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State-Owned Enterprises Restructuring and Its Challenges in Business Competition from the Perspective of Antitrust and Competition Law in Indonesia

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ABSTRACT

The restructuring of SOEs can lead to potential market dominance, raising concerns about monopolistic practices and unfair business competition. This is especially relevant in industries such as energy, banking, and telecommunications, where SOEs often occupy a significant share of the market. If restructuring leads to excessive market control by SOEs, it may restrict private enterprises' ability to compete, violating the principles of fair competition as outlined in Law Number 5 of 1999. Article 51 of this law, which allows SOEs to hold monopolies in certain sectors, further complicates the regulatory landscape, creating challenges in balancing efficiency with maintaining competition. This research adopts a normative legal approach, analyzing relevant laws, regulations, and case studies of SOEs involved in restructuring. The study aims to evaluate how the restructuring aligns with competition law, particularly Law Number 5 of 1999, and assess whether the legal framework adequately addresses potential anti-competitive practices. The findings reveal that while SOEs restructuring enhances operational efficiency, it also risks undermining market competition, necessitating careful regulatory oversight to prevent monopolistic behavior. The paper concludes with recommendations for improving legal instruments to ensure that SOEs restructuring supports fair business practices while achieving national economic goals.

Keywords: SOEs restructuring; monopolistic practices; and business competition.

INTRODUCTION

Indonesia, as a large country, must strive to accelerate its economic development. One of the steps is to realize strategic plans in the economic sector. In this case, various national strategic projects as part of the strategic plan in the economic sector designed by the government also require the participation of State-Owned Enterprises (SOEs) to carry out various projects that have a broad impact on society.[1] Basically, the Ministry of State-Owned Enterprises (SOEs), as a state institution, plays a pivotal role in managing and supervising SOEs in Indonesia. This role is crucial considering that SOEs are the backbone of the national economy, contributing significantly to state revenues, providing employment, and providing goods and services needed by the community.[2] One of the important initiatives undertaken by the Ministry of SOEs is the restructuring of SOEs, which aims to minimize the problems faced by these state companies

[1]Sumiyati, Y. (2013). "Peranan BUMN dalam Pelaksanaan Tanggung Jawab Sosial Perusahaan untuk Meningkatkan Kesejahteraan Rakyat." *Jurnal Hukum Ius Quia Iustum, 20*(3).

[2]Samawati, P. (2020). "Konsep Ekonomi Kerakyatan Pada Pilihan Kebijakan Monopoli Atau Demonopolisasi BUMN Indonesia". *Lex Liberum : Jurnal Ilmu Hukum*, 7(1).

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and support the achievement of national strategic goals.[3] Consolidating SOEs into a holding or sub-holding structure can significantly enhance operational efficiency, effectiveness, and bolster competitiveness on both domestic and global markets.[4] In order to improve performance and added value, the Ministry of SOEs continues to streamline and improve the portfolio of the number of SOEs through corporate restructuring both in the context of holding formation, mergers, acquisitions, etc.[5] Internal and external forces are driving the restructuring of SOEs. Internally, the pursuit of improved corporate governance frequently encounters obstacles in SOEs management. Restructuring began in 2020 and aims to make the number of SOEs more efficient over the next five years, reducing the total to fewer than 70. These enterprises will be grouped according to their value chains and business ecosystems to enhance sustainability. Data indicates that various SOEs in Indonesia have undertaken restructuring through mergers, yielding varying results.

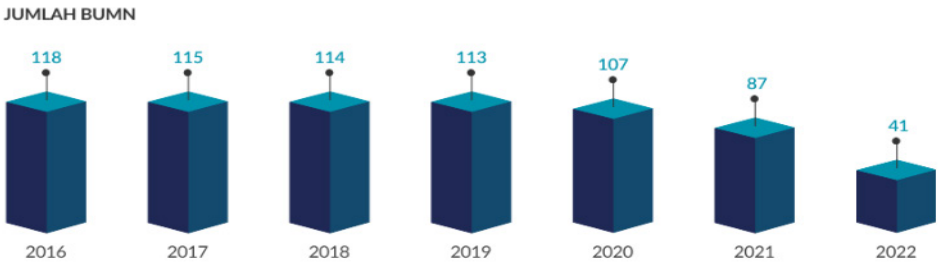

Figure 1.1 Refocusing of SOEs through Restructuring from 2016-2022

As of 2016, Indonesia boasted a diverse landscape of 118 SOEs operating across various sectors nationwide.[6] In alignment with the Ministry of SOEs' strategic refocusing of SOEs, a series of mergers commenced in 2017, culminating in the formation of holding companies as a pivotal corporate restructuring mechanism.[7] By 2022, the number of SOEs, which initially stood at 118, was reduced to 41, organized into 12 clusters based on their business categories.

One of the primary reasons for this restructuring was to minimize inefficiencies and enhance the competitiveness of SOEs. Inefficiencies in SOEs often arise from complex bureaucracy, a lack of coordination among business units, and a high dependence on government subsidies.[8] Inefficiencies in SOEs frequently stem from complex bureaucracy, insufficient coordination among business units, and a strong reliance on government subsidies.

