

Monopoly Analysis of a Limited Liability of State-Owned Enterprises (SOEs)

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ABSTRACT

Monopoly is regulated in the regulation of State-Owned Enterprises (SOEs) as the right to regulate (*bestuur*) all state resources as mandated by the constitution of Article 33 of the 1945 Constitution and also the BUMN Law Number 19 of 2003 where one of them is a company that is an entity a government-owned business in the form of a limited liability company. The capital is divided into wholly or at least 51 percent of the shares owned by the Republic of Indonesia with the main objective of pursuing profit. In the case of SOEs, corporate actions are determined by the direction of state policies in their economy. Problem formulation based on the above background, is monopolistic and de-monopoly practices against SOEs, inconsistency of the government? This research used normative juridical with a quantitative analytical approach and examines literature studies that conclude. The study results showed that corporate action was not doubt or inconsistency in implementing a state monopoly. However, this holding was to increase the capacity and existence of SOEs as agents of development and the state in managing resources related to many people's lives.

Keywords: Holding Company; Monopoly; Privatization

1. Introduction

SOEs is a business entity owned and controlled by the state. In most countries that are members of the OECD member countries, the practice of SOEs is intended to carry out market mechanisms that are important for the national economy, usually to meet the needs of utilities and public services, but for developing countries. In a country that carries an open economy, the role of monopolizing the market has the potential to disrupt healthy business competition, especially with private companies. Likewise, SOEs in China is tightly controlled, especially for public utilities. Although they suffer losses compared to being handed over to the private sector, the central bureaucracy can control SOEs through *guanxi* networks and informal nomenclature.

SOEs are given state support to achieve coordinated long-term goals in strategic industrial sectors and pillars that are considered beneficial to the economy, including expanding global market share (Bergsager & Korppoo, 2013).

Besides, the problems that arise from SOEs in various countries vary, both those who run their business in a monopoly and those that are free to compete with private entities. In addition to running healthy competitions, they also carry out state orders in public services. The profits earned cover losses from public service activities through cross-subsidies. SOEs generally carry out anti-competition activities with supporting regulations provided by regulators where. SOEs are a state regulation of their vital resources used for the public interest. Even though these SOEs have just been liberalized through corporate action through privatization because of provisions or rules made for private and state-owned companies, there are some differences as a form of exception (Organisation for Economic Co-Operation and Development (OECD), 2018).

There is a common understanding that competition legislation should apply to all market participants, both public and private, and, generally speaking, it is also the case in most OECD nations. The function of government in the economy is to set a regulation so that the market runs properly. The same competition laws apply to private businesses to SOEs recognized as legal persons and so organizationally separate from the state. Since SOEs carry out state tasks to offer general public services like postal services, railways, and healthcare, they unquestionably have exceptions in these competitive market activities. Exceptions of this kind require appropriate restrictions to reduce the possibility of ensuing market distortions (OECD, 2018).

Such conditions make law enforcement officers and judicial institutions face a dilemma in violating the law related to business entities where they face challenges in cases involving SOEs, both institutional and substantive, even though investigations are independent but in some cases, government intervention, especially for SOEs, in particular, related to industries that are subject to supervision by sectoral regulatory bodies, in addition to SOEs that are closely affiliated with the state are not subject to the scope of competition law, particularly in federal states. For example, US antitrust laws in the United States may differ depending on whether the SOE is controlled by the federal, state, or municipal government. However, not all jurisdictions are exempt from the regulations governing competition. Insofar as their actions involve state-owned or other privileged firms, European Union member states are subject to the EU's competition laws. They can be held liable for their anti-competitive behavior if proven that such behavior is state-induced or induced. Siti Anisah, Richo Andi Wibowo said that the BUMN monopoly violates the law due to state intervention in equity participation originating from separated state assets - both from the APBN and other assets - but is not comparable to the results obtained from dividends deposited into the state treasury, as a consequence of the role assigned to SOEs as servants or providers of goods and services needed by the community, especially those related to

sectors that are vital to the state – education, health, and defense – but when the price of goods and services provided by SOEs exceeds the price. If it is natural, then the domination or monopoly is out of the goal of the nation and state, which is to provide the greatest prosperity for the people (FHC/ESP, 2022).

