

Reassessing Article 51 of the Indonesian Competition Law Through the KPPU Decision No. 13/KPPU-I/2014

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Abstract

This study analyses the principle of legal certainty in direct appointment practices conducted by State-Owned Enterprises (BUMN) within the framework of Indonesian business competition law, using the KPPU Decision No. 13/KPPU-I/2014 involving PT Angkasa Pura I and PT ExecuJet Indonesia as a case study. The research examines the tension between the monopoly exemption granted to BUMN under Article 51 of Law No. 5 of 1999 and its obligation to uphold fair competition in the procurement process. A normative juridical method was employed, combining statutory and case study approaches, with secondary data analysed qualitatively. The findings reveal that although Article 51 allows BUMN to operate monopolies in sectors related to essential services, the direct appointment of PT ExecuJet Indonesia by PT Angkasa Pura I constituted conduct inconsistent with the principles of fair competition. The transaction failed to satisfy transparency and accountability requirements, thereby creating legal uncertainty in the procurement mechanism. This study concludes that the current regulatory framework does not sufficiently prevent anti-competitive behaviour by BUMN when exercising monopoly privileges. Therefore, a reformulation of procurement policies is required to align BUMN practices with the principles of legal certainty, transparency, and fair business competition. The study contributes to the development of competition law discourse by highlighting the regulatory gaps in the intersection between monopoly exemptions and procurement governance.

Keywords: *Business Competition; Direct Appointment; State-Owned Enterprises.*

1. INTRODUCTION

The intensifying competition among businesses poses significant challenges for market participants, who must continuously adapt to dynamic economic structures. Every business actor must be able to survive amid dynamic economic structural changes. Business competition refers to activities conducted by one or more entities that compete to attract customers by offering goods or services perceived as the most beneficial.¹ However, in practice, such competition often leads to deviations from the legal norms that should form the basis for conducting business competition. Essentially, fair competition must fulfil the elements of freedom for consumers to choose goods providers, as well as freedom for providers to choose their customers, creating a market that allows business actors to operate freely. In addition, the market must also be easily accessible to new entrants.² The existence of State-Owned Enterprises (BUMN) in Indonesia represents their role as guarantors of public welfare. BUMN must provide benefits to the community by supplying high-quality goods and/or services in sufficient quantities to meet the needs

¹ Ferdinand Freivan and Nauli Napitupulu, "Persaingan Usaha Kafe Di Kota Medan Ditinjau Dari Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat," 2022.

² Ovilia S Fadhillah, "Upaya Mencegah Pelanggaran Praktik Monopoli Yang Dilakukan Oleh PT. Angkasa Pura," Lex Renaissance, 2020, <https://doi.org/10.20885/JLR.vol5.iss1.art8>.

of many people.³ BUMN plays a role as entities that have a social responsibility to support the welfare of the people, not only as profit-oriented entities as mandated in Article 33 of the 1945 Constitution of the Republic of Indonesia (UUD 1945).

As business entities executing state mandates, state-owned enterprises are wholly or partly owned by the state, with their assets separated from state finances.⁴ Law 1/2025 distinguishes BUMN into Persero and Perum.⁵ With differences in orientation and capital structure as stipulated in Article 1 paragraphs 3 and 5.⁶ A Persero is a company in which the state holds all or at least 51% of shares, with profit-making as its primary objective.⁷ In contrast, a Perum is entirely state-owned and operates primarily to provide public service.⁸ The government may also privatize Persero entities by reducing state ownership, thereby transforming them into private legal entities. This classification reflects a clear separation between state assets and corporate ownership.⁹

State-owned enterprises have a dual character as business entities under the auspices of the state, pursuing profits while also acting as an extension of the state in the provision of public services. This dual structure creates a dilemma in the application of business competition, especially when BUMN use their authority to make direct appointments to obtain specific partners or vendors in the procurement of goods and services. In some cases, these direct appointments often result in market monopolies, under the protection of state-owned enterprises. This raises the question of whether BUMN are legally permitted to engage in monopolistic practices.

The issue that arises is whether such actions are still in line with the principle of legal certainty and fair competition as stipulated in Law 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition. Article 51 of Law 5/1999 regulates the granting of exceptions to state-owned enterprises to engage in monopolies, namely only certain production sectors that are considered important to the state or that control the needs of the community, in accordance with the provisions contained in Article 33, paragraph 2 of the 1945 Constitution.¹⁰ However, its implementation in

³ Ismail Koto, "Peran Badan Usaha Milik Negara Dalam Penyelenggaraan Perekonomian Nasional Guna Mewujudkan Kesejahteraan Masyarakat," Seminar Nasional Teknologi Edukasi Sosial Dan Humaniora, (2021).

⁴ Iza Sadzili and Elisatris Gutom, "Status Badan Usaha Milik Negara Terhadap Anak Perusahaan Holding Bumn," *Eksekusi: Jurnal Ilmu Hukum Dan Administrasi Negara* 2, no. 1 (2024): 227–39, <https://doi.org/10.55606/EKSEKUSI.V2I1.874>.

⁵ Meidy Yanto Sandi, Muhammad Hadin Muhjad, and Akhmad Syaafi, "Kekayaan Negara Yang Dipisahkan Dalam Badan Usaha Milik Negara (BUMN) Dalam Bentuk Persero," *Notary Law Journal* 2, no. 3 (2023): 181–202.

⁶ Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 1 Tahun 2025 Tentang Perubahan Ketiga Atas Undang-Undang Nomor 19 Tahun 2003 Tentang Badan Usaha Milik Negara," JDIIH BPK Database Peraturan, 2025, <https://peraturan.bpk.go.id/Details/314622/uu-no-1-tahun-2025>.

⁷ Rizal Choirul Romadhan, "Kedudukan Hukum Badan Usaha Milik Negara Sebagai Anak Perusahaan Dalam Perusahaan Holding Induk," *Media Iuris* 4, no. 1 (February 11, 2021): 73–90, <https://doi.org/10.20473/MI.V4I1.23669>.

⁸ Ibid, Pasal 1 angka 5.

⁹ Op.Cit., Halaman 183.