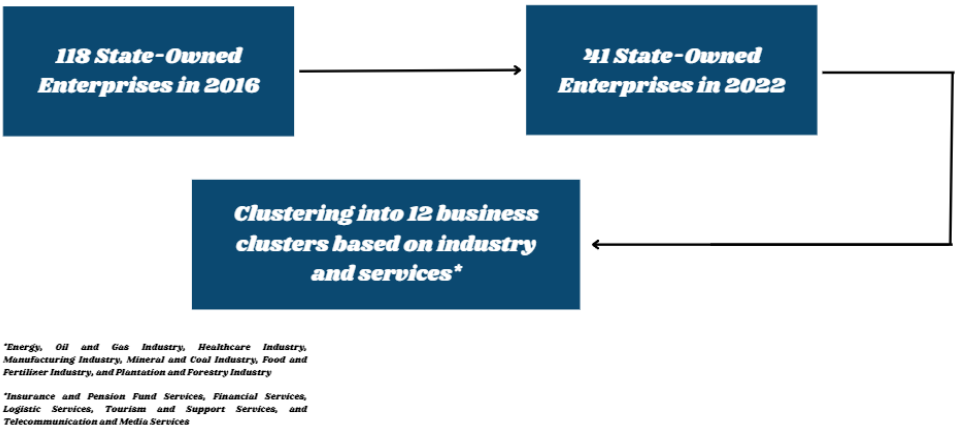

Figure 1.2 Restructuring and Business Cluster Formation of SOEs

However, SOEs restructuring through mergers, acquisitions, or the formation of holdings, in addition to offering potential benefits in terms of operational efficiency and increased competitiveness, may also pose potential risks related to business competition.[9] Consolidating multiple SOEs into a larger entity can potentially lead to market dominance, raising concerns about monopolistic practices and unfair business competition. Such market control by increasingly large SOEs could hinder the ability of other businesses, particularly private enterprises, to compete effectively in the relevant market.[10] To ensure market fairness and prevent anti-competitive practices, strict oversight of potential market dominance is essential, particularly in adherence to the provisions of Law Number 5 of 1999. The Ministry of SOEs and regulatory bodies like the Business Competition Supervisory Commission must carefully weigh the benefits of restructuring-driven efficiency against the imperative of preserving fair market competition.[11] Failure to manage these potential risks can disrupt market mechanisms, which would be contrary to the principles of an open and fair economy. Additionally, from the perspective of Good Corporate Governance (GCG), restructuring must be carried out with full transparency and accountability, ensuring that the process not only complies with existing legal regulations but also prevents any abuse of market power that could harm other businesses.[12] The government and other stakeholders must ensure that this restructuring is not solely focused on short-term business gains but also takes into account the long-term impact on the competitive business climate in Indonesia.

METHOD

This research uses a normative legal approach, focusing on literature review and secondary data to analyze legislation, legal doctrines, and relevant theories related to the impact of SOEs restructuring on compliance and business competition from the perspective of competition law. This study seeks to analyze the legal framework in Indonesia by reviewing regulations governing SOEs restructuring, principles of business competition, and prohibitions on monopolistic practices, with a primary focus on Law Number 5 of 1999. The research focuses on the impact of SOEs restructuring on business competition, using case studies of SOEs involved in mergers and acquisitions to assess the alignment of these processes with the principles of fair competition. Data sources include primary data from legislation and court rulings, as well as secondary data such as books, journals, and relevant documents. Data collection techniques involve literature review, including steps of identification, inventory, note-taking, and citation of legal materials. Data analysis is conducted using descriptive analytical techniques, simplifying the data into a format that is easy to read and interpret. The analysis results are presented in a research report to draw conclusions on the issues discussed.

ANALYSIS AND DISCUSSION

Regulation and Oversight in SOEs Restructuring in Indonesia to Ensure Adherence to Fair

[9]Rangga, Wiesma Mara. (2022). "Pembentukan Holding Company Badan Usaha Milik Negara (BUMN) di Sektor Infrastruktur Ditinjau dalam Persaingan Usaha Tidak Sehat". *Dharmasisya Jurnal Program Magister Hukum FHUI*, 2(39).

[10]Abrianti, S., Anggraini, A. M. T., Sabirin, A., & Fernandez, S. O. (2024). "The Rule of Reason Approach in Discriminatory Practices: Airlines and Telecommunications Industry Sector". *Jurnal Dinamika Hukum*, 24(2).

[11]Fadhilah, M. (2019). "Penegakan Hukum Persaingan Usaha Tidak Sehat oleh Komisi Pengawas Persaingan Usaha (KPPU) dalam Kerangka Ekstrateritorial". *Jurnal Wawasan Yuridika*, 3(1).

[12]Samawati, P. (2018). *Monopoli BUMN dalam Perspektif Hukum Persaingan Usaha*. Malang: Tunggal Mandiri.

Competition Principles Under Business Competition Law

In the world of business, restructuring is a common practice aimed at optimizing enterprises to improve their internal conditions. Restructuring comes in various types and forms, including mergers, consolidations, acquisitions, company spin-offs, and the formation of holding companies.[13] The restructuring of SOEs is intended to enhance the performance and competitiveness of state-owned companies, which often face structural and managerial challenges. One of the most commonly applied methods in this restructuring process is the formation of a holding company, where SOEs with similar business lines are merged into a single parent company.[14] This approach aims to increase operational efficiency and reduce redundancies in business activities. Any restructuring initiative must be grounded in a legal framework to ensure its legitimacy; however, it is possible for corporate actions arising from such restructuring to result in potential unfair competition in the marketplace.[15] Indonesia's restructuring of SOEs is guided by a legal framework including the Limited Liability Companies Law and the SOEs Law. The SOEs Law's Article 72, paragraph 1, defines the goals of restructuring:

(1) "Restructuring is carried out with the aim of revitalizing SOEs so that they can operate efficiently, transparently, and professionally."

