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# Juridical Analysis of the Competitive Neutrality of SOEs in Indonesian Business Competition

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**ABSTRACT**
The competitive neutrality of SOEs is an important issue in Indonesian business competition law because SOEs have a dual position as implementers of the state mandate as well as business actors in the market. This article aims to analyze juridically the limits of SOE exemption in Article 51 of Law No. 5 of 1999 and its relevance to the principle of healthy business competition. This study uses a qualitative method with a juridical-normative approach through literature studies and legal documentation. The analysis was carried out in a descriptive-analytical and prescriptive manner by examining laws and regulations, doctrines, rulings, and academic literature related to competitive neutrality, public interest, and state-owned enterprises. The results of the study show that the exemption for SOEs cannot be interpreted as absolute immunity from competition law, but must be tested based on the principles of legality, necessity, proportionality, and transparency. This article contributes to offering a new framework for reading Article 51 in order to be able to balance the mandate of public services and the protection of competitive markets. Further research is recommended using an empirical-juridical approach on strategic sectors of SOEs.



## INTRODUCTION

State-Owned Enterprises (SOEs) have a strategic position in the Indonesian economic system because they carry out a dual function: as a state instrument to meet the needs of the people and as business actors operating in a market that is also inhabited by private actors. In the framework of business competition law, this dual position raises juridical problems when SOEs obtain exclusive rights, special assignments, subsidies, access to financing, or certain regulatory treatment that are not available to other business actors. Normatively, Law Number 5 of 1999 does open up a space for exemption through Article 51, namely monopoly and/or centralization of activities related to production branches that are important to the state and control the lives of the people can be organized by SOEs or agencies/institutions formed or appointed by the government. However, in practice, such exceptions have the potential to create tensions between the state's constitutional mandate to control strategic sectors and the principle of healthy business competition which demands equal opportunities, non-discrimination, and restrictions on state privileges in the market.

This issue is increasingly important in the current situation because many countries are re-strengthening the role of the state in the economy through industrial policies, energy transitions, crisis stabilization, and strengthening strategic sectors. Recent literature suggests that the increasing role of the state in the economy can expand the space for government intervention and challenge the classical boundaries between public policy and competition law (Martyniszyn, 2025). In the context of the European Union, for example, the need to align industrial policies with competition policies is a major issue because uncontrolled state intervention can disrupt market efficiency and create unfair profits for certain entities (Duso & Peitz, 2026). In the Asian region, a study on fair competition review in China shows that a government policy review mechanism is needed to prevent regulations that grant administrative privileges and inhibit competition between business actors (Healey & Bai, 2026). These findings show that the issue of competitive neutrality is not just an economic issue, but a public law issue and competition law that are directly related to the design of state authority in the market.

In the Indonesian context, the urgency of the discussion is getting stronger because the structure of the national market is still marked by the strong presence of the state in various strategic sectors, including energy, transportation, infrastructure, food, finance, and telecommunications. The OECD report on product market regulation in Indonesia highlights that SOE governance and business competition frameworks still need strengthening, including the need for a clearer framework to ensure competitive neutrality between SOEs and private business actors (Lewis et al., 2022). On the other hand, recent studies of Indonesian competition law show that oversight of SOE exemptions remains a sensitive issue because it involves the relationship between public service mandates, legitimate monopoly rights, and potential abuse of dominant positions or barriers to market entry (Santoso et al., 2026). Thus, the main problem lies not in the existence of SOEs themselves, but in how the law determines the boundary between legitimate state assignments and competitive privileges that have the potential to undermine the structure of competition.

A number of previous studies have discussed competitive neutrality in the context of SOE globally, especially related to subsidies, state capitalism, first-mover advantages, administrative monopoly, and fair competition policy. Gong (2025), for example, shows that state-owned enterprises in China's hydrogen sector gain an early advantage due to their proximity to the state and sectoral policies. Bi and Wang (2026) found that fair competition review can be used to suppress distortions due to administrative monopoly. Jiang and Li (2025) and Wu et al. (2025) also show that a more competitive policy contributes to increased efficiency, cross-regional investment, and restructuring of the company's value chain. However, there are still gaps in the Indonesian literature, especially regarding how the principle of competitive neutrality can be read juridically against Article 51 of Law No. 5 of 1999, how the SOE exemption limit must be interpreted by ICC and the courts, and how to design the right law so that the public service mandate does not turn into a competitive privilege that harms other business actors.

Based on this background, this article aims to juridically analyze the principle of the competitive neutrality of SOEs in the Indonesian business competition system, focusing on the relationship between legal exemptions, state mandates, and protection of competitive markets. Theoretically, this article contributes to the development of competition law discourse by bringing together the concepts of competitive neutrality, public interest, and state-owned enterprises in the context of Indonesian law. Practically, this article is expected to provide an argumentative basis for policymakers, ICC, and stakeholders in formulating a clearer line between legitimate state assignments and preferential treatment that has the potential to cause market distortions. Thus, this study is not intended to reject the role of SOEs in strategic sectors, but to ensure that these roles are carried out proportionately, transparently, accountably, and do not eliminate the principle of healthy business competition.

