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The Transformation of State-Owned Enterprise Monopolies and Healthy Market Competition in Bulding Harmonization of Business Competition Law

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ABSTRACT
The 1945 Constitution, Article 33(2), establishes the state as the controller of important branches of production for the welfare of the people, but its implementation has continued to shift in line with political regime dynamics, from the command economy model of independence to the corporatization of state-owned enterprises (SOEs) under the New Order and the post-1998 crisis reforms that emphasized healthy competition. The latest debate has emerged from Law No. 1/2025 on SOEs, which grants the President discretionary monopoly powers through Government Regulations without competition impact assessments by the Competition Commission (KPPU), while Law No. 5/1999 requires SOE monopolies to be regulated by law and supervised by the KPPU. The main issue is the normative disharmony between executive monopoly rights and independent oversight mechanisms, which creates legal uncertainty, potential inefficiency, and rent-seeking risks. This study employs a normative-analytical legal approach with literature review and analysis of primary, secondary, and tertiary legal documents, integrating the statute approach and conceptual approach to unravel the relationship between the constitutional framework, monopoly policy, and the principle of fair competition. The findings indicate that Article 86M of Law 1/2025 expands executive discretion without adequate checks and balances, while Law 5/1999 provides a strict oversight framework through the KPPU. The discussion emphasizes the urgency of regulatory harmonization through systematic revision of Article 86M, including mandatory consultation with the KPPU, a sunset clause, and a competition impact assessment, as well as strengthening the independence and advisory role of the KPPU. The implementation of Good Corporate Governance, objective criteria for "national interest," and periodic evaluation mechanisms will ensure that state-owned enterprise monopolies function in accordance with the objectives of the welfare state without undermining the competitive environment. A phased implementation model over 10 years recommends normative, institutional, operational, and democratic arrangements to achieve a balance between state intervention and sustainable market mechanisms.
***Keywords**: Competition, Harmonization, KPPU, Monopoly, SOEs.*

Introduction

Since its inception on August 18, 1945, Article 33 of the 1945 Constitution has occupied a central position in the framework of Indonesia's economic constitution. Paragraph (2) of Article 33 explicitly states that "branches of production that are important to the state and that control the livelihoods of the people shall be controlled by the state." This provision not only affirms the state's role as the dominant actor in strategic sectors but also realizes the vision of social justice for all citizens through the concept of a people-centered economy, as envisioned by the nation's founders. However, the philosophical underpinnings and practical implementation of this provision have undergone significant transformations in tandem with the shifts in political regimes and economic policy dynamics from the independence era to the post-1998 reform era (Fadli Zon, Muhammad Iskandar, & Susanto Zuhdi,2016).

The evolution of the interpretation of Article 33 of the 1945 Constitution has undergone three main phases that have determined the direction of Indonesia's economic legal policy. During the period of independence preceding the early Guided Democracy regime (1945-1965), Article 33 was interpreted as the manifestation of a "people's economy," incorporating a command economy model. In this model, the state assumed the roles of both regulator and primary business actor. With the advent of the New Order era, the Soeharto regime underwent a shift in economic policies, transitioning from a command economy to a controlled economy. This transition was marked by the promotion of state-owned enterprises (SOEs) to become modern corporations, fostering collaboration with foreign investors. However, this shift came with the simultaneous obscuring of the principles of kinship and social justice (Mubyarto,2003). In the aftermath of the 1998 reforms, the Asian financial crisis precipitated a profound shift in the economic landscape, giving rise to a clamor for reform of state-owned enterprises (SOEs) and a reversion to the tenets of Article 33. This pivotal moment underscored the paramountcy of fostering healthy competition as a conduit for ensuring the efficient and equitable functioning of the economy (Syafwendi Syafril, 2020).

The response to the 1997-1998 economic crisis resulted in a new paradigm in national economic governance through Law No. 5 of 1999 on the Prohibition of Monopoly Practices and Unhealthy Business Competition (Law 5/1999), which was enacted on March 5, 1999. The law explicitly prohibits monopolistic practices, enforces competition, and establishes the Competition Supervisory Commission (KPPU) as an independent institution with dual functions as a competition law enforcement agency and a policy advisor to the government. The enactment of Law No. 5 of 1999 signifies an endeavor to align the constitutional mandate stipulated in Article 33 of the 1945 Constitution with the imperative for robust market competition. In this regard, Article 51 provides an exemption for monopolies by state-owned enterprises (SOEs), contingent upon additional regulation by law and its alignment with the public interest (Dewi, R., Timori, H. P., S, M. K. A., Zakariya, A., Putri, A. A., Taena, M., & Ramadhanty, A. E,2024).

The intricate interplay between state-owned enterprise monopolies and business competition has become increasingly evident with the enactment of Law No. 1 of 2025 on State-Owned Enterprises on February 24, 2025. Among the most contentious provisions is Article 86M(1), which confers upon the President the discretionary authority to bestow monopoly rights upon SOEs or their subsidiaries for goods and/or services associated with the public interest and critical sectors of the national economy through Government Regulations. This provision has given rise to a series of legal and constitutional debates, as it appears to support the mandate of Article 33 of the 1945 Constitution, yet concurrently has the potential to undermine the independent oversight function that has long been the domain of the Competition Commission (KPPU) and engender legal uncertainty for businesses (Rasji & Erick Darmansyah,2024).