Based on this provision, it indirectly implies that SOEs undergoing restructuring have a low level of financial health and are at risk of incurring losses. Article 72, paragraph 2 of the SOEs Law reinforces this objective, explicitly stating that restructuring aims to enhance company performance and value. In general, the restructuring carried out by the Ministry of SOEs its strategic plan is divided into four categories: mergers, consolidations, acquisitions, and the formation of holding companies.[16] The legal basis for these corporate actions is regulated under Law Number 40 of 2007.

Table 2.1 Forms of Restructuring in Law Number 40 of 2007 and Their Explanations

Types of Restructuring	Articles and Explanations
Merger	**Article 1, Paragraph 9:** *"A merger constitutes a legal act undertaken by one or more corporations to consolidate with an existing entity, leading to the statutory transfer of assets and liabilities from the merging firms to the entity that receives the merger. Consequently, the legal identity of the merging firms is dissolved under the law."*

[13]Adler Haymans. (2021). *Restrukturisasi Perusahaan: Merger, Akuisisi, dan Konsolidasi*, Jakarta: PT Adler Press.

[14]Sela Sulaksmi Widyatamaka, Assyura Zumarnis, Nyulistiowati Suryanti, & Deviana Yuanitasari. (2023). "Analisis Hukum terkait Restrukturisasi BUMN melalui Konsolidasi Pembentukan Bank Syariah Indonesia: Aspek Regulasi dan Pengawasan". *Eksekusi : Jurnal Ilmu Hukum Dan Administrasi Negara*, *2*(1), 122–139. https://doi.org/10.55606/eksekusi.v2i1.839

[15]Mohan Rifqo. (2020). *Hukum Merger, Konsolidasi, dan Akuisisi Pada Industri Telekomunikasi*. Sleman: Deepublish.

[16]Puspitarini, A., & Prijadi, R. (2023). "Corporate restructuring of an energy company in Indonesia: Does it have an impact?". *Eduvest - Journal of Universal Studies*, *3*(7), 1273-1288.

Consolidation	**Article 1, Paragraph 10:** *"A consolidation is a legal act carried out by two or more companies to consolidate by establishing a new company, which by law acquires the assets and liabilities of the consolidating companies. The legal status of the consolidating companies is terminated by law."*
Acquisition	**Article 1, Paragraph 11:** *"An acquisition is a legal act performed by a legal entity or individual to take over shares of a company, resulting in a transfer of control over that company."*

Based on the definitions in those articles, all three corporate actions significantly impact the sustainability of the respective companies. However, within the framework of the Limited Liability Company Law itself, there is currently no definition or provision regarding the formation of holding companies.

The establishment of a holding company, specifically for SOEs, presents distinct differences compared to the three corporate actions previously mentioned. This is primarily due to a fundamental change in the management of SOEs through the holding structure, which involves a shift in the legal framework applicable to the member companies of the holding.[17] This change occurs as the status of the member companies shifts from SOEs to non-SOEs. SOEs, functioning as Limited Liability Companies (PT), are required to follow the stipulations outlined in the SOEs Law. It is essential to adhere to the Limited Liability Companies Law, the Capital Market Law, and related regulations governing state finances, especially considering that state capital is represented by shares in these enterprises, constituting a portion of public funds.[18] Upon transitioning from a SOEs to a non-SOEs, the member companies of the holding will be exclusively subject to the provisions of the Limited Liability Companies Law, as outlined in the Government Regulation governing the establishment of each SOEs holding.[19] The establishment of the SOEs holding company, is a cornerstone initiative of the Ministry of SOEs, aligned with the strategic blueprints for 2015-2019 and 2020-2024. This initiative is anchored in the constitutional mandate outlined in Article 33, paragraph (2) of the 1945 Constitution, which stipulates that the state shall exercise control over industries deemed essential to national interests and the well-being of the populace. Based on the content of this article, the state has the authority to control the production sectors that significantly affect the needs of the public.[20] The formation of the SOEs holding company is crucial for optimizing the role of SOEs as development agents, supporting government programs through synergy among SOEs, enhancing downstream activities and the use of local products, developing integrated regional economies, and creating financial independence.[21]

In the context of optimizing the role of SOEs, the Ministry of SOEs has refined its strategic plan by consolidating approximately 118 business entities into 41 entities organized across 12 cluster, based on their respective industrial and service sectors. Given the scale of this strategic plan, various risks and potential challenges may arise in the future. Therefore, the legal instruments underlying the changes and restructuring of SOEs (SOEs) in Indonesia play a

[17]Nanda Ayu Cahyanti, Rahma Dwi Pangastuti, & Sumriyah. (2023). "Pertanggungjawaban Holding Company Terhadap Anak Perusahaan". *Jurnal Hukum Dan Sosial Politik*, *1*(2), 68–77. https://doi.org/10.59581/jhsp-widyakarya.v1i2.243

[18]Hariru, L. O., Tolo, S. B., & Niasa, L. (2022). "Kedudukan Hukum Badan Usaha Milik Negara (Persero) sebagai Perusahaan Berbadan Hukum". *Arus Jurnal Sosial dan Humaniora*, 2(3).