SOEs are also often a paradox or dilemma where on the one hand, the state is only a shareholder - a separate legal entity - but there is not a small amount of state intervention both politically and in business activities so that there is a potential for conflicts of interest and also conflicts with the business world because they are contrary to business competition that exists. Health, so that good governance is needed, especially transparency of state status in SOEs so that other stakeholders feel comfortable, the role of the government as an operator as well as regulator has the potential for inefficiency and potential for corruption, for that we need a way to maintain collective memory, understand the context and improve regulations not in accordance with Presidential Decree Number 04/2016 jo 04/2017 concerning the Acceleration of Electricity Infrastructure Development (PPIK) the government appoints PLN as the executor by providing full support in terms of regulations (Presiden Republik Indonesia, 2016) - in guarantees, acceleration of licensing and nonperforming permits, primary energy supply, spatial planning, land provision, and the resolution of obstacles and problems, as well as solving legal problems faced and improving the way of thinking of policymakers. So the government needs to heed the designs that have been made in the constitution; also exercise prudence, consider fairness, and do work based on priorities (FHC/ESP, 2022).

State-Owned Enterprises (SOEs) enjoy various privileges due to their distinctive organizational structure, substantial capital, and place in the economy. They are successfully enduring because, like other business ventures, they do not have a set length. Additionally, because they constitute a benefit to the state, they may easily survive in non-competitive marketplaces. Therefore, SOEs compete unfairly with privately financed companies in today's challenging global market conditions. They do not obey the norms of the market; instead, they create those rules by relying on their status as state activities. Aside from SOEs, which the government directly controls, several privately backed companies rule the markets where the government permits them to establish unnatural monopolies and grow their dominance over time. This artificial monopoly distorts market dynamics and fosters an environment that frequently breeds corruption (Coşar, Yilmaz, & Altındağ, 2019).

Richo Andi Wibowo argued that from a normative juridical perspective, there are three difficulties or obstacles to state status in the ownership of SOEs, namely, finding common ground between capitalist ideology and welfare. When combining the two, what often happens is to take the bad side instead of the good side. Disinformation that forms a wrong perception where every state action in BUMN is considered as a form of neglect of state functions related to natural resources – Article 33 of the 1945 Constitution) – requires *tabayyun* first through observing the role of which BUMN and

in what sector. Third, there are irregularities in the regulations under the law. Whereas at the practical level, regulations such as Government Regulations, Presidential Regulations, and Ministerial Regulations play freely to reduce the concept that prohibits the domination/monopoly of SOEs without a strong or clear justification – thus resulting in inefficient and ineffective practices (FHC/ESP, 2022).

Sinopec, CNPC, and State Grid are the top three SOEs in China according to the Fortune 500 after the reformation of fifty-nine Chinese SOEs in 2011. The impact of the monopoly caused the total revenue of SOEs at the central level to increase from 3.36 trillion yuan to 22.5 trillion yuan between 2002 and 2012, which increased pressure on these SOEs to be privatized to conduct their business in line with the competitive market (Shanghai Daily, 2013).

Most SOEs face fierce competition, as evidenced by the construction, real estate, automobile, manufacturing, information, finance, trade, and social services industries. However, they enjoy a relatively high monopoly in the electricity, oil and gas, telecommunications, railways, tobacco, and several social services sectors. More than 90% of SOEs must compete to survive in the real world. However, the competitive landscape among SOEs engaged in oil and gas production - Sinopec, CNPC, and CNOOC are tight (Songmin, 2013).

America, which currently has the greatest economy, should teach about the monopoly issue as China is currently the second-largest economy in the world. Whirlpool Corporation, the largest home appliance producer in the United States, applied to buy Maytag Corporation, the third-largest producer in China, in 2006. Critics of the deal worried that Whirlpool would gain a monopoly in the North American market. However, following an antitrust investigation, the US Department of Justice said that the term “home appliance market” refers to the entire worldwide market, not only the domestic market. The purchase was approved after it was determined to improve Whirlpool’s ability to create quality products and boost its international competitiveness. Since joining the WTO, China has not been isolated from international competition. Wal-Mart and Carrefour are the market leaders in China’s retail sector, while international corporations like Intel, Microsoft, and IBM dominate the country’s computer processor, software, and server businesses. Hence, it is sensible to turn our attention to foreign monopolies rather than merely asking for the privatization and division of leading SOEs, reducing their ability to compete with foreign firms (Songmin, 2013).