The nation's legal policy endeavors to strike a balance between the monopoly rights of SOEs and the principle of fair competition. However, this policy faces a fundamental dilemma between the welfare state concept, as outlined in Article 33 of the 1945 Constitution, and the spirit of market competition, which is necessary to ensure efficiency, innovation, and economic justice. In the context of the welfare state, the state is morally and constitutionally obligated to act as the primary protector and facilitator of public welfare, particularly in vital sectors such as energy, transportation, telecommunications, and public utilities. This doctrine justifies state intervention through SOEs to address market failures that have demonstrated an inability to provide public goods and services of sufficient quality and at reasonable prices in a fair manner. However, empirical evidence indicates that unchecked state monopolies frequently evolve into conduits of inefficiency, rent-seeking practices, and abuse of power,

ultimately resulting in harm to public interests they are intended to safeguard (Endyk M,2024).

The potential discord between Law No. 1 of 2025 and Law No. 5 of 1999 engenders considerable legal intricacy in the implementation of competition law. Article 86M(1) of Law 1/2025 confers upon the President extensive discretionary authority to establish monopoly rights through Government Regulations. Conversely, Law 5/1999, through Article 51, stipulates that state-owned enterprise monopolies be governed by law and subject to the oversight of the Competition Commission (KPPU) (Marshias Mereapul Ginting, Ningrum Natasya Sirait, & Windha,2013). This normative conflict gives rise to a hierarchical ambiguity in the application of the principles of lex specialis derogat legi generali and lex posterior derogat legi priori. In the context of equal standing between both laws, this ambiguity arises from the divergent approaches employed in regulating monopoly aspects. Law No. 5 of 1999 is oriented toward enforcing business competition through strict oversight by the KPPU, while Law No. 1 of 2025 is oriented toward managing SOEs and enhancing the state's role in strategic sectors by granting broad discretion to the executive branch (Rasji & Erick Darmansyah,2024).

The practical ramifications of this disharmony have begun to manifest in the implementation of state-owned enterprise monopoly policies following the enactment of Law No. 1 of 2025. The allocation of monopoly rights through government regulations in specific infrastructure sectors was executed without any preliminary assessment of the impact on business competition by the KPPU, engendering uncertainty for private businesses that have been investing in these sectors. The KPPU finds itself in a quandary, facing a choice between fulfilling its supervisory duties as outlined in Law 5/1999 and acquiescing to the constraints on its authority imposed by the executive's prerogative, a prerogative that has been further reinforced by Law 1/2025. This scenario has the potential to compromise the system of checks and balances, which is a foundational element of the rule of law and economic democracy (Aris Machmud, Djihadul Mubarok, Abdul Majid, & Nurini Aprilianda, 2022).

The KPPU's status as an autonomous institution, as stipulated by Article 30(2) of Law No. 5 of 1999, is pivotal in ensuring a balance between SOE monopolies and healthy competition. The KPPU was established to serve as a counterbalance to the potential exploitation of monopoly power by performing oversight, law enforcement, and advisory functions regarding government policies pertaining to monopolistic practices. The autonomy of the KPPU signifies more than a freedom from political influence in decision-making; it also denotes the capacity to undertake objective assessments of the repercussions of SOE monopolies on economic efficiency, distributive justice, and the safeguarding of consumer interests and other business entities. However, the enactment of Law No. 1 of 2025, which grants the President broader discretionary powers, may potentially diminish the efficacy of the KPPU's oversight function if it is not accompanied by effective coordination mechanisms and a robust system of checks and balances (Hersusetiyati, & Tatang Sudrajat, 2023)

The primary challenge in balancing SOE monopoly rights with the principle of fair competition lies in formulating objective legal criteria for determining "national interest" as the basis for granting monopolies. The notion of "national interest," as delineated in the context of Article 86M (1) of Law No. 1 of 2025, necessitates an operational definition that not only aligns with constitutional imperatives but is also economically and socially justifiable. Absent clear and measurable criteria, the term "national interest" risks becoming an elastic justification for the granting of monopolies that are disproportionate and potentially harmful to business competition and public interests. Substantive justice demands that every monopoly policy must provide tangible benefits to the broader public, not discriminate against other business actors, and be subject to periodic evaluation based on its actual impact

on social welfare and economic efficiency (Anisa Larassati, Afifa Febri, Shafa Ramadhani, Mochamad Fikri Kharazi, & Aswin Rivai,2024).

A review of international experience indicates that the success of state monopolies in achieving social welfare objectives is contingent upon the quality of governance, transparency, and institutional accountability. State-owned monopolies in critical sectors, such as electricity, oil and gas, and transportation, frequently encounter challenges related to technical efficiency and resource allocation. These challenges can adversely impact service quality and the financial obligations of the state. In the absence of effective competition and oversight, monopolistic SOEs tend to prioritize compliance over performance, demonstrate a lack of innovation, and become susceptible to corruption and rent-seeking practices (Richard Bozec, Gaétan Breton, & Louise Côté,2002). This, in turn, calls into question the fundamental rationale behind the establishment of state monopolies, which are designed to promote public welfare. Instead, the imposition of these taxes effectively places an economic burden on society, potentially hindering rather than facilitating the realization of its stated objectives.