[19]Dewi, R. A. K. (2019). "Akibat Transformasi Saham Pada Holdingisasi BUMN Migas Terhadap Pengendalian PT PGN Tbk". *Jurist-Diction*, *2*(4), 1425–1440. https://doi.org/10.20473/jd.v2i4.14501

[20]Article 51, Law Number 5 Of 1999 On Prohibition of Monopolistic Practices and Unfair Business Competition.

[21]Rusli, R., Basri, Y. Z., & Arafah, W. (2020). "Role of CEO Leadership towards the Performance of Indonesian SOEs". *International Review of Management and Marketing*, 10(2), 96–106. https://www.econjournals.net.tr/index.php/irmm/article/view/9215

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crucial role in this restructuring process to support improvements in efficiency, competitiveness, and more professional governance.[22]

Table 2.2 Clustering of SOEs in the Strategic Plan of the Ministry of SOEs

Business Cluster	SOEs
Energy, Oil and Gas Industry	PT PLN (Persero) PT Pertamina (Persero)
Healthcare Industry	PT Bio Farma (Persero)
Manufacturing Industry	PT Biro Klasifikasi Indonesia (Persero) PT Len Industri (Persero)
Mineral and Coal Industry	PT Mineral Industri Indonesia (Persero)
Food and Fertilizer Industry	PT Pupuk Indonesia (Persero) Perum Bulog PT Rajawali Nusantara Indonesia (Persero)
Plantation and Forestry Industry	PT Perkebunan Nusantara III (Persero) Perum Perhutani
Insurance and Pension Fund Services	PT Bahana Pembinaan Usaha Indonesia (Persero) PT Reasuransi Indonesia Utama (Persero) PT Taspen (Persero)
Financial Services	PT Bank Tabungan Negara (Persero) Tbk, PT Bank Negara Indonesia (Persero) Tbk, PT Bank Rakyat Indonesia (Persero) Tbk, and PT Bank Mandiri (Persero) Tbk
Logistic Services	PT Industri Kereta Api (Persero) PT Pos Indonesia (Persero) Tbk PT Pelayaran Nasional Indonesia (Persero) Tbk Perum Damri PT Pelabuhan Indonesia (Persero) PT ASDP Indonesia Ferry (Persero) PT Kereta Api Indonesia (Persero)
Tourism and Support Services	PT Aviasi Pariwisata Indonesia (Persero) PT Garuda Indonesia (Persero) Tbk Perum AirNav

[22]Siswanto, A., & Hutajulu, M. J. (2019). "SOEs in Indonesia's Competition Law and Practice". *Yustisia*, 8(1), 93-108.

Telecommunication and Media Services	Perum Jasa Tirta II
	PT Telekomunikasi Indonesia (Persero)
	PT Produksi Film Negara(Persero)
	Perum Percetakan Uang Republik Indonesia
	Perum Lembaga Kantor Berita Nasional Antara
	PT Danareksa (Persero)

In several sectors, SOEs (SOEs) already hold a dominant role, such as in the energy, banking, and telecommunications sectors. If several large companies within these sectors are consolidated into a single holding entity, the market power of that holding could become extremely significant, thereby hindering competition from other market players, including private enterprises.[23] This poses a potential violation of the competition principles regulated under Law Number 5 of 1999, which aims to prevent the occurrence of monopolistic practices and unhealthy dominance in the market. The application of Law Number 5 of 1999 in the restructuring of SOEs is not only related to efforts to enhance the efficiency and competitiveness of state-owned companies but also to the importance of maintaining healthy business competition.[24] The balance between improving the performance of SOEs and protecting competition and consumer interests should be a primary focus in the implementation of this restructuring. In this regard, Law Number 5 of 1999 serves as an important guideline to ensure that company restructuring is carried out fairly, without hindering competition or creating excessive market dominance. The articles in this law explicitly prohibit various forms of agreements and actions that may lead to monopolies or unhealthy competition, such as excessive market control, price fixing, vertical integration, and restricting market access for other business players.[25] In the context of company restructuring, such as that undertaken by PT Perkebunan Nusantara III (Persero), the potential for violations of Law Number 5 of 1999 may arise, particularly in the forms of mergers, the establishment of holdings, or acquisitions that could violate the provisions set forth in this law. The law outlines several violations that may potentially emerge as a result of restructuring within a company, as detailed in the table below.

Table 2.4 Violations in Law Number 5 of 1999 in Company Restructuring

No.	Articles	Type of Violation	Relevance
1.	Article 4	Oligopoly	In restructuring, such as mergers or acquisitions, potential violations occur if the merged or acquired company achieves more than 75% market share, which could lead to price control or distribution of goods/services.
2.	Article 12	Trust	The establishment of a holding or the merger of companies to control production or marketing may lead to a trust that results in market dominance, causing monopolies and unhealthy competition.

[23]Andhini S.P, C. M. (2019). "Problematika Hukum Pada Peer To Peer Lending di Indonesia Dalam Perspektif Hukum Persaingan Usaha". *Jurist-Diction*, *2*(6). https://doi.org/10.20473/jd.v2i6.15941

[24]Hakim, D. A. (2016). "Pengecualian Perjanjian Hak Kekayaan Intelektual Dalam Hukum Persaingan Usaha". *Fiat Justisia: Jurnal Ilmu Hukum*, *9*(4).