¹⁰ Ferdinand Freivan Nauli Napitupulu, "Persaingan Usaha Coffee Shop Di Kota Medan Ditinjau Dari Undang-Undang No 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat," November 14, (2022), <https://repository.uhn.ac.id/handle/123456789/7623>.

Indonesia as a guideline for national economic movement has not been entirely successful, as evidenced by the fact that monopolistic practices are still commonplace without regard to the requirements stipulated by the law.¹¹ Although it is an exception, it is not justifiable for state-owned enterprises, especially limited liability state-owned enterprises, to engage in monopolistic practices, such as raising service rates and preventing other business competitors from operating in the same industry. Given that limited liability state-owned enterprises only have 51% government shares, it is questionable whether these companies can also be exempted from the regulations.¹²

In 2014, the Business Competition Supervisory Commission (KPPU) issued a ruling regarding violations of Article 17 of Law 5/1999 on monopolies involving PT Angkasa Pura I and PT Execujet Indonesia, related to the ground handling service project. In this case, it was proven that both companies had acted in violation of the provisions of Article 17. In its ruling, the Commission ordered the termination of the privileges granted to PT Execujet Indonesia in the form of exclusive rights obtained by PT Angkasa Pura I to operate and provide special services at the Public Aviation Terminal intended for public aircraft and/or their passengers. By directly appointing PT Execujet, the state-owned enterprise had acted beyond its authority by granting monopoly powers to another party and engaging in monopolistic practices that disrupted the business climate in the airport services sector.

The case in KPPU Decision No. 13/KPPU-I/2014 (Decision 13/KPPU-I/2014) has proven the validity of actions that violate Article 17, but in the report, there is Article 14, which has not been proven by KPPU. Article 14 is a provision that regulates the prohibition of agreements between business actors that may hinder other business actors from carrying out similar businesses. After analysis, the Commission Council determined that there were elements that did not comply with Article 14, which is based on the cumulative principle, and the entire content of the article could not be proven because one of the elements was not fulfilled. This case demonstrates legal uncertainty in the practice of direct appointment by state-owned enterprises, as the mechanism implemented is not in line with the principles of fair competition as stipulated in legal norms. This study examines the fulfilment of the elements of Article 14 that were not proven in the Decision made by the Commission Council. This study will also examine what should be done in the appointment of vendors to provide legal certainty and explore the monopoly gaps that may occur within the scope of BUMN in Indonesia.

Previous studies have contributed to the study of business competition, but have not specifically addressed the issues raised in this study. Purwoedi (2024) examined the practice of direct appointment by state-owned enterprises (BUMN) with a case study of KPPU Decision Number 13/KPPU-I/2014, but his analysis emphasised the synergy

¹¹ SH Rachmandi Usman, "Hukum Persaingan Usaha Di Indonesia," Sinar Grafika, (2022).

¹²Opcit, halaman 79.

aspect of BUMN and did not explore the application of Article 51 of Law No. 5/1999. Fachri and JoeBUMNf (2021) highlight monopoly violations by state-owned airlines based on the per se illegal principle and BUMN governance, but the research is still general and does not discuss the exceptions in Article 51 in depth. Meanwhile, Swari and Tanaya (2022) review monopoly practices by state-owned enterprises in the transportation sector, but their coverage is too broad and does not focus on the aviation sector.

Thus, a research gap that has not been widely studied is an in-depth analysis of Article 51 of Law No. 5/1999 in the context of direct appointments to state-owned enterprises in the aviation sector, which is the focus of this study, using KPPU Decision No. 13/KPPU-I/2014 as a case study. This research is important because it highlights the boundaries between legal exemptions for BUMN and their obligation to continue to ensure a healthy business competition climate. By considering the principles contained in the General Principles of Good Governance (AUPB), this study examines the application of the principles of legal certainty and transparency in the procurement of goods and services by BUMN so as not to conflict with competition law in Indonesia. This study aims to analyse how the Indonesian Competition Commission (KPPU) assessed the appointment of PT ExecuJet Indonesia as a ground-handling service provider in KPPU Decision No. 13/KPPU-I/2014, and to examine how vendor appointment mechanisms employed by State-Owned Enterprises (BUMN) ensure legal certainty for tender participants.

2. METHOD

Normative legal research is defined as research that focuses on legal issues within a specific jurisdiction.¹³ This research focuses on applicable laws and regulations and their application in specific cases, rather than empirical observation.¹⁴ This method is relevant to the research objective, which is to assess the legal certainty of direct appointment practices by state-owned enterprises from the perspective of competition law. In addition, this research also analyses the structure and systematics of the legal system.¹⁵ Legal certainty is a normative concept that can only be tested through a review of written norms and decisions of authorised institutions. The approach in this paper is carried out through a case study by analysing Decision 13/KPPU-I/2014 through a review of Law 5/1999, Law 1/2025, and Minister of State-Owned Enterprises Regulation Number PER-2/MBU/3/2023 (Permen 2023). Based on the type of research, this study

¹³ Muhammad Zainuddin and Aisyah D Karina, “[PDF] Dari Unkaha.Ac.Id Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum,” *Smart Law Journal*, (2023)

¹⁴ Rafli Fadilah Muhammad and Rianda Dirkareshza, “Legalitas Penerapan Central Bank Digital Currency (CBDC) Di Indonesia,” *Jurnal USM Law Review* 6, no. 3 (2023): 913–30, <https://doi.org/10.26623/JULR.V6I3.7370>.

¹⁵ Clara Citra Piternalis and Diah Ratna Sari Hariyanto, “Koherensi Implementasi Pendekatan Normatif Terhadap Peradilan Pidana Di Indonesia,” *Ethics and Law Journal: Business and Notary* 2, no. 3 (2024): 149–55, <https://doi.org/10.61292/ELJBN.226>.

is based on the processing of secondary data obtained from various literature and legal documents obtained through primary legal sources. In this study, this includes the basic provisions in the 1945 Constitution and laws and regulations issued through legislation, as well as secondary sources such as scientific articles, journals, theses, and dissertations. The data in this study were analysed qualitatively through an in-depth approach, so that the results of the analysis are expected to provide solutions or answers to the problems that are the focus of the study.¹⁶ This methodological design ensures the reliability of findings and their alignment with doctrinal legal analysis standards

3. RESULT AND DISCUSSION

3.1 Considerations in Appointing PT Execujet Indonesia as Ground Handling Service Provider in KPPU Decision Number 13/KPPU-I/2014

Airport operations in Indonesia are managed by state-owned enterprises. Angkasa Pura, a state-owned company engaged in airport services and other services related to airport operations, has a subsidiary, PT Angkasa Pura I, which became the subject of direct appointment of business partners.¹⁷ Within PT Angkasa Pura I, the authority to select and determine potential business partners is regulated in internal regulations, namely that the selection is in the hands of the Board of Directors, but some of the authority can be delegated to the Managing Director at the Branch Office or the Deputy Director at the Head Office. The process of selecting business partners who will carry out business activities within the airport environment can be done through two methods, namely through competitive selection or direct appointment. This provision provides flexibility in managing business cooperation while ensuring a structured selection mechanism.