In addressing the dilemma between SOE monopolies and healthy competition, Indonesia's legal policy must adopt an approach that integrates the principles of a welfare state with effective and transparent oversight mechanisms. The harmonization of Law No. 1 of 2025 and Law No. 5 of 1999 is imperative to avert the duplication of authorities, the resulting legal uncertainty, and the misuse of executive discretion. A system of checks and balances involving the KPPU as an autonomous regulator, public participation mechanisms, and periodic evaluations of the impact of monopolies are instrumental in ensuring that SOE monopoly rights remain congruent with constitutional objectives and do not compromise the tenets of robust business competition. This balance is not only important for legal certainty and the investment climate but also fundamental for the realization of economic democracy and social justice as mandated by Article 33 of the 1945 Constitution (Inas Sofia Latif, Ilham Aji Pangestu, & Muhammad Rizqi Fadhlillah,2023).

In light of the preceding discourse, the author hereby poses the following research question for deliberation in this paper: How does Indonesian legal policy balance the monopoly rights of SOEs (Article 86M(1) of Law No. 1 of 2025) with the principles of fair competition under Law No. 5 of 1999? The objective of this research is to analyze how Indonesian legal policy establishes a balance between granting monopoly rights to SOEs through Article 86M(1) of Law No. 1 of 2025 and enforcing the principle of fair competition as mandated by Law No. 5 of 1999 on the Prohibition of Monopoly Practices and Unhealthy Business Competition.

John Maynard Keynes, a preeminent economist of the 20th century, pioneered a novel theoretical framework that redefined the role of the state. In this framework, the state is no longer regarded as a passive guardian, but rather as an active agent responsible for ensuring macroeconomic stability through the implementation of deliberate and strategic fiscal policy and market intervention.

Keynes's economic thinking was shaped by a profound critique of the classical doctrine that markets would invariably attain a state of equilibrium. Keynes demonstrated that market mechanisms often suffer from systemic failures that can lead to mass unemployment, unstable economic fluctuations, and income distribution inequalities that are detrimental to the general welfare. Keynes underscored the state's moral and economic responsibility to proactively intervene through expansionary fiscal policies, public investment management, or the regulation of vital sectors that significantly impact the populace's lives (Eizo Kawai,2023).

The author posits that Keynesian theory on the welfare state is particularly apt for addressing the issue of SOE monopolies in this study, as it offers a robust theoretical

foundation for state intervention in strategic sectors as mandated by Article 33 of the 1945 Constitution. Keynes demonstrated that when the market fails to provide public goods and services of adequate quality and price, the state not only has the right but also the obligation to take over the management of that sector to ensure economic stability and public welfare. In the context of research examining the equilibrium between SOE monopoly rights and the principle of fair competition, Keynes's economic thinking provides the perspective that the legitimacy of a state-owned enterprise (SOE) is contingent upon its utilization for the remediation of market failures, the assurance of universal access to fundamental needs, and the mitigation of potential exploitation by private market forces that could compromise public interests (Tālis J. Putniņš,2015).

Research Methodology

This research is normative in nature because it focuses on examining, interpreting, and critiquing positive legal norms, particularly legislation, court decisions, and legal doctrines relevant to the issue of state-owned enterprise monopolies and business competition. The nature of this research is more inclined toward literature review and legal document analysis to identify the appropriate legal rules, principles, and norms in addressing the issues under examination.

The type of research used is normative-analytical legal research with a prescriptive dimension, which aims to analyze the substance of norms in the 1945 Constitution, Law No. 1 of 2025 on SOEs, Law No. 5 of 1999 on the Prohibition of Monopoly Practices, and relevant sectoral legal provisions. This normative-analytical research not only describes the legal material textually but also dissects the relationships, conflicts, and effectiveness of the implementation of each rule. The research approach applied includes the statute approach as the core method, which places laws and their implementing regulations as the central object of analysis.

This approach aims to examine and interpret written regulations, particularly the 1945 Constitution, the SOE Law, the Business Competition Law, and interrelated implementing regulations in regulating monopolies and state agency oversight. This study also applies a conceptual approach to elaborate the definitions and theoretical constructions of key concepts such as monopoly, welfare state, rule of law, substantive justice, good corporate governance, and state interests through a review of national literature and a comparison of foreign legal systems.

The research data sources are entirely legal and documentary, with primary legal materials consisting of legislation regulating the main issues of the research, including the 1945 Constitution, Law No. 1 of 2025, Law No. 5 of 1999, and implementing regulations such as Government Regulations and KPPU Regulations. Secondary legal materials include legal literature, national and international journals, dissertations, regulatory authority publications, and government strategic policy documents. Tertiary legal materials consist of legal dictionaries, legal encyclopedias, regulation indices, official government news, and authoritative digital reference sources to ensure the accuracy of terminology and the validity of references. Data collection techniques rely on library research as the primary method through searching, reviewing, and organizing relevant legal materials related to the dissertation's research question, supported by systematic identification, classification, and documentation processes aligned with the substance of the research question and the objectives of the research recommendations.

Research Results

The legal policy of Indonesia in regulating the monopoly rights of state-owned enterprises and the application of the principle of fair competition reflect the complexity of the relationship between state interests, based on the philosophy of the welfare state, and the need to maintain a conducive business competition climate. Article 86M(1) of Law No. 1 of 2025 on State-Owned Enterprises has introduced a new paradigm in the construction of national economic law by granting the President broader discretion to grant monopoly rights to SOEs or their subsidiaries. This provision stipulates that the President possesses the authority to confer monopoly rights on entities engaged in the production and/or marketing of goods and/or services that are deemed to be in the public interest. The President may exercise this authority in instances where the production sectors in question are of significant importance to the state, and where the President deems it necessary to do so for the benefit of the state or other considerations deemed essential by the President. This normative formulation marks a significant expansion of the concept of state monopoly, which was previously regulated more strictly through legislative mechanisms as mandated by Article 51 of Law No. 5 of 1999 on the Prohibition of Monopoly Practices and Unhealthy Business Competition.