[25]Amalya, A. R. (2020). "Prinsip Ekstrateritorial Dalam Penegakan Hukum Persaingan Usaha". *JIME: Jurnal Ilmiah Mandala Education*, 6(1). https://doi.org/10.36312/jime.v6i1.1125

3.	Article 13	Oligopsony	If restructuring leads to control over purchasing or supply by the merged or acquired entity exceeding 75% market share, that company could be considered to engage in oligopsony, which can control prices from suppliers of goods/services.
4.	Article 14	Vertical Integration	If restructuring results in a company controlling the entire production chain of goods/services (vertical integration), the potential for unhealthy competition arises, especially if the company controls the process from upstream to downstream, thereby hindering competitors.
5.	Article 17	Monopoly	Mergers, the establishment of holding companies, or acquisitions that lead to dominance in the production or marketing of goods or services with no alternatives, or that hinder the entry of other businesses into the market, may be classified as monopolistic practices
6.	Article 18	Monopsony	If, in the restructuring process, a company becomes the sole buyer in a market, this may lead to monopsonistic practices, which can also hinder competitors in providing goods or services.
7.	Article 19	Market Dominance	If a merger or acquisition is conducted with the intent to obstruct other businesses from entering the market or reducing competition, this can be considered an attempt to dominate the market, which violates the provisions of the law.
8.	Article 25	Dominant Position	After restructuring, a company may hold a dominant position. If the company uses this position to impose trading conditions that hinder competitors or prevent innovation, this could violate the provisions against the abuse of dominant positions.

The regulation and supervision of State-Owned Enterprises (SOEs) during their restructuring are crucial in upholding compliance with the principles of equitable competition, as outlined in Law No. 5 of 1999.[26] Restructuring activities, such as mergers, acquisitions, or consolidations, can significantly impact market dynamics and competition in key industries. The legal framework governing SOE restructuring addresses multiple dimensions, including the prohibition of monopolistic behavior and cartels as enshrined in Law No. 5 of 1999. This law forbids practices that could create market dominance by a single entity or a group of entities,

[26]Machmud, A., Mubarok, D., Madjid, A., & Aprilianda, N. (2022). "Monopoly Analysis of a Limited Liability of State-owned Enterprises (SOEs)". *Jurnal Penegakan Hukum dan Keadilan*, 3(2), 152-168. https://doi.org/10.18196/jphk.v3i2.15825

which could harm other businesses and consumers alike. In the context of restructuring, if the merger of SOEs results in a majority market share dominance, it could be deemed a violation of the competition principles established by the law.[27] One of the regulations governing the obligation to report restructuring to KPPU is Article 7 of KPPU Regulation Number 3 of 2019. This article explicitly states that business actors intending to engage in mergers, acquisitions, or share takeovers are required to notify KPPU. This obligation is intended to allow KPPU to evaluate the impact of the restructuring on business competition. Article 7 also stipulates a deadline for KPPU to respond to the submitted reports, ensuring that business actors can proceed with the restructuring process with legal certainty.[28] KPPU, as the supervisory body, plays a central role in ensuring that existing regulations are enforced effectively. KPPU's oversight in SOEs restructuring encompasses several critical aspects. First, KPPU is tasked with conducting an economic impact analysis of the restructuring. This analysis includes an assessment of market structure, competitive dynamics, and potential effects on consumers. By doing so, KPPU can determine whether the restructuring measures may lead to unhealthy market dominance or hinder competition. Second, before proceeding with restructuring, SOEs are required to submit a plan to KPPU. This process is essential to give KPPU the opportunity to review and ensure that the steps taken will not create harmful market dominance. Furthermore, KPPU actively provides recommendations to SOEs on actions that can be taken to maintain fair competition.[29] In this regard, KPPU acts not only as a regulator but also as a facilitator, assisting SOEs in operating within a compliant legal framework.

On the other hand, challenges persists in the implementation of regulation and supervision. One of the primary challenges is the complexity of the market structures involved in SOEs restructuring. Sectors frequently involved, such as energy, telecommunications, and transportation, have unique characteristics and are often significantly affected by structural changes.[30] Analyzing the impact on existing market structures requires a deep understanding and accurate data, necessitating a high level of analytical capacity from KPPU. In addition, effective coordination between the KPPU and other government agencies, such as ministries related to the SOE sectors, is essential. Raising awareness among business actors about the importance of complying with Law No. 5 of 1999 is also a crucial factor in the implementation of oversight.[31] Thus, the regulation and oversight conducted by KPPU in SOEs restructuring are essential to ensure compliance with the principles of fair business competition. Through effective oversight, strict law enforcement, and ongoing education, KPPU can help create a competitive environment that is fair and healthy for all business actors. Moreover, proactive oversight by KPPU can ensure that SOEs restructuring is carried out in a manner that supports sustainable economic growth in Indonesia, while providing benefits to consumers and society as a whole.[32] In this way, regulation and oversight in SOEs restructuring not only serve as tools for legal compliance but also contribute to enhancing the efficiency and global competitiveness of SOEs.

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[27]Sugianto, E., & Putra, M. (2023). "Tinjauan Yuridis Upaya Hukum terhadap Praktik Monopoli yang Timbul setelah Dilakukannya Restrukturisasi Perusahaan". *Kertha Negara : Journal Ilmu Hukum, 11*(4),

[28]Fadhali, M., & Yusuf. (2022). 'Reformulasi Sistem Post-Merger Notification untuk Menghindari Rechtsvacuum Pembatalan Merger oleh KPPU". *Jurnal Persaingan Usaha*, 2(2)

[29]Kholis, N., Kurniawan, A. S., Setyani, W., & Arisandi, A. D. (2024). "Urgensi Penegakan Hukum dan Penguatan Peran Pengawasan KPPU di Era Industri Digital". Cendekia Niaga: Journal of Trade Development and Studies, 8(1).

