constitutional principles that emphasize that state economic power must not conflict with the guarantee of fair business competition and the protection of the public's right to participate in economic activities. The legitimacy of monopolies granted to BUMNs, generally based on the mandate of the 1945 Constitution of the Republic of Indonesia and special laws, is only justified in certain circumstances, especially when it concerns strategic sectors that are vital to the lives of many people. Thus, granting monopolies to BUMNs must not be done haphazardly, but must meet objective requirements and be within clear limits of authority, for example: there is a real public interest and cannot be handed over to ordinary market mechanisms without risking national economic stability or food security, energy, and essential public services.

Provisions regarding the terms and limits of monopolies must be further reviewed to prevent practical deviations, whereby state-owned enterprise monopolies become excessive instruments of state business protection, leading to competition distortion and economic injustice. Inherent in this is the necessity for justification for efficiency, fairness, and legal certainty, with a protection scheme that maintains a healthy competitive environment. In essence, the delegation of monopolies to state-owned enterprises must be governed by explicit regulations containing ongoing evaluation and oversight mechanisms, so that state-owned enterprise performance not only meets national targets but also adheres to the principles of public accountability and transparency. In the implementation of monopolistic practices, strong oversight and correction mechanisms are the primary foundation for preventing deviations or exploitation of economic power. Internal and external oversight through institutions such as the Business Competition Supervisory Commission (KPPU) must function effectively, not merely as a formality, so that all forms of state-owned enterprise monopolies remain under serious and objective scrutiny.

The recommendations from this study include the need for clarification and systematic updating of technical regulations on state-owned enterprise monopolies in line with the challenges of modernization and economic globalization. While the current regulations provide a legal framework for state-owned enterprises to exercise their monopoly role, they are still plagued by gaps in interpretation and weaknesses in their implementation. Therefore, it is highly recommended that the government and the House of Representatives (DPR) immediately formulate a policy that technically clarifies the provisions on state-owned enterprise monopolies, including requirements, limits, evaluation mechanisms, and sanctions for violations. Furthermore, the involvement and role of the Commission for the Supervision of the Indonesian Financial Services Authority (KPPU) must be strengthened, not only limited to monitoring and law enforcement, but also to providing evidence-based, publicly accessible policy recommendations and analysis. Collaboration between state-owned enterprises, the KPPU, and other regulatory authorities is crucial for synergy that fosters a healthy, fair, and responsible business ecosystem.

The principles of transparency, periodic evaluation, and public disclosure must be consistently adopted in every step of SOE monopolies to achieve a balance between state interests and the protection of fair competition. Transparency of monopoly information and evaluation results is crucial for the public to conduct social oversight as an element of public control. Periodic evaluations of all SOE monopoly activities should be structured in such a way that monopolistic practices can be corrected quickly and appropriately when indications of violations or a decline in service quality are found. In the context of strengthening correction mechanisms, every SOE monopoly policy must be accompanied by clear evaluation indicators, measurable outcome targets, and a complaint channel that is open to the public. Efforts to maintain a balance between national interests and fair business competition must be realized through adaptive, transparent, and accountable policies, so that the rights of the community and business actors remain guaranteed within a democratic and equitable national economic system.

Overall, the study of state-owned enterprise monopolies confirms that constitutional legitimacy is only a starting point that must be enhanced with technical regulations, intensive oversight, and dynamic correction mechanisms. SOE monopolies are not an end in themselves, but rather a means to achieve broader societal welfare, provided that their implementation is based on the principles of openness, transparency, and high accountability. The implementation of these recommendations is expected to improve the quality of SOE governance and strengthen public trust in state monopoly policies amidst the challenges of increasingly complex and dynamic business competition.

REFERENCE

Abizar Yusro, M., Rosa Sidabutar, L., Dezeana Ticoalu, L., Sandi Ariani, R., & et al. (2021). Parameters of Monopoly Rights of State-Owned Enterprises from the Perspective of Business Competition in Indonesia. *Journal of Judicial Review* , *23* (2), 217–230. https://doi.org/http://dx.doi.org/10.37253/jjr.v

Adzkia, I., Gultom, E., Yuanitasari, D., & et al. (2025). Analysis of the Alleged Monopoly of the Payment System by Shopee in Indonesia, Including Its Impact on Business Competition, Law Enforcement, and Legal Implications in the Digital E-Commerce Ecosystem. *JIHHP: Journal of Law, Humanities and Politics*, *5* (5), 2025. https://doi.org/doi.org/10.38035/jihhp.v5i5

Aprilly, CV, Fathimah, C., Istiqomah, D., Romadhoni, A., Oktavianada, R., & et al. (2025). The Impact of Avtur Monopoly on Business Competition: A Legal and Policy Study of the Case Study of PT X. *CENDEKIA: Journal of Law, Social & Humanities* , *3* (2), 2025. https://doi.org/doi.org/10.5281/zenodo.15339489