The designation for ground handling services covers public business branches that must remain open to all business actors, and the state's monopoly rights must not be abused to close access to other service providers in accordance with Article 51 of Law 5/1999. Article 51 provides the basis for exceptions allowing state-owned enterprises to engage in monopolistic practices, particularly for production branches that are important or vital to the life of the community.¹⁸ This article emphasises that monopolistic practices can only be justified for strategic sectors regulated by relevant regulations and operated by state-owned enterprises/state-owned entities appointed by the government.

Article 14 of Law No. 5/1999 prohibits agreements between business entities that aim to control the production of a number of commodities in a single production chain of certain goods and/or services. This prohibition applies to both direct production chains (without interruption in the production stage) and indirect production chains (through

¹⁶ Dadang Sumarna And Ayyub Kadriah, "Penelitian Kualitatif Terhadap Hukum Empiris," *Jurnal Penelitian Serambi Hukum* 16, no. 02 (2023): 101–13, <https://doi.org/10.59582/SH.V16I02.730>.

¹⁷ Fadhila, "Upaya Mencegah Pelanggaran Praktik Monopoli Yang Dilakukan Oleh PT. Angkasa Pura."

¹⁸ UU, "Pasal 51 Undang-Undang Nomor 5 Tahun 1999,"

several stages or processes).¹⁹ Meanwhile, Article 17 aims to avoid monopolistic practices and maintain a healthy business competition climate by prohibiting dominant control over the production and/or distribution of goods or services by one or a group of business actors.²⁰ The elements in Article 14 of Law No. 5/1999 can be divided into five elements.

The first element in this article is business actors represented by PT Angkasa Pura I and PT Execujet Indonesia. Provisions regarding business entities are also regulated in Article 1, point 5 of the same law. This definition emphasises individuals or business entities that are legal entities or not, individuals or jointly conducting economic activities in this country, in accordance with the position of the two companies, thereby fulfilling the first element.²¹ The second element is an agreement, the basis of which can be categorised as an agreement if there is one or more business entities that agree to relate to each other through a written or verbal contract.²² This element is characterised by the creation of a cooperation agreement made by both parties on 18 June 2013. The third element is other business actors that refer to PT Execujet Indonesia as a business partner that is carrying out a series of service production processes. The fourth element is control over a number of products that are part of a single production chain of certain goods and/or services, where each stage in the production chain is the result of further processing, either directly or indirectly. And the last element is control over a number of products that are part of a series of production of certain goods and/or services.

To assess Article 14, the "rule of reason" approach is considered relevant because this method takes into account size (market share) and relevant market characteristics. Evaluation and decision-making are based on the competitive impact of business activities in the relevant market context.²³ This approach emphasises the importance of proving the actual impact of an action on competition, whereby *the rule of reason* can be an instrument that ensures that an activity cannot be directly categorised as a violation without proving that it causes market dominance or other obstacles to other business actors.²⁴

In KPPU Decision No. 13/KPPU-I/2014, the Angkasa Pura company that was the focus of the case was PT Angkasa Pura I, which operates special services at the General Aviation Terminal of I Gusti Ngurah Rai Airport. In practice, PT Angkasa Pura I directly

¹⁹ UU Pasal 14 Undang-Undang Nomor 5 Tahun 1999.

²⁰ UU, "Pasal 17 UU No. 5 Tahun 1999," 1999, <https://peraturan.bpk.go.id/Details/45280/uu-no-5-tahun-1999>.

²¹ UU, "Pasal 1 Angka 15 Undang-Undang Nomor 5 Tahun 1999."

²² UU, "Pasal 1 Angka 7 UU No. 5 Tahun 1999," 1999, <https://peraturan.bpk.go.id/Details/45280/uu-no-5-tahun-1999>.

²³ Joice Chintya Mardohar and Anna Maria Tri Anggraini, "Pendekatan Rule Of Reason Dalam Praktik Diskriminasi Pada Putusan Kppu Tahun 2020," *Amicus Curiae* 1, no. 2 (2024): 881–92, <https://doi.org/10.25105/AMICUS.V1I2.19751>.

²⁴ Aisyah Amini Nur, Paramita Prananingtyas, and Irawati Irawati, "Analisa Yuridis Penerapan Prinsip Rule Of Reason Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dalam Kasus-Kasus Dugaan Kartel," *Diponegoro Law Journal* 12, no. 3 (2023): 2023, <https://doi.org/10.14710/DLJ.2023.39558>.

appointed PT Execujet Indonesia as a partner to manage these special services through a cooperation agreement. The irregularities in this appointment prompted an investigation by the KPPU, which found that both companies had engaged in monopolistic conduct by granting exclusive operating rights to PT Execujet Indonesia, thereby disrupting competition within the airport services sector.²⁵ In the decision, the alleged violations included the granting of exclusive rights by PT Angkasa Pura I to PT Execujet Indonesia to operate and handle special services at the General Aviation Terminal of I Gusti Ngurah Rai Airport - Bali, intended for general aviation aircraft and/or their passengers, including but not limited to other normal airport services.