The legal policy articulated in Article 86M of Law No. 1 of 2025 signifies a pronounced augmentation of the state's authority in overseeing pivotal sectors, which are regarded as essential for safeguarding national interests. This legal framework is firmly rooted in the constitutional mandate of Article 33(2) of the 1945 Constitution, which states that branches of production that are important to the state and that control the necessities of life for the people shall be controlled by the state. However, the implementation of this norm through Article 86M introduces a more flexible mechanism compared to previous regulations. In the previous regulations, the granting of monopoly rights required separate legislation. Now, the President can grant monopoly rights through a Government Regulation. This paradigm shift signifies a political determination to accelerate the process of conferring monopoly rights to SOEs, thereby circumventing the typically protracted legislative procedure. Concurrently, it confers a more expansive discretion upon the executive branch to ascertain the sectors that necessitate state control through SOEs (Suroto,2020).

From a philosophical perspective, the state's exercise of monopoly rights through Article 86M of Law 1/2025 serves as a testament to its commitment to the implementation of the concept of the welfare state. This commitment positions the state as an active agent in ensuring the welfare of the populace. This philosophical legitimacy is predicated on the understanding that in sectors affecting the livelihoods of many people, free market mechanisms often fail to guarantee fair and affordable access for all segments of society. Consequently, state intervention through SOE monopolies is regarded as a crucial instrument for ensuring the satisfaction of fundamental needs at reasonable prices and with adequate quality. However, this approach is not without its risks, including potential inefficiency, abuse of power, and barriers to innovation that often arise from market competition. The legal policy codified in Law No. 1 of 2025 aims to proactively mitigate these risks by underscoring the principles of sound corporate governance and accountability. However, external oversight mechanisms are not explicitly addressed within the legal framework (Hasbi, Rahmat Muhammad, Aryo Dwi Wibowo, Umi Farida, & Yusriadi, 2020).

Conversely, the principle of fair competition as articulated in Law 5/1999 reflects Indonesia's commitment to efficient and equitable market-based economic development. This legislative act was implemented in the aftermath of the 1997-1998 monetary crisis, with the objective of fostering a favorable business environment, curbing monopolistic practices and competitive inequity, and safeguarding the interests of consumers and small and medium-

sized enterprises. Article 3 of Law No. 5 of 1999 explicitly states that the purpose of this law is to safeguard the public interest and enhance national economic efficiency, create a conducive business climate through the regulation of healthy business competition, prevent monopolistic practices and unfair business competition, and achieve effectiveness and efficiency in business activities. These principles are operationalized through prohibitions on various forms of agreements and activities that may hinder competition. Such activities include cartels, oligopolies, price fixing, market division, and the abuse of dominant positions (Wafiya,2015).

According to Law No. 5 of 1999, a system for supervising business competition has been established. This system is centered on the Business Competition Supervisory Commission, which is an independent institution that has been tasked with the supervision of business competition, the enforcement of the law, and the provision of policy advice in this field. The KPPU is authorized to assess agreements and activities of business entities suspected of violating competition regulations. It is also authorized to conduct investigations and examinations, impose administrative sanctions, and provide recommendations and considerations to the government regarding policies that may potentially distort competition. In the context of state-owned enterprise monopolies, the KPPU fulfills a pivotal function as a regulatory entity, ensuring that the monopoly rights bestowed upon state-owned enterprises are not exploited and are in accordance with the principle of public interest. Article 51 of Law No. 5 of 1999 establishes an exception for monopolies operated by SOEs, contingent upon the condition that such monopolies are subject to legal regulation and are directed towards the public interest, and that the branches of production in question are deemed significant to the state (I Ketut Karmi Nurjaya,2009).

The harmonization between the legal policy on SOE monopolies in Law 1/2025 and the principles of fair competition in Law 5/1999 is faced with complex challenges in the form of potential normative disharmony. The fundamental difference between the two legal frameworks lies in the mechanism for granting monopoly rights. Specifically, Law No. 1 of 2025 grants the President the authority to establish monopolies through Government Regulations, while Law No. 5 of 1999 requires regulation through law. This shift prompts inquiries into the role and authority of the Competition Commission (KPPU) in overseeing monopoly policies established through the exercise of presidential discretion. According to Law 5/1999, the KPPU possesses the authority to offer counsel and suggestions regarding government policies pertaining to monopoly practices. Nevertheless, the efficacy of this function may be compromised if the process of conferring monopoly rights does not encompass sufficient consultation mechanisms with the competition oversight agency.

Theoretically, the legal policy governing the relationship between SOE monopoly rights and the principle of fair competition reflects an effort to strike a balance between two different economic approaches: the interventionist state approach, which emphasizes the active role of the state in the economy, and the market-based approach, which prioritizes market mechanisms as an efficient allocator of resources. Article 86M of Law No. 1 of 2025 signifies the inaugural approach by conferring upon the state extensive authority to regulate strategic sectors through SOEs. Conversely, Law No. 5 of 1999 more closely mirrors the second approach by underscoring the significance of free competition and limitations on monopolistic practices. The harmonization of these two approaches necessitates the implementation of a rigorous supervisory framework to prevent SOE monopolies from causing market distortions that adversely impact other businesses and consumers. In this regard, the principle of proportionality assumes paramount importance. The conferral of monopoly rights must be predicated on objective considerations regarding the necessity to

protect the public interest. The scope of such rights must not exceed what is necessary to achieve that objective (Akhsan Hadi, & Paulus Aluk Fadjar Dwi Santo,2023).