Ash Shidiq, H., Zakaria, A., Nasution, H., & et al. (2024). Analysis of Sustainability Report Disclosure and Sustainability Performance in Energy, Oil, and Gas Cluster BUMN Companies. *Journal of Business Innovation and Accounting Research* , *1* (2), 162–178. https://doi.org/10.56442/s9q8z354

Disyon, H., & Sibarani, KB (2023). Justice as the Legal Goal of the State's Right to Control in the BUMN Holding Scheme. *Pancasila: Jurnal Keindonesiaan* , *3* (2), 134–148. https://doi.org/10.52738/pjk.v3i2.184

Filza Yunas, VA (2025). Competition Law Review of Direct Appointments in State-Owned Enterprise Synergy Based on PER-2/MBU/2023. *Khatulistiwa: Journal of Education and Social Humanities* , *5* (1), 851–874. https://doi.org/doi.org/10.55606/khatulistiwa.v5i1.6456 Available

Ginting, MM, Sirait, NN, & Windha. (2013). Exceptions to Monopolistic Practices Carried Out by State-Owned Enterprises in Accordance with Article 51 of Law No. 5 of 1999. *TRANSPARENCY, Journal of Economic Law* , *II* (2), 1–8.

Humairah, N. (2025). *The Role of the Business Competition Supervisory Commission in Supervising Unfair Business Competition* . Medan Area University, Medan.

Imantaka, B., Harswendo, SY, Jacous, JG, R. Yuniar, AI, & et al. (2023). State-Owned Enterprises' Immunity to Monopolies. *Karimah Tauhid* , *2* (3), 688–696. https://doi.org/10.30997/karimahtauhid.v2i3.8786

Kusumawardana, AS, & Apriani, R. (2025). Impact of Monopoly Practices in Business Space in Indonesia According to Indonesian Regulations. *De'Rechtsstaat* , *11* (1), 75–90. https://doi.org/10.30997/jhd.v11i1.7029

Larassati, A., Febri, A., Ramadhani, S., Kharazi, M.F., Rivai, A., & et al. (2024). The Effects of Monopoly Markets on the Indonesian Economy: Benefit or Disadvantage? *JoSES:*

Journal of Sharia Economics Scholar , *2* (3), 26–35. https://doi.org/doi.org/10.5281/zenodo.14223839 Effects

Muhammad, F., Fadhilah, HN, Hidayat, MI, & et al. (2025). Economic Justice in Islamic Business Law. *MRBEST; Media for Research on Science and Applied Economic Business* , *3* (2), 95–102. https://doi.org/doi.org/10.71312/mrbest.v3i2.315

Ningtias, DP, Mahisi, PL, Sabila, S., & Diponegoro, HU (2025). Progressiveness of Anti-Predatory Pricing Policy through Parallel Investigation Based on Human Centered Design to Protect E-Commerce Business Actors. *Forschungs Forum Law Journal* , *2* (2), 170–191.

Patul, D., Kornelis, Y., Zukriadi, D., & et al. (2024). Strengthening the Check and Balance Mechanism to Prevent Corruption in State-Owned Enterprises: A Constitutional Law Perspective. *Causa* , *5* (4), 1–6. https://doi.org/doi.org/10.3783/causa.v2i9.2461

Guidelines for the Implementation of the Provisions of Article 51, Pub. L. No. Article 51, Republic of Indonesia Business Competition Supervisory Commission (2009).

Permadani, RM (2024). Legal Analysis of Price Fixing Agreements in the Practice of Airline Ticket Price Cartels by Several Airlines in Indonesia (Study of the Decision of the Business Competition Supervisory Commission Number 15/KPPU-I/2019). *Al-Hikmah Journal of Law and Society* , *5* (1), 30–36.

Primayoga, E., & Aulisa, Y. (2022). *Trends in Prosecution of Corruption Cases in State-Owned Enterprises* .

Putu, S. (2019). The Perspective of Business Competition Law on the Demonopolization Policy of State-Owned Enterprises in Indonesia. *Simbur Cahaya* , *25* (1), 1–15.

Rasji, & Darmansyah, E. (2025). LEGAL ANALYSIS OF THE EXPANSION OF MONOPOLY RIGHTS TO STATE-OWNED ENTERPRISES BY THE PRESIDENT: A STUDY BASED ON THE PERSPECTIVE OF LEGAL PHILOSOPHY. *Rewang Rencang: Jurnal Hukum Lex Generalis* , *5* (10), 1–15.

Samawati, P. (2018). State-Owned Enterprise Monopoly from the Perspective of Business Competition Law. In MI Bisri (Ed.), *Business Competition Supervisory Commission* (1st ed.). Tunggal Mandiri.

Suparji, & Ikraam, A. (2015). The Case of Cross-Share Ownership of PT Temasek Holdings. *Journal of Master of Law* , *1* (2).

Yanto, A., Hikmah, F., Nugroho, S., Firmansyah, D., & et al. (2023). Review of Governance and Monopolistic Practices of State-Owned Enterprises from a Competition Law Perspective. *Legal Reform* , *27* (3), 226–235. https://doi.org/10.46257/jrh.v27i3.686