The agreement dated 18 June 2013 grants PT Execujet exclusive rights to manage the South Apron, with the consent of both parties.²⁶ This is stated in the analysis of Decision 13/KPPU-I/2014 by the KPPU team. As a form of implementation of the granting of exclusive rights, all subsequent unscheduled commercial flight operations must use the General Aviation Terminal services managed by PT Execujet Indonesia. All ground handling activities and other related services must also be carried out through PT Execujet Indonesia, with operations centred at the southern apron.²⁷ With the monopoly power granted by its appointment, namely PT Angkasa Pura I. In addition, PT Execujet Indonesia sets a relatively high tariff structure for the provision of ground handling and other related services. In this case, PT Angkasa Pura I is not required by law to engage in exclusivity practices, and ground handling services can be performed by other companies that are qualified in this field, such as private companies that have been serving consumers at I Gusti Ngurah Rai Airport, Bali.

Market share control is a violation of Law No. 5/1999, which, in its ruling, explains that monopolistic practices violate the provisions of Articles 14 and 17. The KPPU Commission Council then declared that PT Angkasa Pura I, together with PT Execujet Indonesia, had legally and convincingly violated the provisions of Article 17 of Law No. 5/1999. The "rule of reason" approach was used to assess the fulfilment of the elements in Article 17, which requires evidence of the detrimental impact of an action, so that the prohibition of cartels and monopolies only applies if the action is proven to be detrimental to business competition.²⁸ The application of this approach resulted in certainty that the elements of violation of Article 17 were fulfilled.

The first element is the business entity, in this case referring to PT Angkasa Pura I as Respondent I and PT Execujet Indonesia as Respondent II. PT Angkasa Pura I is a state-owned enterprise which, based on legal authority, has been granted a monopoly in the provision of airport services at I Gusti Ngurah Rai Airport, Bali. PT Execujet Indonesia is a

²⁵ KPPU, "Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014," 2015,

²⁶ KPPU Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014 halaman 19.

²⁷ KPPU Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014, halaman 3.

²⁸ Devi Meyliana Savitri. Kumalasari, "Hukum Persaingan Usaha : Studi Konsep Pembuktian Terhadap Perjanjian Penetapan Harga Dalam Persaingan Usaha," *Setara Press*, (2013), 136.

private enterprise that exclusively carries out business activities in the management of general aviation services in the South Apron of I Gusti Ngurah Rai Airport, Bali, based on a cooperation agreement with the relevant state-owned enterprise.²⁹ The second is control over the production and/or marketing of goods and/or services. The fulfilment of this element must cover the product market, namely ground handling services and additional services, and must cover the relevant product market, as well as control over the production and marketing of goods and/or services. The granting of exclusive rights through direct appointment to PT Execujet Indonesia is a concrete act of market share control. Furthermore, this has led to the provision of ground handling services at the I Gusti Ngurah Rai Airport General Aviation Terminal being dominated by PT Execujet Indonesia, thereby hindering the participation of other business actors in market competition.³⁰ The last element refers to monopolistic practices and unfair business competition, Article 1, paragraph 6, Law No. 5/1999, with an emphasis on business competition between business actors who violate regulations and hinder competition in the market, as well as contravene the law, illegal practices of unilaterally setting excessive prices.³¹ In this case, what hinders competition are direct appointment practices and illegal practices of unilaterally setting excessive prices.³²

With all elements of Article 17 fulfilled based on existing evidence, data, and facts, the violation can be proven and imposed on PT Angkasa Pura I and PT Execujet Indonesia. In this regard, both companies are subject to sanctions in the form of fines and are required to terminate the exclusive rights granted to PT Execujet Indonesia in the management and provision of special services at the General Aviation Terminal that serves aircraft and their passengers. Additionally, they are required to open access to other businesses that have obtained airport service licences from the Directorate General of Civil Aviation to operate as providers of ground handling and airport-related services, while still prioritising company qualifications as the main requirement.³³

Unlike the application of the rule of reason approach in Article 17, in Article 14, the Commission Council's decision stated that the entire article could not be proven because one of the elements was not fulfilled.³⁴ This element specifically concerned the control of the production of a number of products in a particular series of goods and/or services. As a result, the decision states that the other elements, namely those that result in the inability to prove unfair business competition, cannot be fulfilled. This is due to the cumulative principle that considers the elements of the article as a whole, so that if

²⁹ KPPU, “Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014. halaman 34”

³⁰ KPPU Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014, halaman 365-366.

³¹ Republik Indonesia, “Pasal 1 Angka 6 Undang-Undang Nomor 5 Tahun 1999.,” 1999.

³² KPPU, “Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014. halaman 366”

³³ KPPU Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014, halaman 368.

³⁴ Luqman Hakim, “Efektivitas Undang-Undang Antimonopoli Dalam Mewujudkan Iklim Persaingan Usaha Yang Sehat: Studi Kasus Putusan Nomor 13/KPPU-I/2019,” *Lex Renaissance*, 2022, <https://journal.uui.ac.id/Lex-Renaissance/article/view/25941/15472>.

one element is not fulfilled, the fulfilment of the elements as a whole becomes unproven.³⁵

A series of production processes means that the business activities carried out are a unified whole, starting from the initial process to the final stage that can be consumed by the public.³⁶ In this case, the involvement of ground handling service providers is required between the pre-flight and post-flight stages, except for the during-flight stage, where each stage becomes a series of flight cycles. When linked to the main cycle of unscheduled flights, the business cycle described in the scope of the agreement covers all important stages in that cycle.³⁷ This results in control over all stages of the flight process, which is also an integral part of the production of airport services and other support services.

Although the Commission's ruling, with all considerations determining Article 14 as unproven, is not in line with the author's analysis regarding the non-fulfilment of the relevant elements. In this case, the relevance of fulfilling the elements refers to vertical integration. Vertical integration is understood as a form of control over a number of products in the production process chain. In the context of this case, control over production refers to control over airport services and other services directly related to airport operations, specifically the management of the General Aviation Terminal at I Gusti Ngurah Rai Airport in Bali, which is carried out jointly by PT Angkasa Pura I (Persero) and PT Execujet Indonesia.