Furthermore, Indonesian legal policy demonstrates an evolution in the understanding of the role of SOEs in the national economy. During the New Order era, SOEs functioned more as a centrally controlled tool for economic development. However, the reform era witnessed a paradigm shift, in which SOEs were expected to operate professionally and competitively while continuing to fulfill their social mission. The first law of 2025 exemplifies a more pragmatic approach by conferring upon the government a degree of flexibility to establish monopoly rights based on strategic considerations. This is accompanied by an ongoing emphasis on the significance of good corporate governance and accountability. The alteration in the definition of SOEs in this legislation, which is no longer confined to majority shareholding but also encompasses special privileges held by the state, exemplifies a more expansive comprehension of how the state can utilize corporate instruments to attain its public policy objectives (Ubaidillah Nugraha,2017).

The implementation of fair competition principles in the context of state-owned enterprise monopolies faces practical dilemmas in the form of the need to balance economic efficiency with social objectives. On the one hand, competition is necessary to encourage innovation, efficiency, and responsiveness to consumer needs. Conversely, in sectors such as basic infrastructure, public utilities, or strategic industries, uncontrolled competition can result in inefficient investment duplication or pose a threat to national security. Indonesian legal policy endeavors to address this dilemma through a selective approach, whereby SOE monopolies are only permitted in sectors that truly require state control, while other sectors are opened to competition. However, implementing this approach necessitates the establishment of clear and objective criteria to determine which sectors can be monopolized by SOEs and which sectors must be opened to competition (Ari Siswanto,2020).

From a law enforcement perspective, the harmonization of SOE monopoly rights and the principle of fair competition necessitates close coordination between various relevant institutions, including the Ministry of SOEs, the KPPU, and relevant sectoral ministries. The KPPU, as the institution responsible for enforcing business competition law, requires adequate access to information regarding the performance of monopolistic SOEs and their impact on market competition. The establishment of transparent and regular reporting mechanisms from SOEs to the KPPU is imperative. Furthermore, the KPPU must be granted the authority to evaluate the effectiveness of monopolies in achieving public interest objectives. Moreover, a periodic review mechanism for monopoly policies is imperative to ensure that the monopoly rights granted remain pertinent to market conditions and public needs (Rafi Oktario Mahdi Alkari, & Dwi Desi Yayi Tarinam, 2024).

The legal policy governing the relationship between SOE monopolies and fair competition must also take into account international dimensions, particularly Indonesia's commitments to various international and regional trade agreements. In the context of economic globalization, state-owned enterprises (SOEs) have the potential to give rise to trade distortion issues that have the potential to violate the principles of free and fair trade. Consequently, national legal policies must be aligned with Indonesia's international obligations while preserving sovereignty in the management of sectors deemed strategic. This necessitates a nuanced approach in formulating SOE monopoly policies that can satisfy domestic requirements without contravening international obligations.

In the future, it is imperative that Indonesia's legal policy regarding SOE monopoly rights and the principles of fair competition continue to evolve in order to address the novel challenges posed by the digital economy and the shifting global industrial structure. The advent of digital technology has precipitated a paradigm shift in the characteristics of

numerous industries, giving rise to novel forms of monopoly or market dominance that were not foreseen within the confines of the prevailing legal framework. In order to address these challenges, future legal policy must develop more adaptive and responsive instruments to these changes while maintaining the fundamental principles of protecting the public interest and maintaining a healthy competitive environment. This necessitates sustained discourse among a range of stakeholders, encompassing the government, business entities, academic institutions, and civil society, to ensure that the evolution of national economic legislation remains congruent with the aspirations and necessities of the Indonesian populace (Ria Setyawati, Stefan Koos, & Zalfa A.F. Jatmiko,2024).

Discussion

The legal policy of Indonesia in balancing the monopoly rights of state-owned enterprises (BUMN), as stipulated in Article 86M paragraph (1) of Law No. 1 of 2025, with the principle of fair competition in Law No. 5 of 1999, reflects a profound philosophical struggle that can be critically understood through the lens of John Maynard Keynes' Welfare State Theory. In his seminal work "The General Theory of Employment, Interest and Money" (1936), Keynes advanced a theoretical foundation for state intervention in the economy. This theoretical framework has since been widely cited and has provided a relevant philosophical basis for understanding the complexity of Indonesia's legal policy in managing the tension between state monopoly and free market competition. The Keynesian approach to the welfare state acknowledges that, while markets are often efficient in many respects, they exhibit structural failures that necessitate correction through measured and strategic state intervention (Team Investopedia,2025).