Fair competition enhances customer welfare by delivering superior products and services at cheaper rates. However, for SOEs, profits are typically the result of distortions in the quality and prices of goods and services, affecting competition in the long run. It can be distorted between public and private companies. Since applying competition laws cannot always eliminate these distortions, policies that aim to achieve competitive neutrality in markets where public and private companies compete under the same rules and without government intervention in market activities may offer a

potential remedy. Additionally, SOEs should not be given preferential taxation or have easier access to capital than private businesses. Direct involvement enables the state to get data about expenses and prices that it cannot obtain from private enterprises, which may result in stricter regulatory monitoring (OECD, 2018).

When the government purchases goods or services, it is crucial to ensure that prices are reasonable and do not include any implicit subsidies. An apparent and frequently employed solution to this issue is the adoption of effective public procurement procedures. Another concern may be where contracting with the government provides the winning bidder with economies of scale advantages that others cannot imitate or generate large reputational gains for the company. It is crucial to remember that there can be neutrality difficulties in situations where the government serves as both a consumer and a provider. Compensation for the supply of important public goods, such as postal services, railroads, and health services, must be impartial and fair in the face of competition. There are some circumstances where pursuing competitive neutrality might prevent achieving this objective (OECD, 2018).

SOEs in providing public goods, one of which is that businesses provided are not of interest to the private sector or have not been willing to be provided by the private sector, so as long as they are not available, SOEs are at the forefront in serving the needs of these goods and services has a legal right to compensation for providing the public good. However, the pricing or cost is calculated properly to minimize the distortionary effect of compensation - procurement auctions involving the private sector can eliminate price and service distortions. In addition, a level playing field can be created through competition agencies, but other government actions outside the purview of competition law are necessary to ensure neutrality (OECD, 2018).

SOEs must comply with proper corporate governance rules. First, proper corporate governance and transparency rules can limit the undue benefits that SOEs can enjoy due to minimal government involvement in completing their tasks. Second, the state has a stake in SOEs conducting their business properly and efficiently, just like other shareholders. Due to this issue, the corporate governance structure should contain corporate governance for each SOE, clear and transparent guidance to SOEs about non-commercial aims, and an acceptable level of separation between regulatory and ownership functions. SOEs' advantages due to government ownership must be obvious and transparent to rivals. The government should give up its role as the market's operator, and SOEs should abide by rules that improve their internal audit system, establish a reliable accounting system, boost the effectiveness of regulatory agencies, improve the supervisory function, increase transparency, and advance the rights of stakeholders and shareholders. In this context, the 2005 OECD Guidelines on Corporate Governance of State-Owned Enterprises provided some legitimate and practical proposals designed to create an effective corporate governance framework for SOEs (OECD, 2018).

ID. G Palguna in Suartini and Syafrizal stated that the 1945 Constitution and all laws upheld to ensure the community's economic and social rights reflect the Indonesian people's social welfare goal (Suartini & Syafrizal, 2021).

Fulfillment of the economic and social rights of the community is implemented through an economic system that is in line with Pancasila and a people's economy, which is considered an economic pillar appropriate to be applied in Indonesia than the current market economy (Sirait, 2006).

Andi Mallarangeng, Mari Pangestu, and Kwiek Kian Gie in Ningrum Natasya Sirait said that the government's policies have an extensive role in the economy. However, these policies are often unilateral and only enjoyed by certain groups. This role can be seen in the provision of facilities or approval facilities for several business actors, which in the end gives birth to monopolistic practices – which have an impact on the competition climate which does not run under the principles of fair business competition (Sirait, 2006).

The purpose of regulating the economy by legislation is to create a national economic structure in realizing economic democracy based on Pancasila and the 1945 Constitution. This arrangement is to avoid the following possible occurrences (Rangkuti, Syamsah, & Yani, 2019):

1. Free fight liberalism system that can foster the exploitation of humans and other nations, which in Indonesia's history has caused the weakness of the national economic structure in Indonesia's position in the world economic arena.
2. The state and its economic machinery dominate, encourage and suppress the potential and creative force of economic entities outside the state sector. It is the etatism system.
3. Unfair competition and the concentration of economic power in a single entity through monopolies and monopsonies, in many forms, are harmful to society and go against the principles of social justice.

M Nawir Messi said that the Business Competition Supervisory Commission (KPPU) found that many government policies, both at the central and regional levels, had facilitated monopolistic practices. So synergy is needed from various parties to prevent this monopoly practice. The government can play its role by issuing policies to build a business climate and dare to process business laws that are proven to practice monopoly (ANT, 2016).