The market structure for airport services in the I Gusti Ngurah Rai Airport area is entirely controlled by PT Angkasa Pura I as the airport operator business entity. As a result, no other business entity can directly organise airport services in the area. Although PT Angkasa Pura I (Persero) has market dominance in this context, its control is not absolute, as there are legal and structural limitations that prevent the company from controlling all markets related to the airport. For example, control over the *ground handling* services market and various other support services is not exclusively owned, given that these sectors are essentially open to other business actors who meet the licensing requirements. This provision is in line with the discussion on the limits of the monopoly authority held by PT Angkasa Pura I (Persero).³⁸ Article 234 paragraph (1) letter k of Law Number 1 of 2009 states that airport services must comply with laws and regulations, so that PT Angkasa Pura I is not allowed to violate regulations on

³⁵ Andi Hamzah, "ASAS-ASAS HUKUM PIDANA: Edisi Revisi 2008," Jakarta: Rineka Cipta, 2010, <https://inlislite.ipdn.ac.id/opac/detail-opac?id=9022>.

³⁶ Dian Anriyani and Ana Maria Tri Anggraini, "Terminologi 'Rangkaian Produksi Barang/Jasa Tertentu' Yang Mengakibatkan Persaingan Usaha Tidak Sehat (Studi Putusan- Putusan Kppu Terkait Pasal 14 Uuno 5/1999)," *Amicus Curiae* 1, no. 3 (2024): 987–1003, <https://doi.org/10.25105/2292EQ84>.

³⁷ KPPU, "Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014, halaman 19-20"

³⁸ KPPU Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014, halaman 336.

monopolies by entering into agreements as a means of granting exclusive rights with the aim of controlling the airport services market.³⁹

Indications of market share control were also shown by witness testimony. The CEO of PT Indonesia Air said, "After PT Execujet Indonesia started managing the south apron, charter slots were finally directed to the south apron. Because this was the policy of the authorities, PT Indonesia Air Transport had to comply. Although PT Indonesia Air Transport operated in the south, its rates were quite high compared to the north."⁴⁰ This occurred as a result of the agreement dated 18 June 2013, which caused losses to other business actors. This was reinforced by other testimony revealing the absence of prior socialisation regarding PT Execujet's activities on the southern apron to other business actors at the airport, as well as a letter signed on 30 August 2013 Number AP.I.S239/KB.03/2013/PD-B, stipulating that unscheduled aircraft with an MTO weight of less than or equal to 77 tonnes are required to use the southern apron,⁴¹ reinforces the element of control over a number of service products by the two companies.

In this case, the impact referred to in the context of hindering business competition is evident in the restrictions imposed on other business entities that provide ground handling services for unscheduled flights. This occurs because these activities are monopolised by PT Execujet Indonesia, so that other service providers who wish to provide services to their users must cooperate with or go through PT Execujet Indonesia. This situation has clearly reduced the level of competition among ground handling companies, particularly in terms of pricing. In addition, consumers are also disadvantaged in terms of losing their right as consumers to freely choose other service providers as stipulated in Article 4 letter b of Law 8/1999. By proving a violation of Article 14, the elements can be fulfilled through these facts.

Although the KPPU's considerations in the decision used the rule of reason approach, its application was deemed inconsistent between Article 14 and Article 17 of Law 5/1999. The decision elaborates on all elements of proof in Article 17 due to market control that creates exclusivity for one business entity over other business entities. Using the same approach, the KPPU assessed that Article 14 was not fulfilled on the grounds that there was no sustainable production chain. This assessment shows the KPPU's tendency to be more oriented towards formal normative proof rather than the substance of the market economy. In the context of competition law, the element of "control of production" should not be interpreted purely technically, but must include forms of vertical coordination that result in the closure of market competition between business actors.⁴² Thus, the logic used in reasoning the KPPU's decision in assessing market

³⁹ Republik Indonesia, "Pasal 234 ayat 1 huruf k Undang-Undang Nomor 5 Tahun 1999."

⁴⁰ KPPU, "Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014. halaman 69"

⁴¹ KPPU Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014, halaman 45.

⁴² Naufal Hariz, "Penerapan Rule of Reason Dalam Putusan Komisi Pengawas Persaingan Usaha Pada Kasus Penguasaan Pasar," *Jurnal Suara Hukum* 5, no. 1 (2023): 127–57, <https://doi.org/10.26740/JSH.V5N1.P127-157>.

structure and business actors creates legal uncertainty in the application of the rule of reason principle.

From the perspective of Gustav Radbruch's theory of legal certainty, ideally, law should encompass three key elements, namely certainty, utility, and justice.⁴³ The KPPU's considerations appear to lean more towards formal aspects, namely stating that the elements of Article 17 are fulfilled, but ignoring the aspects of economic benefit and fairness for other business actors by not stating the evidence in Article 14. This inconsistency shows the weakness of legal protection for fair business competition. Therefore, the analysis of Article 14 should prove the elements by assessing whether the action causes an imbalance in the market structure that has the potential to obstruct the principle of fairness before the law, and not only look at the formal elements.

3.2 Appointment of Vendors by State-Owned Enterprises Providing Legal Certainty for Tender Participants

State-owned enterprises (BUMN) play a strategic role as institutions under state management to support development and improve public welfare through the management of their resources. In carrying out this function, BUMN must ensure that the procurement of goods and services is carried out in accordance with the principles set out in laws and regulations and other supporting regulations. Law No. 30 of 2014 regulates the general principles of good governance or AUPB. Article 10 states that AUPB consists of legal certainty, efficiency, impartiality, accuracy, non-abuse of authority, openness, public interest, and good service.⁴⁴ Meanwhile, Article 147 of PER-2/MBU/03/2023 stipulates that these principles are efficiency, effectiveness, competitiveness, transparency, fairness and reasonableness, openness, and accountability.⁴⁵ These principles must be applied so that BUMN not only achieve their business objectives but also generates public and economic value. In addition, the regulations and rules governing the procurement process in BUMN aim to create an open, fair, and accountable procurement mechanism.

The reason for paying attention to AUPB in the procurement of goods and services by state-owned enterprises is that production sectors that are important to the state or that control the lives of many people, as stipulated in Article 33 paragraph (2) of the 1945 Constitution, are controlled by the state, especially state-managed economic sectors. The next argument is Article 51 of Law No. 5/1999, which forms the basis for the exemption of BUMN from the prohibition on monopolistic practices, particularly for production sectors that are important or vital to the life of the community. This article does not

⁴³ Ayu Shafira Puspitasari, "Pengajuan Pembatalan Perkawinan Oleh Kantor Urusan Agama (KUA) Kec. Gedeg Kab. Mojokerto Perspektif Teori Kepastian Hukum Gustav Radbruch: Studi Putusan Nomor 1014/Pdt.G/2022/PA.Mr," February 23, (2024).