[30]Kusuma Jati, S. A. (2024). "Dinamika Hukum dalam Pengembangan Energi Baru Terbarukan di Indonesia: Tinjauan Terhadap Aspek Regulasi dan Implementasinya dalam Pembangunan Infrastruktur Energi Berkelanjutan". Jurnal Legal Reasoning, 6(2).

[31]Fauzi, A. (2021). "Pengawasan Praktek Monopoli sebagai Bentuk Persaingan Usaha Tidak Sehat". *De Lega Lata: Jurnal Ilmu Hukum*, 6(2).

[32]Luthfia, & Hadi, H. (2021). "Analisis Pengaturan Merger, Akuisisi, dan Konsolidasi Perseroan Terbatas dalam Ketentuan Undang-Undang No.5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat". *Private Law, 9*(2).

The Potential for Violations of Competition Principles in Law No. 5 of 1999 in the Restructuring of State-Owned Enterprises (SOEs)

Essentially, competition in the economic sector will continue, especially in industries that have large markets and significantly impact the needs of the wider community. Law Number 5 of 1999 concerning the restrictions on monopolistic behavior and unfair competition is intended to maintain fair market conditions and encourage healthy competition among businesses, aiming to create healthy business competition and prevent harmful market dominance that disadvantages consumers.[33] In the context of the restructuring of SOEs (SOEs), Law Number 5 of 1999 has significant implications, particularly regarding the regulation of monopolies, mergers, acquisitions, and collaboration among companies. SOEs often hold a dominant position in several strategic sectors, so their restructuring policies must consider the potential conflicts with the provisions established in this law.

The existence of Law Number 5 of 1999 serves not only as a reference to avoid monopolies and unhealthy business competition but also as a foundation that mandates all business entities engaged in economic activities in Indonesia to comply with the provisions and regulations contained within it.[34] Concerning SOEs (SOEs), Article 51 of Law Number 5 of 1999 stipulates that monopolies or the concentration of similar activities in the production and/or marketing of goods and/or services that significantly influence the basic needs of the populace are to be managed and regulated by the state via SOEs.[35] This underscores the critical role of the state, through SOEs, as a key facilitator of the national economy. The restructuring process undertaken by the Ministry of SOEs aims to enhance efficiency and avoid potential losses experienced by companies due to being below the company's health index.[36] The steps outlined in the strategic plan must align with the principles of fair competition. Each SOEs undergoing restructuring will be fortified by a robust legal foundation established through a Government Regulation, providing the necessary legal authority for these transformative initiatives. One such restructuring endeavor undertaken by the Ministry involves the creation of a Plantation Holding, as outlined in Government Regulation Number 72 of 2014. This regulation mandates an increase in state capital participation in PT Perkebunan Nusantara III (Persero), facilitating a merger, acquisition, and consolidation process involving PT Perkebunan Nusantara I (Persero) through PT Perkebunan Nusantara XIV (Persero). Upon completion of this process, the (Persero) designation will be removed from these entities, elevating PT Perkebunan Nusantara III (Persero) to the status of a holding company overseeing thirteen enterprises.

Table 2.3 Transformation in Companies Pre-Restructuring and Post-Restructuring

Pre-Restructuring	Post-Restructuring
PTPN III (Persero)	PTPN III (Persero) (Holding)

[33]Tarmizi, T. (2022). "Analisis Hukum Persaingan Usaha Di Indonesia Dalam Undang-Undang Nomor 5 Tahun 1999". *Shar-E : Jurnal Kajian Ekonomi Hukum Syariah*, *8*(1). https://doi.org/10.37567/shar-e.v8i1.986

[34]Arliman S, L. (2019). "Penegakan Hukum Bisnis Ditinjau Dari Undang-Undang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat". *Lex Jurnalica*, 16(3).

[35]Disyon, H., Gultom, E., & Rahmawati, E. (2023). "The Establishment of State-Owned-Holding-Company: A State's Controlling Rights Perspective Based on Radbruch's Theory". *Law Review*, 23(1). http://dx.doi.org/10.19166/lr.v23i1.6995

[36]Wibowo, F. A., Satria, A., Lumban Gaol, S., & Indrawan, D. (2024). "Financial Risk, Debt, and Efficiency in Indonesia's Construction Industry: A Comparative Study of SOEs and Private Companies". *Journal of Risk and Financial Management*, 17(7).