Sarbini Sumawinata, Rahayu Hartini, Barcelius Ruru, and Donald Clarke in Putu Samawati said that the basic justification for the SOE monopoly policy is an effort to protect state assets and guarantee the welfare of the Indonesian people as a whole because of the demands for the role of SOEs as executor of the state's governing functions (*bestuur*) or direct managers of owned natural resources, especially those related to production branches that are important to the state and control the livelihoods of many people. BUMN employs the commercial sector's regulatory, planning, and oversight channels to carry out the state's role for life, i.e., the state as

the custodian of sovereignty. The government also maintains the business ecosystem in line with the situation and circumstances of the times, which always call for adjustments to follow the global policies that favor a free market without any restrictions or obstacles to doing business (Samawati, 2018).

By reorganizing the internal and external institutional SOEs to maximize their potential as development agents, implementing the SOE monopoly concept based on economic democracy strengthens the core goal of creating a BUMN. It is being done to reward the Indonesian people for processing their natural and human resources. The government is responsible for performing state tasks, which include delivering public services, as the state's representative. BUMN is a government instrument because it plays a different function than traditional businesses in supporting the state's efforts to achieve development success. To be available as a vehicle for development to conduct essential business operations and develop specific projects not covered by the previously established development plan, BUMN must be available as a vehicle for development. The demand for BUMN to be independent and optimally provide benefit services for most Indonesian people is carried out to strengthen BUMN institutions professionally. A greater strategy is required for SOEs to play a role in supporting a sustainable national economy (Samawati, 2018).

Structuring SOEs internally and externally is an important point for the government in enforcing a monopoly policy so that SOEs do not continue to experience a deficit/loss but instead can become large independent corporations, provide benefits to the community, and become the main agent in the nation's economic development. By establishing a corporate culture, utilizing professionals to manage and own shares of SEOs, and reorganizing management, corporatization is one strategy to increase the role of SOEs (Samawati, 2018). Teddy Anggoro said that monopoly was formed in three ways, namely as follows (Anggoro, 2020):

1. Legitimate Monopoly, where a monopoly is formed because of the law - by regulation - the justification is State Sovereignty and Public Interest, as described in Articles 50 and 51 of Law Number 5 of 1999, where Article 50 is excluded from the provisions of this law are:
 - a. an agreement that aims to implement the applicable laws and regulations;
 - b. Monopolies and/or concentration of activities relating to the production, marketing, and/or distribution of goods and/or services that have an impact on people's quality of life as well as significant production branches for the state shall be governed by law and carried out by State-Owned Enterprises and/or bodies or institutions established or appointed by the government;
2. Natural Monopoly. The Justification is Efficiency and Network Effect, Natural Monopoly. Article 52 specifically states: - goods or services that affect the livelihood of peoples; - Goods or services which are important branches of production for the state;

3. Monopoly due to competition -as a result of competition - the justification is that the objectives of the business competition are achieved.

Sudikno Mertokusumo, A. Gunawan Setiardja, Ni Luh Made Mahendrawati in Putu Samawati said that Demonopoli can be stopped or ignored if it is associated with legal objectives, in its function as the protection of human interests, the main purpose of the law is to create an orderly social order, to create order and balance, Human interests will be protected. Still, they must comply with the provisions and guarantee legal certainty. As Radbruch said, for national security's sake, positive law must always be upheld, even if its provisions are unfair or contrary to the law's intended outcome. However, there is one exception to this rule: when the tension between the legal system's provisions and justice is so great that it appears unfair, the legal order may be suspended (Samawati, 2018).

This circumstance raises the idea of using the balance principle. The idea of balance means implementing good faith, honest business practices, and fairness principles. A regulatory framework that can defend parties in an adverse position is required because the requirement for balance in the law is founded on the fact that there is a significant difference in society. The criteria used to determine if the balance principle in corporate competition law is present are:

1. Whether a balance between the public and individual interests is established and measured;
2. Justice and legal certainty in balancing;
3. Economic growth and law enforcement must coexist in harmony.;
4. Keeping economic and social values in balance;
5. The harmony of the formal legality principle with material legality.

This structure can help better organize the process of deciding how to execute a monopoly on BUMN. BUMN was founded as a development agency focused on achieving public benefits (public utility), which sets it apart from private businesses that are exclusively profit-focused (profit motive). The policies put in place by the government must essentially be founded on the idea of economic democracy, even as it continues to provide SOEs exclusive rights over important commercial operations.