In the context of Indonesia, legal politics aimed at balancing the monopoly rights of state-owned enterprises with healthy competition can be understood as a manifestation of what Keynes termed the "monetary theory of production." This theory posits that money and state policy play a central role in determining the direction of production and distribution within an economy. Keynes's economic theory diverges from the conventional view of the economy as an automatic exchange mechanism. Instead, he posits that it is a complex system in which expectations, trust, and state intervention interact to shape the final outcome. In this particular instance, the provision of monopoly rights to SOEs through Article 86M paragraph (1) of Law 1/2025 constitutes more than a mere regulatory policy; it is, in essence, a legal political instrument that mirrors the Keynesian perspective on the state's role in actively managing market dynamics to achieve full employment and ensure sustainable economic stability (John Maynard Keynes,1936).

Keynes' theory of effective demand is pivotal in elucidating the political rationality of Indonesia in allocating monopoly space to SOEs in strategic sectors. Keynes demonstrated that the level of output and employment in the economy is not solely determined by production capacity; it is also influenced by current decisions regarding production, which, in turn, are contingent on current decisions to invest and expectations of future consumption. In this context, SOE monopolies in the energy, transportation, and basic infrastructure sectors can be understood as the state's effort to ensure that investment in vital sectors is not hindered by market uncertainty or by the rational expectations of private businesses that may view these sectors as commercially unprofitable yet critically important for national economic stability. Indonesian legal policy, as articulated in Law No. 1 of 2025, formally adopts the Keynesian principle that the state is obligated to ensure sufficient investment in sectors that significantly impact the livelihoods of the population. This commitment, however, is subject to the caveat of constraining market competition in the short term.

Nevertheless, Keynes was also very wary of the risks of excessive and unmeasured state intervention. Within the framework of the welfare state, Keynes emphasized that state intervention must be counter-cyclical and responsive to actual economic conditions, rather than becoming a permanent feature that ignores market dynamics. The Indonesian government faces a significant political and legal challenge in ensuring that the exclusive rights granted to SOEs through presidential discretion do not become a rent-seeking mechanism that hinders economic efficiency and innovation. In this particular context, Keynes's position aligns with the notion of a state monopoly that is conditional and subject to review. This implies that the state would only maintain monopoly rights to the extent that they are deemed essential for rectifying market failures and achieving public objectives. It is imperative for Indonesian legal policy to incorporate provisions for the revocation of monopoly rights upon the realization of welfare state objectives or when the market demonstrates effective and equitable provision of goods and services. This policy integration would be instrumental in aligning Indonesia's legal framework with contemporary economic principles and best practices (Alvaro Del Regil,2021).

The principle of proportionality in Keynesian theory assumes particular relevance when analyzing the harmonization of Law No. 5/1999 on fair business competition with Law No. 1/2025 on state-owned enterprises. Keynes's economic perspective diverged from the zero-sum game paradigm. He regarded state intervention and market mechanisms as complementary mechanisms that must be balanced based on concrete economic conditions. In the context of Indonesia, the KPPU, as the business competition supervisory agency, should not be regarded as antagonistic to SOE monopoly policies. Rather, it should be regarded as an institutional mechanism that ensures that such monopolies function in accordance with Keynesian welfare state principles, including the promotion of employment, price stabilization, and universal access to vital goods and services. It is imperative for Indonesian legal policy to establish a framework that empowers the KPPU to undertake ex-ante assessments of all grants of monopoly rights to SOEs. These evaluations should be guided by evaluation criteria rooted in Keynesian principles, encompassing the impact on aggregate demand, employment generation, and public welfare enhancement (Johan Graafland, & Harmen Verbruggen,2022).

Keynes' theory of liquidity preference and multiplier effect offers significant insights into the rationale behind Indonesian legal policy, which confers upon the president the authority to grant monopoly rights to state-owned enterprises. Keynes demonstrated that in times of economic uncertainty, businesses often prioritize liquidity over investment, a phenomenon that can result in unemployment and economic stagnation. In such circumstances, SOE monopolies can serve as a crucial instrument of last resort, ensuring the continuity of investment and production in critical sectors even when the private sector is incapacitated by uncertainty. Article 86M, paragraph (1) of Law 1/2025, which confers discretion upon the President, can be interpreted as an adaptive mechanism that enables the state to respond expeditiously to market failures or economic shocks without being encumbered by complex bureaucratic procedures. However, in accordance with Keynesian principles, this discretion must be accompanied by transparent criteria and democratic accountability to ensure that monopoly decisions are truly based on economic rationality and public interest, rather than on political expediency or vested interests (Sarwat Jahan,2014).

It is imperative for Indonesian legal policy to acknowledge that within Keynesian economic theory, the concepts of public goods and natural monopoly possess a more profound philosophical underpinning than mere economic efficiency. Keynes's analysis identified certain goods and services that, due to their characteristics, are not well-suited for market provision in its purest form. These goods and services are deemed unsuitable not only

due to technical factors such as economies of scale or network effects, but also due to social and moral considerations. In the Indonesian context, sectors such as clean water, basic energy, and mass transportation are not only important economically, but also constitute a manifestation of social citizenship that must be guaranteed by the state as part of its social contract with the people. Legal policies that grant monopoly rights to SOEs in these sectors essentially acknowledge that there are goods and services that are too important to be left to market forces alone. The failure to provide them would have devastating effects on social cohesion and the political legitimacy of the state (Wisnu Setiadi Nugrohom,2018).