⁴⁴ UU, "Pasal 10 Undang-Undang Nomor 30 Tahun 2014," 2014, <https://peraturan.bpk.go.id/Details/38695/uu-no-30-tahun-2014>.

⁴⁵ Menteri BUMN RI, "Pasal 147 Peraturan Menteri BUMN Nomor PER-2/MBU/03/2023 Tahun 2023" No. 262, no. 262 (2023): 144, <https://peraturan.bpk.go.id/Details/264291/permen-bumn-no-per-2mbu032023-tahun-2023>.

specify the form of BUMN, whether in the form of Perum, which is 100% government-owned, or Persero, which is 51% government-owned and the rest privately owned. However, in Law No. 1 of 2025, BUMN consists of companies or Persero whose capital is partly owned by the private sector and Public Companies or Perum whose capital is 100% owned by the government.⁴⁶ Therefore, BUMN Persero, whose capital is partly owned by the private sector up to 49%, has the potential to engage in unfair business competition. Therefore, BUMN Persero must refer to the AUPB in the procurement of goods and services.

The procurement of goods and services must go through a process to obtain the best vendors in order to drive business in state-owned enterprises. The process of appointing suppliers through tenders or direct procurement is one of the important mechanisms in maintaining these principles.⁴⁷ To obtain the best suppliers, BUMN can use several methods tailored to their needs, including tenders or general selection, which is a process of procuring goods and services that is widely announced through the mass media to provide maximum opportunity for qualified suppliers to participate in the auction. Meanwhile, limited tenders or limited selection are procurements offered to certain parties with a minimum requirement of two bids. There is also the direct appointment method, which is carried out by selecting one provider directly or through an auction mechanism. Meanwhile, direct procurement is the purchase of goods that are already available at market prices, as well as the use of an e-purchasing system in the process.⁴⁸

These methods are often used by state-owned enterprises to determine their goods/services providers, but the application of direct appointment methods is often questioned in terms of implementation and urgency. Direct appointment often causes problems in the procurement process, with indications of collusion or bribery involving prospective service providers with budget users, or even the procurement committee itself, which is done to pursue personal interests or illegally benefit certain groups.⁴⁹ This causes a number of very detrimental risks, such as the obstruction of fair business competition, the emergence of monopolistic practices, and reduced transparency in the procurement process.

The application of the direct appointment method is subject to certain conditions that justify the disregard of the standard tender process. One such condition occurs when

⁴⁶ Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2025.”

⁴⁷ Susanti Susanti, Adam Idris, and Nur Fitriyah, “Analisis Pelaksanaan Pengadaan Barang Dan Jasa Melalui Penunjukkan Langsung Pada Badan Pengelola Keuangan Dan Aset Daerah Kabupaten Mahakam Ulu,” *Jurnal Paradigma* 14, no. 1 (2025), <https://doi.org/10.30872/JP.V14I1.8599>.

⁴⁸ UU, “Pasal 152 Peraturan Menteri BUMN Nomor PER-2/MBU/03/2023 Tahun 2023,,” 2023, <https://peraturan.bpk.go.id/Details/264291/permen-bumn-no-per-2mbu032023-tahun-2023>.

⁴⁹ Wahyudia Pratama and Yoyok Ucu Soyono, “Pertanggungjawaban Pidana Korporasi Dalam Pengadaan Barang/Jasa Menggunakan Metode Penunjukan Langsung,” *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 6, no. 2 (2023): 145–65, <https://doi.org/10.33474/yur.v6i2.19451>.

the goods or services required can only be supplied by a single source, such as the original manufacturer or intellectual property rights holder, making open competition impractical. Another condition involves emergency situations and critical business needs, where delays resulting from the tender process could cause significant operational or financial risks. In addition, direct appointment may be permitted in procurement activities related to synergies between state-owned enterprises and their subsidiaries, particularly if such arrangements improve long-term efficiency and sustainability. This method also applies when two consecutive tender attempts fail to attract providers that meet the necessary requirements, indicating a lack of adequate competition. In addition, in the case of highly specialised or knowledge-intensive goods or services, where technical specifications or unique expertise are essential and cannot be met through a public tender, direct appointment becomes a practical solution. Finally, emergency situations that impact the security, safety, or strategic interests of BUMN may necessitate immediate procurement decisions that do not allow for lengthy tender procedures. Under these clear conditions, the use of direct appointment is expected to be in line with the regulatory framework, ensuring that the procurement process remains compliant and responsive to the operational realities of BUMN.⁵⁰

In the case of Decision 13/KPPU-I/2014, the application of the direct appointment method to determine vendors contained an error in the appointment of PT Execujet Indonesia, because PT Angkasa Pura I was not classified as facing all the conditions of urgency set out in the Ministerial Regulation, as PT Execujet Indonesia was not the only general aviation vendor providing *ground handling* services in Indonesia. Although the state-owned enterprise argued that the appointed private company was the best in terms of service,⁵¹ the requirements for direct appointment were not met by PT Angkasa Pura I. In addition, other requirements for direct appointment were also not met, which caused legal uncertainty. The practice of direct appointment in this case, without fulfilling the applicable provisions, creates a conflict of interest and hinders the formation of fair business competition. This is evidenced by the testimony of other airport service operators who claim to have been harmed by the granting of exclusive rights to PT Execujet Indonesia, which indirectly requires consumers to transact services at the southern apron where PT Execujet Indonesia operates, as well as related service tariffs.⁵² The disclosure that has come to light not only harms other businesses that have the potential to compete but also threatens the principles of transparency and accountability in the procurement of ground handling services.

⁵⁰ UU, “Pasal 155 Peraturan Menteri BUMN Nomor PER-2/MBU/03/2023 Tahun 2023,” 2023, <https://peraturan.bpk.go.id/Details/264291/permen-bumn-no-per-2mbu032023-tahun-2023>.

⁵¹ KPPU, “Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014, halaman 36”

⁵² KPPU Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2014, halaman 54.