For this reason, competition law enforcement is an economic instrument for ensuring that competition is healthy, and the results can be measured by increasing community welfare. As a result of the imperfect competition market, business actors, through concerted action, can carry out monopoly as a result of a causal relationship. The business structure affects the behavior of business actors on their performance. However, because the direction of the relationship is not in line with the direction resulting in monopolistic behavior - competition law was originally better known as an anti-monopoly law that puts forward structural changes as its main condition. There are two distinct approaches to business competition law to determine the practice of unfair competition: per se illegal (per se illegal violations or per se illegal rule) or with the Rule of Reason approach. What is meant by, per se illegal is the determination of

action through simple tests (bright-line tests)? At the same time, the rule of reason is determining action using more complicated tests (multifactorized reasonableness tests) (Permadi & Sukranatha, 2015).

Alexis Jacquemin in Andi Fahmi Lubis, Anna Maria Tri Anggraini et al. stated that it requires the right characteristics in market analysis, both from the point of view of the company that operates (or wants to operate) in it, as well as from the point of view of the public authority. The main purpose of industrial economics is to provide this characterization, relying on a scheme that links the market structure with the behavior of economic actors in the market and with the performance resulting from these relationships (Lubis et al., 2009). Analysis is needed to determine certain practices that inhibit or encourage competition or if there is a tendency for both, the court will take steps that have the most beneficial (efficient) effect on the wider community (Permadi & Sukranatha, 2015).

The birth of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition was born during the reformation period, which became the reference for the economic system based on Pancasila and the 1945 Constitution. Prior to the reformation period, business actors who had access to power controlled the economy on a large scale through monopoly and oligopoly structures which, in turn, many conglomerates control their business from upstream to downstream in various sectors, and anti-competitive behavior through cartels, abuse of dominant position, mergers/takeovers, and discrimination. As a result, the performance of the national economy is quite alarming - limited choices for consumers, scarcity of supply, unaffordable prices, limited employment opportunities, slow industrial growth, weakened product competitiveness, and economic disparities in various fields of people's lives - This condition has led to the collapse Indonesia's economic building, which had been built for decades, was erased in a short time during the 1997 crisis. In the end, it prompted reforms in the economic sector as part of various fields of state and national life.

The accumulation of market power in the hands of several companies can interfere with unfair business competition. The accumulation of power is formed through a conglomeration of various types of businesses or forming a holding company under the control of a large company. Hassan Shadily in Jhon F Sipayung, Bismar Nasution, and Mahmul Siregar mentioned that holdings are formed because of the process. Holding company companies are usually formed because of the conglomeration process, which in economic terms means the process of concentration (conglomerate: Latin, means lumping) of several subsidiary companies to join the parent company (Sipayung, Nasution, & Siregar, 2013).

With the development of conglomerate business groups in Indonesia since the seventies, business control through holding companies has become a trend and business need that cannot / need not be avoided. M. Manullang in Jhon F Sipayung, Bismar Nasution, Mahmul Siregar said that a holding company is a business entity in

the form of a corporation that owns part of the shares of several business entities (Sipayung et al., 2013).

The development of BUMN Holding is not new considering that several decades ago, Indonesia was flooded with privatization and its problems. Privatization and holding are common in companies and regulated by Company Law. Companies can carry out mergers, mergers, or acquisitions, as stipulated in Law Number 106 of 2007 concerning the incorporated company.

Munir Fuady, Ningrum Natasya Sirait, Ahmad Yani, and Gunawan Widjaja In Jhon F Sipayung, Bismar Nasution, Mahmud Siregar said that the Holding Company - holding company, parent company, or controlling company - group company as an economic unit where legal entities/companies organizationally bound in such a way under one neutral leadership, which aims to own shares in one or more other companies and regulate one or more other companies. This holding can go through residual procedures, programmed or full procedures. Mostly, BUMN holdings use full procedures scattered without being concentrated in a holding company (Sipayung et al., 2013).

Holdings in BUMN, both in the industrial, financial, and other sectors, do not rule out the possibility. However, holdingization can lead to a centralization of economic power in the hands of a few people - by many parties, one of which is criticism from the DPR RI to the Ministry of SOEs. However, Erik Thohir said that establishing a holding at the Ministry of SOEs strengthens the state's alignment with state-owned enterprises, not supporting monopoly. With the proliferation of holding business units under the auspices of BUMN aimed at the efficiency of state companies, normatively, it will have an impact on unfair business competition because of the culmination of market power, which will lead to monopolistic practices (Wareza, 2021).