One of Keynes' most significant contributions to the understanding of Indonesian legal politics is his concept of the "socialization of investment." Keynes contended that in a modern economy, the state is obligated to ensure that the level of aggregate investment reaches the level necessary for full employment and growth. This obligation extends even to direct involvement in investment and production activities by the state. In the Indonesian context, state-owned enterprises (SOEs) that are granted monopoly rights can be conceptualized as vehicles for socialized investment that enable the state to engage in long-term planning and counter-cyclical investment that would be impossible for the private sector, which is focused on short-term profit maximization. It is imperative for Indonesian legal policy to develop a framework that enables monopolistic SOEs to function as a stabilizing force in the national economy, while maintaining high standards of accountability and efficiency.

Furthermore, Keynes's theory offers a critical perspective on the relationship between monopoly and innovation. Contrary to the neoliberal perspective that posits the notion of a monopolistic environment as a hindrance to innovation, Keynes's analysis demonstrates that, under specific circumstances, monopolies or concentrated market power can serve as catalysts for innovation. This is due to the fact that monopolies provide firms with the necessary resources and incentives to undertake high-risk, long-term investments in research and development (R&D). In the context of Indonesian SOEs, the monopoly rights granted to companies such as PLN or Pertamina should not be viewed as a license to be complacent. Rather, they should be regarded as an opportunity and responsibility to become innovation leaders in their respective sectors. It is imperative for Indonesian legal policy to incorporate innovation requirements and technology transfer obligations as conditionalities for the conferral of monopoly rights to SOEs, thereby ensuring that these monopolies serve as effective catalysts for technological progress and economic development.

The democratic dimension of Keynes' welfare state theory is also highly relevant for understanding how Indonesian legal policy should balance the monopoly rights of state-owned enterprises with the principle of fair competition. Keynes's economic philosophy was predicated on the notion that state intervention in the economy must be grounded in a democratic mandate and subject to democratic control. In the context of Indonesia, the allocation of monopoly rights to SOEs through Article 86M paragraph (1) of Law 1/2025 must be accompanied by effective mechanisms for public participation, parliamentary oversight, and judicial review. In this particular instance, the KPPU is expected to fulfill a dual role, functioning not only as a technical regulatory body but also as a democratic institution. The KPPU's mandate is to ensure that monopoly policies are genuinely responsive to public needs and accountable to the broader community. It is imperative for Indonesian legal policy to evolve institutional frameworks that empower civil society, academic communities, and other relevant stakeholders to engage in the evaluation and review of the performance of monopolistic SOEs (Pongthep Suntigul,2023).

Keynes's theory of international economics offers significant insights into the manner in which Indonesian legal policy, in its management of SOE monopolies, must take into account the global dimension. Keynes recognized that in an open economy, domestic policy

cannot be separated from international dynamics. Consequently, countries must be able to protect their national interests while participating in the global economic system. In the context of Indonesia, the possession of SOE monopoly rights in strategic sectors can be conceptualized as a mechanism of economic sovereignty. This instrument enables the state to exercise control over pivotal sectors while concurrently maintaining openness to foreign investment and international collaboration in other sectors. It is imperative for Indonesian legal policy to cultivate a nuanced approach to navigating the discord between domestic policy autonomy and international economic integration. The strategic utilization of SOE monopolies can serve as a pivotal instrument to fortify Indonesia's bargaining position within global value chains.

Therefore, Indonesia's legal policy, which aims to balance SOE monopoly rights with the principle of fair competition, can be understood as a reflection of sophisticated efforts to integrate market mechanisms with state intervention within a democratic, accountable, and responsive framework that addresses public needs. This interpretation is supported by the principles of Keynesian welfare state theory. The challenge lies in ensuring that this integration does not devolve into an incoherent amalgamation of policies. Instead, it should be formulated into a coherent strategy that aims to achieve full employment, price stability, and shared prosperity within the context of Indonesia's intricate and ever-evolving economy (Linda Fatmawati, Angga Rosidin, & Zakaria Habib Al-Ra'zie,2025).

Harmonization of State-Owned Enterprise Monopolies with the Principles of Fair Competition

The process of regulatory harmonization is initiated by the necessity to redesign the legal infrastructure through a systematic revision of Article 86M of Law No. 1 of 2025. This article bestows the President with extensive discretion in granting monopoly rights to state-owned enterprises. This revision must include the addition of a mandatory consultation clause with the Competition Commission (KPPU) prior to the issuance of monopoly regulations, the establishment of a sunset clause mechanism with periodic evaluations every 3-5 years, and the limitation of monopoly scope to sectors that have been proven to fail to be adequately served by private market mechanisms. The alignment between Law No. 5 of 1999 and Synergy is reinforced by several provisions. Primarily, the obligation to assess the competition impact of every monopoly regulation is reinforced, as is the requirement to disclose the reasons for granting a monopoly along with the anticipated benefits. Additionally, a straightforward judicial review mechanism is to be made available for businesses and civil society (Putu Samawati Saleh,2019).

The second pillar of this harmonization framework is the restructuring of the role and independence of the KPPU. This is consistent with the principle of checks and balances in a democratic legal system. The KPPU's advisory authority has expanded to encompass several key obligations. Primarily, the KPPU is now obligated to provide written recommendations for every monopoly plan. Additionally, the KPPU possesses the right to conduct ongoing monitoring of the performance of monopolistic SOEs. Finally, the KPPU has been granted the authority to issue binding opinions that must be given serious consideration by the government. The shift in accountability from the president to the House of Representatives has been identified as a key factor in enhancing institutional independence. This transition is believed to contribute to the mitigation of direct political pressure, the fortification of budget protection measures, and the establishment of an effective internal whistleblower protection mechanism.