PTPN II (Persero) PTPN VII (Persero) PTPN X (Persero) PTPN XI (Persero) PTPN XIV (Persero)	PT Sinergi Gula Nusantara (SugarCo)
PTPN V (Persero) PTPN VI (Perero) PTPN XIII (Persero)	PTPN IV (PalmCo)
PTPN VIII (Persero) PTPN IX (Persero) PTPN X (Persero) PTPN XI (Persero) PTPN XII (Persero) PTPN XIV (Persero)	PTPN I (SuppCo)

Through this legal instrument, the Ministry of SOEs (BUMN) seeks to improve the structure and operations of SOEs in order to achieve better and sustainable performance across various industrial sectors. This legal instrument also serves as the foundation for carrying out restructuring, with the aim of ensuring that SOEs are not only profit-generating entities but also contribute to national economic growth without overly relying on the state budget.[37] Although the restructuring efforts of SOEs aim to enhance efficiency and competitiveness, there will always be gaps and potential legal violations that may arise.[38] One significant potential legal issue is that this restructuring could lead to violations of competition principles. If not properly regulated, the restructuring involving large SOEs, such as the formation of a holding company that consolidates several SOEs within one sector, could narrow the space for private companies to compete fairly, thereby creating market dominance that undermines competition.[39]In a corporate restructuring situation, such as the one undertaken by PT Perkebunan Nusantara III (Persero), there is a potential for violations of Law Number 5 of 1999, particularly in the form of mergers, the creation of holding companies, or acquisitions that may breach the provisions outlined in the law.[40] A large-scale corporate restructuring like that of PT Perkebunan Nusantara III (Persero) could have a significant impact on market dynamics, especially when it involves massive consolidation of other entities within strategic sectors. In the case of PTPN III, the merger of several PTPNs under a new sub-holding has the potential to create substantial changes in market competition, distribution, and pricing in the plantation sector, particularly in the palm oil and sugar industries. This restructuring could lead to violations of Law Number 5

[37]Hendrawan, S. (2019). "Ekonomi Politik Restrukturisasi BUMN". *Jurnal Ilmu Administrasi: Media Pengembangan Ilmu dan Praktek Administrasi*, 2(1).

[38]Kartiadi, P., Kusbianto, K., & Sahputra, R. (2023). "The Concept of Legal Regulation of SOEs Restructuring Through A Holding Mechanism". *International Asia of Law and Money Laundering (IAML)*, 2(3). https://doi.org/10.59712/iaml.v2i3.68

[39]Kim, K. (2018). "Matchmaking: Establishment of State-Owned Holding Companies in Indonesia". *Asia & the Pacific Policy Studies*, 5(2). https://crawford.anu.edu.au/publication/apps/12606/matchmaking-establishment-state-owned-holding-companies-indonesia

[40]Adhimastha, B., Kagramanto, B., & Prasetyowati, E. (2023). "Urgence of Regulations for the Acquisition of Limited Company Share in Indonesia." *Journal of World Science*, 2(5).

of 1999 which seeks to ensure equitable competition and avert detrimental market monopolies. Below are some potential violations that may arise at PT Perkebunan Nusantara III (Persero) following the restructuring.

Table 2.5 Potential Violations at PT Perkebunan Nusantara III Based on Law Number 5 of 1999

No.	Article	Potential Violation	Analysis
1.	Article 4	Oligopoly	PTPN IV and PTPN I, arising from the restructuring of PTPN III, have the potential to exert significant control over the palm oil and sugar markets in Indonesia. Although they are not the only players, their dominance over a large portion of plantation land and vast production capacity could lead to the formation of an oligopoly. In such a situation, PTPN, along with a few other major players, could collaborate to set prices or limit supply, ultimately harming consumers and smaller competitors.
2.	Article 13	Oligopsony	As one of the largest companies in the plantation industry, PTPN III, through its sub-holding, particularly PTPN IV, has the potential to control more than 75% of raw material purchases from small farmers, especially in the palm oil sector. With this dominant position, PTPN III could press down the prices that farmers or other suppliers receive. This could violate Article 13 if PTPN is found to be using this position to set unfair prices for suppliers.
3.	Article 17	Monopoly	In 2022 PTPN's annual report, it was stated that PTPN IV aims to increase CPO production from 460,000 tons per year to 1.8 million tons per year by 2026, a significant rise. If this target is achieved, PTPN IV could monopolize the palm oil market in Indonesia, given its dominance over vast plantation lands. This poses a risk of violating Article 17 of Law Number 5 of 1999, which prohibits actions that hinder or prevent other business actors from entering the market or competing fairly.
4.	Article 18	Monopsony	PTPN III, through its sub-holding PTPN IV, could become the sole major buyer for many palm oil and sugarcane farmers, managing over 600,000 hectares of palm oil plantations. If this sub-holding dominates the purchase of production from small palm oil or sugarcane farmers, it may use this position to set unfavorable prices for suppliers. Such a monopsony could squeeze the profit margins of small farmers and reduce their bargaining power, ultimately stifling competition in the sector.

5.	Article 19	Market Control	PTPN's 2023 annual report mentioned that PTPN IV, formed from the merger of PTPN V, VI, and XIII, is projected to become the largest palm oil company in the world, with over 600,000 hectares of land. With this control, PTPN IV holds a dominant position in the palm oil market, one of Indonesia's key commodities. This could hinder small companies or new competitors from entering the market, as PTPN IV may use its economies of scale to dictate prices and control product distribution. Such market control could violate Article 19 if it is proven that PTPN IV is using its market power to stifle competition or limit innovation from competitors.
6.	Article 25	Dominant Position	The annual report shows that PTPN IV aims to become the largest player in the palm oil industry worldwide. If this company uses its dominant position to set unfair trading terms for competitors, or to prevent innovation and the entry of new competitors, it could violate the provisions concerning the abuse of dominant position. PTPN III may set trade standards or contracts that disadvantage small suppliers or buyers, restricting competitors' ability to compete effectively in the market.