The Business Competition Supervisory Commission (KPPU) urges the government to clarify the monopoly provisions that are excluded or allowed for State-Owned Enterprises (BUMN), often referred to as monopolies due to regulations or assignments. KPPU Chairman Kurnia Toha said, in articles 50 and 51 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, essentially excluding SOEs from being able to exercise monopoly or control over the production of goods and services related to their needs people's lives. However, since this rule was promulgated, there has never been any further explanation regarding the technicalities of this exception (Susanto, 2020).

For this reason, KPPU makes a technical rule related to the provisions of Article 51 to facilitate understanding related to the provisions of Article 51. Therefore, the KPPU, based on prudence in acting, prepares guidelines under its duties as mandated by Article 35 letter f of Law Number 5 of 1999, Determination of KPPU's Decision (Komisi Pengawas Persaingan Usaha, 2010).

The philosophical basis for forming these guidelines is to prevent misinterpretation and create order and legal certainty regarding Article 51 of Law

Number 5 of 1999. It is necessary to have guidelines for Article 51 and comply with Article 35 letter f of Law Number 5 of 1999. The Business Competition Supervisory Commission is tasked with compiling guidelines and publications relating to Law Number 5 of 1999. Unhealthy Business.

Competition law, one part of economic law, will certainly not be separated from the discussion of Article 33 of the 1945 Constitution, which functions as a normative guide in formulating national economic policies. Sri Edy Swasono in R. Putri Rangkuti, T.N Syamsah, and Ahmad Yani said that the state regulates the course of the national economy through laws and regulations, so it is not left to the market. Paragraph 1 of Article 33 of the 1945 Constitution means that the economy is not allowed to be organized independently or formed independently based on existing economic forces or free market forces (Rangkuti et al., 2019).

In line with Article 33 of the 1945 Constitution of the Republic of Indonesia, the objectives of Law Number 5 of 1999 are as stated in Article 3 of Law Number 5 of 1999 are:

1. as part of efforts to promote people's welfare, protect the public interest and improve the effectiveness of the national economy;
2. In order to provide the certainty of equal business possibilities for major business actors, medium business actors, and small business players, develop a favorable business climate through the regulation of fair commercial competition;
3. discourage commercial players from engaging in monopolistic practices or unfair competition; and
4. making business activities more productive and efficient.

Basically, in the business world, efforts to obtain the maximum profit are a natural behavior. However, the steps to achieve these goals must remain within the corridor the applicable laws and regulations allow. This condition, of course, does not only limit the behavior of the private sector but also applies to the state if the state acts as a business actor, as in the case of BUMN. Nevertheless, of course, certain sectors are given a monopoly by law to the state because they involve the livelihood of many people (Tjokrowasito, 2009).

In this era of globalization and transparency, the monopoly held by the state must be re-examined, lest it is for the public interest that the state monopolizes a sector. However, the results only benefit certain people or certain groups. This business competition law is one of the requirements for a country to implement a market economy. Therefore, a market economy without clear rules of the game will lead to arbitrariness, where large business actors will kill small business actors who are their rivals (Tjokrowasito, 2009).

A perfect competition market is an ideal market structure in a country that adheres to a market mechanism system. In a perfectly competitive market, producers have the same capabilities as one another, so to survive or be superior to similar producers, they must be able to create innovations or breakthroughs. As a result, a

market economy characterized by competition between business actors will create efficiencies in utilizing existing resources. A business actor who cannot run his business efficiently will eventually be run over by his competitors (Tjokrowasito, 2009).

Richard Stone In Trinah Asi Islami stated that business actors who are members of an association of business actors make agreements. The agreement does not always hurt competition. The agreement can reduce business risk, create efficiency and encourage innovation, and cost efficiency in conducting joint research and developing distribution networks. However, such agreements can sometimes reduce competition by reducing innovative desire, market dominance, and seeking to limit other new competitors. With the increasing number of business players, the level of competition will be higher. So that the company will be required to perform efficiently, so that the company does not experience continuous losses, and will bring up innovations and bold business strategies in facing the competition (Islami, 2019).