The establishment of objective and quantifiable "national interests" as legal criteria is of paramount importance in the implementation of substantive justice. Substantive criteria include the Market Failure Test, which stipulates that monopolies are only permissible if the private market is unable to provide services that meet acceptable quality and price standards. Additionally, a Public Interest Assessment is necessary to evaluate the impact on public access, particularly among economically vulnerable groups. Finally, an Efficiency Benchmark must be established, setting performance targets for monopolistic SOEs that can be compared with international standards. Procedural criteria mandate public consultation for a minimum of 30 days prior to the issuance of a Government Regulation, the involvement of academics, business associations, and civil society organizations (CSOs) in the evaluation process, and full transparency of the financial reports and operational performance of monopolistic SOEs (Amanda Salsabila Kusumawardana, & Rani Apriani,2025).

An effective system of checks and balances is established through a multi-level oversight mechanism. This mechanism includes ex-ante control with mandatory involvement of the KPPU in the monopoly policy planning stage, concurrent monitoring through periodic audits by the BPK with a focus on efficiency and accountability, and ex-post evaluation in the form of a comprehensive review every three years with the possibility of revoking monopoly rights if the criteria are not met. Democratic accountability is reinforced by annual reports by monopolistic SOEs to the House of Representatives (DPR) with public hearings, the DPR's right to interpellate on monopoly performance that harms competition, and class action mechanisms for affected communities (Fitri Novia Heriani,2021).

The implementation of Good Corporate Governance constitutes the operational foundation, with a governance structure that includes a Board of Commissioners with a majority of independent commissioners, the establishment of an Audit Committee and a Risk Committee with external members, and a performance-based remuneration system with clear and measurable KPIs. The entity's commitment to transparency and accountability is manifested through the publication of annual sustainability reports, the periodic execution of forensic audits to prevent corruption and abuse of authority, and the implementation of a reliable and protected whistleblowing system (Muh Rizal S, & Henni Zainal,2023).

The implementation model is designed in three phases. Phase I (Years 1-2) focuses on regulatory harmonization through the drafting of derivative regulations of Law 1/2025 involving the KPPU, the establishment of an inter-ministerial coordination team, and pilot projects in 2-3 strategic sectors (Sofia Roselin, & Moody Rizqy Syailendra Putra,2025). Phase II (Years 3-5) focuses on institutional strengthening through a comprehensive evaluation of existing state-owned enterprise monopolies, restructuring the KPPU organization, and implementing an integrated monitoring system (Rory Jeff Akyuwen,2017). Phase III (Years 6–10) is the evaluation and refinement stage, during which a comprehensive review of policy effectiveness is conducted, adjustments are made based on digital economic developments, and international benchmarking is utilized for continuous improvement (OECD,2016).

Conclusion

Indonesia's legal policy faces substantial challenges in balancing the monopoly rights of state-owned enterprises (SOEs) as stipulated in Article 86M(1) of Law No. 1 of 2025 with the principle of fair competition mandated by Law No. 5 of 1999. Research findings indicate that the reformulation of Article 86M grants broader executive flexibility in issuing monopoly rights through Government Regulations without prior competition impact assessments by the Competition Commission (KPPU), thereby creating legal uncertainty and the potential for a shift in the independent oversight function. On the other hand, the welfare state paradigm

inspired by Keynesian theory emphasizes the necessity of state intervention in strategic sectors to ensure public access to basic services; however, excessive discretion may lead to inefficiency, rent-seeking practices, and deviations from social objectives. Research demonstrates that without objective legal criteria and adequate checks and balances, SOE monopoly rights risk exceeding the objective of correcting market failures and instead creating distortions in competition.

The discussion underscores the urgency of regulatory harmonization through a systematic revision of Article 86M, including the addition of mandatory consultation and review by the Competition Commission (KPPU) prior to the issuance of monopoly regulations, the implementation of a sunset clause with periodic evaluations, and the limitation of monopoly scope to sectors that genuinely experience market failure. Synergy with the Competition Law is intensified through the obligation to conduct competition impact assessments and publish the reasons for monopoly policies, ensuring that principles of transparency and accountability are implemented. Institutional strengthening of the KPPU, through expanding its advisory and monitoring roles, as well as enhancing budgetary independence and merit-based recruitment, is a prerequisite for effectively carrying out its oversight functions. Furthermore, the establishment of measurable criteria for "national interest"—including a Market Failure Test, Public Interest Assessment, and Efficiency Benchmark—provides an objective basis for justifying the granting of monopoly rights while facilitating ex-post evaluation.

The research recommendations propose aligning the governance of monopolistic SOEs with the principles of Good Corporate Governance, including the composition of an independent board of commissioners, a performance-based remuneration system, and transparency in sustainability reporting, so that monopolies can function as instruments of social investment and drivers of innovation. A phased implementation model over a 1–10 year period outlines phases of regulatory harmonization, institutional strengthening, and evaluation and continuous improvement that accommodate the dynamics of the digital economy and international integration. By integrating normative, institutional, operational, and democratic dimensions into a single legal-political framework, this study asserts that SOE monopoly rights and healthy competition are not mutually exclusive paradigms but complementary mechanisms that must be balanced proportionally. The success of this harmonization depends on high political commitment, public participation mechanisms, and synergistic institutional oversight, ensuring that economic democracy and social justice, as mandated by the 1945 Constitution, can be realized without sacrificing efficiency, innovation, and legal certainty.

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