Irregularities in the selection of vendors through direct appointment are not only found at PT Angkasa Pura I and PT Execujet Indonesia. Many cases have been uncovered by the KPPU or other relevant institutions regarding these violations. Violations in the direct appointment mechanism also occurred at PT PELNI (Persero), which appointed PT PIDC, its subsidiary, as the contractor. This direct appointment was contrary to the criteria set out in Article 9 paragraph (3) letter (j) PER-05/MBU/2008, considering that PT PIDC subsequently delegated part of the work to third parties through a subcontracting scheme. This practice not only led to an increase in implementation costs but also resulted in a decline in the quality of work that did not meet the established standards.⁵³ Likewise, the direct appointment of Waskita Karya by PLN failed to reflect fair competition principles in goods and services procurement.⁵⁴ These cases prove that not only the cases studied in this research, but also many other cases of misuse of the direct appointment method by state-owned companies.

Although direct appointment practices are legally permissible, corporations often invoke business efficiency and corporate synergy to justify their use. This rationale, however, poses a serious dilemma concerning fair competition and public accountability. The concept of synergy among BUMN is normatively intended to enhance national competitiveness and optimize state resources. In practice, however, such synergy frequently serves as a pretext to bypass open tender mechanisms that guarantee fairness and equal opportunity for all market participants. These practices risk creating conflicts of interest, particularly when conducted among entities within the same corporate ecosystem or those with direct financial stakes in the projects concerned. Consequently, they generate legal uncertainty for private competitors and erect new barriers to entry, contrary to Article 33 of the 1945 Constitution and Law No. 5 of 1999.

From an AUPB perspective, state-owned enterprises must be based on transparency, accountability, responsibility, independence, and fairness in conducting their business. Supervisory mechanisms must be adequate to ensure accountability and fairness in the application of direct appointments; distortions in the market may arise and undermine public confidence in the management of state assets.⁵⁵ When linked to the principle of competitive neutrality, the practice of direct appointments between BUMN can be considered contrary to this principle. This creates an imbalance between state-owned entities and private businesses operating in the same market. In competitive

⁵³ Hanna Marlina Siahaan, "Tinjauan Terhadap Penunjukan Langsung Kepada Anak Perusahaan Dalam Pelaksanaan Pengadaan Barang Dan / Atau Jasa Di BUMN (Studi Kasus Pengadaan Barang Dan / Atau Jasa Di PT PELNI (Persero))," *Tesis, Program Magister Ilmu Hukum, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta*, 2017, 387728.

⁵⁴ Reky Sefriyanto, "Asas Perlakuan Yang Sama Pada Penunjukan Langsung BUMN Dalam Pengadaan Barang Dan Jasa PT PLN (Persero) (Studi Terhadap Penunjukan Langsung PT Waskita Karya (Persero) Tbk Oleh PT PLN (Persero) Dalam Pengadaan Barang Dan Jasa Pembangunan Transmisi 500 KV Muara Enim - New Aurduri," *Tesis, Program Magister Ilmu Hukum, Fakultas Hukum Universitas Gadjah Mada, Jakarta*, 2019.

⁵⁵ Muhammad Nur Aflah et al., "Kedudukan Hukum Aparatur Pengawasan Intern Pemerintah Dalam Pengawasan Pengadaan Barang/Jasa Pemerintah," *Jurnal USM Law Review* 4, no. 2 (2021): 631–50, <https://doi.org/10.26623/JULR.V4I2.4279>.

neutrality, all businesses, whether public or private, should compete efficiently, not through the legal status of BUMN attached to a business entity.⁵⁶

A clear gap between the legal objectives and the realities observed in practice. Normatively, internal regulations of state-owned enterprises and state procurement policies require the principles of AUPB to be upheld. Conversely, in reality, direct appointment practices are often used as a means of covert monopoly that closes market access to other parties. This inconsistency emphasises the need for the KPPU to more firmly enforce the rule of reason principle in BUMN synergy activities, with the aim of economic efficiency, not sacrificing market fairness and legal certainty for all tender participants.

The direct appointment method is widely applied in companies, especially state-owned enterprises (BUMN). Through Article 137 c PER-2/MBU/03/2023, BUMN cooperation is prioritised through BUMN synergy, which is a form of cooperation between BUMN and BUMN subsidiaries, as well as affiliated BUMN and/or LPs.⁵⁷ The KPPU has responded firmly to regulations on direct appointment in the procurement of goods/services by BUMN, because as an institution that has the authority to assess all forms of agreements or activities of business actors that have the potential to cause monopolistic practices and unfair business competition, the KPPU also responds to issues that are relevant to its authority.⁵⁸

Pursuant to Article 36 of the Business Competition Law, the KPPU has the authority to conduct research and investigations, and to conclude the results in order to determine whether there are monopolistic practices or unfair business competition.⁵⁹ In relation to Article 155 paragraph (2) letter j in PER-2/MBU/3/2023. This provision explains that direct appointment as a supplier of goods/services in state-owned enterprises is permitted if the service provider can come from a state-owned enterprise (BUMN), a subsidiary of a state-owned enterprise, or an affiliate of a state-owned enterprise, provided that the aspects of quality, reasonable prices, and suitability of objectives can be proven and accounted for transparently.⁶⁰ According to KPPU, this regulation has great potential to hamper healthy business competition because it limits the participation of business actors outside the scope of BUMN or their affiliates to become goods/services providers through the direct appointment mechanism. The KPPU

⁵⁶ Muhammad Habib et al., “Perkembangan Hukum Persaingan Usaha Pasca Berlakunya Perpu Cipta Kerja Peraturan Presiden Nomor 2 Tahun 2022 Tentang Cipta Kerja (Perpu Cipta Tentang Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat,” *Jurnal USM Law Review* 6, no. 1 (2023): 125–40.

⁵⁷ UU, “Pasal 137 Huruf c Peraturan Menteri BUMN Nomor PER-2/MBU/03/2023 Tahun 2023,” 2023, <https://peraturan.bpk.go.id/Details/264291/permen-bumn-no-per-2mbu032023-tahun-2023>.