Since business competition law is still new, many parties are not yet fully aware of this law's role, function, and rules. KPPU (Business Competition Supervisory Commission), an independent institution with authority to enforce business competition law, often encounters obstacles from the private sector and the government itself, as seen from regulations issued by state officials that contradict the principle of business competition. With competition law in Indonesia, it is hoped that these issues will not happen again. However, the effectiveness of this law in preventing fraudulent business practices also still needs to be studied and is still a matter of debate. For example, some people think that competition law in Indonesia in the context of trade globalization is one way for companies from developed countries to penetrate the market into developing countries. Based on the background above, the problem formulation is whether and how the practice of monopoly and demonopoly against this state-owned company includes the government's inconsistency.

2. Methodology

This research is judicial normative with a qualitative approach and literature review study. This study examined, assessed, or critically analyzed academic literature knowledge, ideas, concepts, or discoveries.

3. Result and Discussion

Holding SOEs is necessary considering the role of SOEs as a function of state responsibility for the state's goals, namely prosperity for the people through managing natural resources and the wealth contained therein. Statutory regulations precede the SOE monopoly because SOEs are created as a mandate from the constitution and ensure that all provisions must comply with the principle. However, the KPPU has judicial power, where it has the right to decide that there is no violation of the Anti-Monopoly Law and Unfair Business Competition against business actors, and the role of the judiciary as a whole is decisive. The police, as an investigative institution, play a

major role in assisting KPPU members who will investigate whether there is a violation or not.

Many regulations issued by state officials contradict business competition. However, some people think that competition law in Indonesia regarding trade globalization is one way for companies from developed countries to penetrate the market into developing countries, ensuring that this opinion is still debatable. Regardless of this view, it is hoped that the core of this holding is a strategic step, regardless of all available resources, to make BUMN a business entity that has a dual role as a development agency as well as a state agent, where BUMN is one of the sources of state budget funds. It also provides a maximum contribution to the state and can carry out professional corporate functions in business management. In addition, BUMN, as a business entity formed based on the law, has the virtue of managing all the resources controlled by the state to achieve the greatest prosperity for the people (Tanaya, 2016).

The state has 2 (two) functions, namely as a regulator when making laws and regulations and an entrepreneur when carrying out private activities, meaning that the state becomes the party with an equal position with other parties. SOEs are a public government service, not an effort to fully control the system, especially as a tool to extract wealth for the state and individuals. This statement is based on the consideration section of Law No.19 of 2003 concerning BUMN, which states that:

1. SOEs play an important role in the implementation of the national economy in order to realize the welfare of the people;
2. SOEs as implementers in the national economy to realize public welfare are not yet optimal;
3. Professionalization of SOEs to optimize the role of state-owned enterprises. The management and supervision must be carried out professionally.

Holding and privatization are not government inconsistencies in carrying out the state's economic functions, but these provisions increase SOEs in the national economy based on people. The holding is a corporate action that is not prohibited by both the Company law and the business competition law, considering that state monopoly is a legal thing that can be done by SOEs, considering that exceptions to SOEs are guaranteed by Article 51 of Law Number 5 of 1999.

P. Fernandes stated in Putu Samawa that the state grants rights to BUMN and organizations or institutions created or designated by the government when conducting a monopoly. In reality, these monopoly exceptions typically take the shape of BUMN or Perum, which are requirements in the BUMN industry frequently required to carry out a monopoly because BUMN is a business company whose capital directly gets capital participation from separated state assets. According to the Business Competition Supervisory Commission, most SOEs perceive themselves as exempt from competition legislation. These corporate actors frequently conceal themselves behind Law No. 5 of 1999's Article 51. Although monopolies are exempt

from the rule in the article, can Article 51 be used in certain situations? Five factors support the establishment of state-owned enterprises, or SOEs (Samawati, 2018):

1. Through inheritance, particularly corporate structures left over from the colonial administration in the colonized country that existed before the country gained independence.
2. The actuality of historical occurrences (historical accidents). In this instance, the state's ownership of a firm results from historical circumstances rather than a deliberate or planned public policy.
3. Via means of nationalization (by nationalization). In contrast to historical occurrences, nationalization is carried out purposely and purposefully with the idea of turning private property, particularly that located abroad, into a public property to regulate the economy.
4. In state entrepreneurship, the state assumes an investor and entrepreneur role (economic actor). In contrast to nationalization, which solely results in a transfer of ownership from private/foreign to state, the state produces new productive capital.
5. Since private businesses that are unhealthy and on the point of bankruptcy have been taken over, especially in developing nations where the government feels it must step in to safeguard employees and keep up production.