The extensive corporate restructuring initiated by PT Perkebunan Nusantara III (PTPN III), encompassing the consolidation of PTPN entities from I to XIV, raises significant concerns regarding potential non-compliance with the provisions of Indonesia's Law Number 5 of 1999. Given the vast operational scale of PTPN III, it is crucial to assess the potential breaches across various relevant categories. Several potential violations with varying levels of risk have been identified. First, **market control (Article 19)** poses **a very high risk of violation**. With the establishment of sub-holdings like PTPN IV, which controls over 600,000 hectares of palm oil plantations, the company may dominate the palm oil market in Indonesia. Such dominance allows PTPN IV to control distribution and pricing, ultimately making it difficult for new entrants to compete and hindering healthy competition. Second, the potential for **monopoly (Article 17)** is also **high**, particularly because PTPN IV is projected to become the largest player in crude palm oil (CPO) production, with a target output of 1.8 million tons by 2026. This dominance could prevent fair competition in the palm oil market, leading to full control over production and distribution, thus violating monopoly provisions.

Third, the risk of **monopsony (Article 18)** is classified as **moderate**. Although PTPN III, through its sub-holdings, has the potential to become the main buyer in the palm oil and sugar markets in certain regions, its dominance as the sole buyer is not yet absolute. However, there is a risk that small farmers and suppliers will lose bargaining power and be forced to sell their products at lower prices, reducing healthy competition. On the other hand, the potential for **oligopoly (Article 4)** is also **high**. The merger of PTPN I and PTPN IV creates a few large players in the palm oil and sugar markets who may collude to control prices and distribution. By controlling a large portion of production, they could set prices that disadvantage consumers and smaller competitors, which constitutes a form of oligopoly violation. The risk of **oligopsony (Article 13)** is **moderate**. With PTPN IV dominating as one of the largest buyers of palm oil raw materials, there is a possibility that the company will dictate the prices received by smaller

suppliers. However, the potential for oligopsony is lower compared to oligopoly, as there are still other players in the market.

Finally, the potential for abuse of **dominant position (Article 25)** is **very high**. With the aim of becoming Indonesia's largest palm oil player, PTPN IV may use its dominant position to impose unfair trading terms, harming smaller competitors and suppliers. If PTPN IV exploits its dominance to suppress competition and stifle innovation, this could be classified as abuse of dominant position. Overall, the highest potential violations are found in the categories of market control, monopoly, oligopoly, and abuse of dominant position, considering the vast operational scale and market power held by PTPN III following the restructuring. Thus, in the context of large-scale corporate restructuring, such as the one undertaken by PT Perkebunan Nusantara III (Persero), it is critical to strike a balance between improving efficiency and ensuring healthy market competition. The stipulations articulated in Law Number 5 of 1999 are formulated not merely to oversee monopolistic practices but also to uphold the comprehensive interests of consumers and the economy in its entirety.[41] As PTPN III consolidates its entities, careful attention must be paid to the potential risks of market dominance and the disruption of fair competition. By adhering to the principles laid out in this law, Indonesia can foster an environment where both SOEs and private companies can thrive, ensuring that economic growth benefits all stakeholders.

CONCLUSION

The restructuring of State-Owned Enterprises (SOEs) in Indonesia, while aimed at enhancing efficiency and competitiveness, must be meticulously regulated and supervised to prevent monopolistic practices or unfair market dominance. The Indonesia Competition Commission (KPPU) plays a critical role in ensuring that these processes adhere to the principles of fair competition as mandated by Law No. 5 of 1999. KPPU's function extends beyond mere oversight—it serves as both a regulatory body and a facilitator, ensuring that any restructuring efforts do not disrupt market balance. However, the complexity of market structures and the strategic sectors involved, such as energy, telecommunications, and particularly agriculture—evident in the restructuring of PT Perkebunan Nusantara III (PTPN III)—pose significant challenges. In the PTPN III case, the consolidation of numerous plantation companies under a single holding company has the potential to significantly alter market dynamics. The risks of market control, monopoly, and oligopoly are high, particularly in the palm oil and sugar sectors, where PTPN III may dominate both production and distribution. Without sufficient oversight, this could lead to violations of Law No. 5 of 1999, by restricting competition, marginalizing smaller players, and creating excessive market dominance. KPPU's role becomes even more crucial in mitigating these risks. Its ability to conduct thorough market analyses, evaluate competitive impacts, and provide regulatory recommendations is essential to preventing monopolistic practices within such large-scale restructurings. To address the high potential for monopoly in the PTPN III case, KPPU should strengthen its oversight mechanisms by implementing more rigorous competitive impact assessments for large SOEs undergoing restructuring. Additionally, KPPU could play a more proactive role by reviewing restructuring plans in advance and collaborating with other regulatory bodies to monitor market shifts post-restructuring. To further bolster its effectiveness, KPPU's regulatory framework should include clearer guidelines for identifying and addressing monopoly risks in high-concentration sectors like agriculture. Enhancing KPPU's authority to impose preventive measures or require

[41]Idris, Z., & Apriani, D. (2019). "Tinjauan Terhadap Hukum Persaingan Usaha Indonesia dari Perspektif Hukum Perlindungan Konsumen". *Jurnal Panorama Hukum*, 4(1).

structural adjustments before monopolistic conditions emerge would be vital in ensuring that SOEs restructurings, such as that of PTPN III, do not hinder fair competition. By embedding these stronger safeguards, KPPU can ensure that restructuring efforts promote sustainable economic growth while preserving a competitive and equitable market landscape for all stakeholders.

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