⁵⁸ Andi Fahmi Lubis et al., “Hukum Persaingan Usaha: Buku Teks,” Komisi Pengawas Persaingan Usaha RI, 2017,

⁵⁹ Lubis dkk. Lubis, Andi Fahmi, Anna Maria Tria Anggraini, Kurnia, Budi Toha, M Hawin, Ningrum N Sirait, Paramita Prananingtyas, Syamsul Maarif, dan Udin Silalahi. “Hukum Persaingan Usaha: Buku TeksLihat Artikel.” Komisi Pengawas Persaingan Usaha RI, 2017

⁶⁰ Zaenal Arifin et al., “Praktik Persaingan Usaha Tidak Sehat Dalam Pengadaan Barang/Jasa Pemerintah Di Sektor Jasa Konstruksi,” *Jurnal USM Law Review* 7, no. 2 (June 17, 2024): 757–67, <https://doi.org/10.26623/JULR.V7I2.8368>.

emphasises that this mechanism reflects the principle of competition neutrality and can stifle competition, so it is proposed that this regulation be repealed.⁶¹ In October 2024, the KPPU issued Written recommendation to the Minister of State-Owned Enterprises, which essentially states that all direct appointments in the procurement of goods or services in state-owned enterprises must continue to comply with the principles of fair competition, remove the provisions of Article 155 paragraph (2) letter j in Minister of State-Owned Enterprises Regulation Number 2 of 2023, and always involve the Indonesian Competition Commission (KPPU) to provide advice and input before implementing synergies between BUMN.⁶²

Direct appointment aims to ensure that all activities carried out by BUMN can be implemented effectively, efficiently, and in accordance with the main objective of cooperation between BUMN, namely, to encourage economic growth.⁶³ BUMN are legal entities that function as real legal subjects, meaning that they do not act independently. In practice, BUMN has organs, namely commissioners and directors, who are tasked with achieving the institution's objectives.⁶⁴ Organ theory discusses the form and characteristics of legal relationships in the context of serving the public interest. This theory is used as a basis for analysing the relationship between state policies that grant monopoly rights to BUMN and the authority possessed by BUMN in managing various strategic sectors, including natural resources and areas of production that are essential to the overall welfare of society.⁶⁵ Monopolies operated by BUMN are essentially aimed at protecting the public interest. In this context, the state plays a strategic role as regulator, corporator, and protector of society to prevent the concentration of economic power in a single entity or group of business actors.⁶⁶ Therefore, the application of BUMN monopoly rights as stipulated in Article 51 of Law 5/1999 does not constitute a violation in the exercise of these rights based on statutory regulations.

Although granting monopoly rights to state-owned enterprises is permitted, the principles of AUPB remain the main reference in the implementation of business activities in all types of markets, not only in the procurement of airport services, as discussed in this study.

⁶¹ Fitri N Heriani, "Penunjukan Langsung Dalam Permen BUMN 2/2023 Dinilai Picu Persaingan Usaha Tidak Sehat," *Hukum Online.com*, 2024, <https://www.hukumonline.com/berita/a/penunjukan-langsung-dalam-permen-bumn-2-2023-dinilai-picu-persaingan-usaha-tidak-sehat-lt672a217d9a5ef/>.

⁶² KPPU, "KPPU Sebut Peraturan Menteri BUMN No.PER-2/MBU/3/2023 Buat Persaingan Usaha Tidak Sehat," 2023, <https://detiknews.id/detiknews/kppu-sebut-peraturan-menteri-bumn-no-per-2-mbu-3-2023-buat-persaingan-usaha-tidak-sehat/>.

⁶³ Muhammad Faisal Riza, "Kebijakan Pengutamaan Kerjasama Antar Bumn Dalam Pengadaan Barang Dan Jasa Pada BUMN Di Indonesia Ditinjau Dari Hukum Persaingan Usaha," *Skripsi, Fakultas Syariah Dan Hukum, UIN Syarif Hidayatullah, Jakarta*, 2024, https://repository.uinjkt.ac.id/dspace/bitstream/123456789/77153/1/MUHAMAD_FAISAL_RIZA_-_FSH.pdf.

⁶⁴ E Utrecht and M.S Djindang, "Pengantar Dalam Hukum Indonesia," Jakarta: Sinar Harapan, 1989, <https://inlislite.ipdn.ac.id/opac/detail-opac?id=16495>.

⁶⁵ Laurensius Arliman, "Teori Organ Negara Sebagai Dasar Pembentukan Dan Penguatan Lembaga Negara Di Indonesia Laurensius," *Ensiklopedia Of Journal TEORI* 6 (2024).

⁶⁶ Aminuddin Ilmar, "Hak Menguasai Negara Dalam Privatisasi BUMN," Kencana, 2012,

The AUPB principles, which include legal certainty, utility, impartiality, accuracy, non-abuse of authority, transparency, public interest, and good service, must be upheld so that the implementation of monopolies does not harm the public interest and provides legal certainty for every business actor in the field, as well as creating fair business competition.

4. CONCLUSION

This study analyses the interpretative gap in Article 51 of Law No. 5/1999 regarding the legality of direct appointments by state-owned enterprises in the aviation sector from the perspective of competition law in Indonesia. Based on case studies of PT Angkasa Pura I and PT Execujet Indonesia, this focus contributes to the renewal of the application of monopoly exemption limits for BUMN and how the principles of fair competition should be regulated when BUMN carry out their functions. Normatively, Article 51 provides an exception for BUMN to carry out certain strategic functions in the national interest, but its implementation must still comply with the principles of transparency, accountability, and legal certainty. However, the reality on the ground is demonstrated by KPPU Decision Number 13/KPPU-I/2014, which states that direct appointments accompanied by exclusive rights, if carried out without an open and competitive process, can result in monopolistic practices and limit access for other business actors, thereby creating legal uncertainty. This study emphasises the need to apply the rule of reason in every evaluation of BUMN procurement policies. This provides a more proportional assessment for the KPPU regarding the economic efficiency generated and its impact on the competitive structure in the market. Thus, exceptions for BUMN are not interpreted as absolute freedom, but rather as policy space that remains within the framework of legal certainty and the principles of fair business competition. Therefore, a reformulation of BUMN procurement policy that encourages greater openness and competition is needed to balance the strategic role of the state with the enforcement of fair competition principles. This study recommends strengthening the regulatory framework and oversight mechanisms in the BUMN procurement process to prevent losses for other market participants and support the development of a healthy and sustainable business ecosystem.

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