Fernandes identified the motives for establishing a company or state-owned enterprise:

1. As a nation's overall strategy. Some sectors of the economy, particularly in the national security domain, are thought to be too crucial or strategic to be given to the private sector.
2. According to the idea of a natural monopoly, the government should monopolize certain economic activities to reinvest the surplus in the country's development.
3. Common lading height, specifically by managing the financial sector and fundamental infrastructure more effectively.
4. Situations where certain company sectors are unattractive to private investors, particularly sectors with slow development, high risk, and modest earnings that call for significant investments that cannot be financed by private money

Monopoly is the state's power to guarantee the well-being of its citizens, according to the logic of the state. What must be stressed is that this monopoly must not hamper efforts to meet people's needs. The state must establish a legal entity to carry out the requirements of Article 33, paragraphs (2) and (3) of the 1945 Constitution. Both public and private legal entities may be created by the state, which is public legal entity. Private legal entities must be focused on the public interest while still being expected to benefit the state in the framework of promoting the welfare of the populace. A State-Owned Enterprise is a private legal entity that the state creates (BUMN). The state's authority to create market efficiency can be realized through its role in economic affairs. According to Didik J. Rachbini dalam Samawati (2018)said that state authority can be exercised in the following ways: 1) The state can award

monopoly rights to state-owned businesses; 2) The state can foster competition among state-owned businesses; 3) The state can enact a system of rules and laws that can foster competition; and 4) The state can control private monopolies.

The monopoly of SOEs due to holdingization is necessary to maintain the state's existence in protecting state assets, contributing to the state budget, and providing full public services. BUMN Law Number 19 of 2003, the government made a mistake in demonopolizing all BUMN through Article 73 of the BUMN Law and other Sectoral Laws amid the irreplaceable role of BUMN. Even against natural monopolies, which is theoretically justified. Teddy Anggoro said it is much easier to monitor a monopoly than a competitive market. Since the answer to the performance of BUMN is corporatization, not deregulation of the monopoly of BUMN, Article 73 letter number 1 reads: Increasing the level of commercial rivalry is a component of restructuring businesses and corporations, particularly in industries with monopolies – both natural and managed. The explanatory article states that sectoral restructuring primarily aims at sectors that have previously received protection or have natural monopolies. The sectoral restructuring is intended to create a healthy business climate, resulting in healthy competition, efficiency, and optimal service. Sector restructuring can be carried out in the following ways: separating segments within the sector to reduce sector vertical integration, increasing competition, introducing competition from substitute industries and other suppliers in the same sector, and increasing market competition. Because big countries of the caliber of the United States and China also carry out a monopoly for their BUMN business. The economic strategy of a country with a market economy system, such as the United States, under certain economic conditions, must

monopoly. It is the same with China, with a command economy system releasing its state-owned monopoly under certain conditions. So Privatization and Holding is a common corporate action and shows the direction of the state in the national economy.

4. Conclusion

Holding and privatization is a corporate action in BUMN that is regulated through laws and regulations. The selection of this policy is determined by the direction of the national political economy policy. The potential for SOEs to monopolize post-holding is natural and does not conflict with the law. It is also the state's duty as the ruler of resources, as mandated by Article 33, to improve the existence and attitude of SOE corporations and increase their contribution to the state budget. The corporate action is not a form of doubt or inconsistency in implementing a state monopoly. However, this holding is intended to increase the capacity and existence of the role of BUMN as an agent of development and agent of the state in managing resources concerning the livelihood of many people. Monopolistic practices in SOEs also occur in big countries, including the United States, as well as the privatization of China, which will release the state monopoly on the private actions of its SOEs

Holding in BUMN can increase the capacity of economies of scale to reduce costs and provide efficiency in providing goods and services. For this reason, similar state-owned companies can be combined into one holding, as has been done in the banking sector with Bank Syariah Indonesia, which combines several state-owned Islamic banks, including PT. BNI Syariah, PT. Bank Mandiri Syariah and PT. BRI Syariah and Ultra Micro combine the State-Owned Enterprises Association of Bank Negara - Himbara - PT. Bank Rakyat Indonesia (Persero), PT. Pegadaian (Persero) and also PT. Civil National Capital (Persero) and SOEs in the Electricity Industry (PLN) sector will also form an electricity holding company that can provide efficiency and effectiveness of entities and can provide maximum contribution to state financial funding.

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