## RESEARCH METHODS

This study uses a type of qualitative research with a juridical-normative approach or doctrinal legal research, because the main object analyzed is not respondent behavior or statistical data, but legal norms, legal principles, doctrines, decisions, and institutional construction that govern the position of SOEs in Indonesian business competition. The juridical-normative approach was chosen because this article aims to assess how the principle of competitive neutrality can be used to read the exclusion limit of SOEs in the business competition law, especially in the relationship between Article 51 of Law Number 5 of 1999, the mandate of public services, monopoly rights granted by the state, and the protection of competitive market structures. Doctrinal research places law as a system of norms that need to be interpreted systematically through relevant laws and regulations, academic doctrines, and rulings (Taekema, 2018; Majeed et al., 2023). For this reason, this study uses three main approaches, namely the statute approach to review laws and regulations, the conceptual approach to build an understanding of competitive neutrality, state-owned enterprises, public interest, and the level playing field, and the case approach to examine decisions or practices of competition law enforcement related to SOEs and monopoly exemptions.

The data sources in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Constitution of the Republic of Indonesia in 1945, Law Number 5 of 1999, Law Number 19 of 2003 concerning SOEs, implementing regulations related to the assignment of SOEs, relevant ICC guidelines or decisions, as well as government policy documents related to strategic sectors and business competition. Secondary legal materials include reputable journal articles, academic books, reports of international institutions, and scientific studies on competitive neutrality, SOE governance, state capitalism, industrial policy, and business competition law. Tertiary legal materials are used in a limited way, such as legal dictionaries, legal encyclopedias, Scopus/SJR indexes, and academic databases to assist with literature search. Data collection techniques are carried out through literature studies and legal documentation, namely by searching, classifying, and evaluating relevant legal documents and academic literature. The inclusion criteria used include: sources that discuss SOEs/SOEs, competitive neutrality, monopoly exclusion, business competition law, public interest, and state policies in the market; Meanwhile, the exclusion criteria include sources that are not relevant to the issue of business competition, do not have a clear academic basis, or are only popular opinions without the support of legal arguments. Because this study did not involve respondents, participants, or field surveys, probabilistic sampling techniques were not used; the selection of legal materials is carried out purposively,based on normative relevance and its contribution to the issue being analyzed.

Data analysis was carried out descriptively-analytically and prescriptively. The first stage is carried out by inventorying the legal norms that govern the position of SOEs in the Indonesian business competition system, especially norms that provide the basis for exceptions or state assignments. The second stage is carried out through legal interpretation, including grammatical, systematic, telelogical, and conceptual interpretations to assess whether the exemption for SOEs is still within the limits of public services or has the potential to cause market distortions. The third stage was carried out by comparing the concept of competitive neutrality in the international literature with the construction of Indonesian law to find normative and institutional gaps. The fourth stage is carried out by formulating a prescriptive argument regarding the ideal boundary between the state mandate, the exclusive rights of SOEs, and the obligation to maintain healthy business competition. The validity of the analysis is maintained through the consistency of the hierarchy of legal materials, triangulation between regulations, doctrines, and rulings, and the use of the latest relevant academic literature. With this method, the research is expected to be able to answer the main question: the extent to which Indonesia's business competition law has accommodated the principle of competitive neutrality to SOEs, and how juridical construction can strengthen the balance between the public interest and healthy business competition.

## RESULTS AND DISCUSSION

### 1. Results

The results of the study show that the problem of the competitive neutrality of SOEs in Indonesian business competition is rooted in the dual position of SOEs as implementers of the state mandate as well as business actors in the market. This position is legally justified as long as SOEs carry out public service functions or manage production branches that are important to the state. However, when SOEs compete with private business actors in the same market, the existence of state facilities, exclusive rights, direct assignments, subsidies, or access to special financing can create an imbalance in a competitive position. These findings are in line with the study of Lewis et al. (2022) which highlights that SOE governance and product market regulation in Indonesia still need to be strengthened so as not to create barriers to competition.

Second, the study found that Article 51 of Law Number 5 of 1999 is the central norm in determining the exemption space for SOEs. The article provides a legal basis for the state to organize a monopoly or concentration of certain activities through SOEs or government-appointed bodies. However, the results of the analysis show that this norm still leaves a wide scope for interpretation, especially regarding the boundary between legitimate monopolies due to constitutional mandates and monopolies that have the potential to hinder business competition. Putri and Joesoef (2025) also emphasized that the application of Article 51 needs to be reviewed so that the exemption of SOEs does not automatically close the space for competition law supervision.

Third, the results of the study show that the principle of competitive neutrality has not been explicitly formulated in Indonesian business competition law. Law No. 5 of 1999 regulates the prohibition of monopolistic practices, unfair business competition, abuse of dominant positions, conspiracy, and market domination, but does not specifically regulate the obligation for SOEs and private business actors to be on an equal level of competition. As a result, the principle of competitive neutrality must still be withdrawn through the interpretation of the principles of economic democracy, justice, economic efficiency, and protection of healthy business competition. This is in contrast to developments in several other jurisdictions that have begun to use fair competition review mechanisms to assess whether a government policy has the potential to create market distortions (Healey & Bai, 2026).

Fourth, this study found that the exception to SOEs should not be understood as absolute immunity from the law of competition. Exceptions can only be justified if certain criteria are met, namely the existence of a clear legal basis, directly related to an important branch of production or the livelihood of the public, necessary to achieve the purpose of public service, and carried out proportionately. Thus, if SOEs carry out ordinary commercial activities outside the mandate of public services, then SOEs should still be subject to the principle of business competition like other business actors. These findings strengthen the argument of Santoso et al. (2026) that the supervision of business competition against SOEs needs to be reconstructed so that there is no inequality between state interests and market protection.

Fifth, the results of the study show that there are potential problems with the mechanism of direct assignment to SOEs. Direct assignments can indeed be justified under certain conditions, for example to ensure the availability of public goods/services, maintain the stability of strategic sectors, or meet the needs of the wider community. However, without clear standards of transparency, accountability, and scope restrictions, such assignments can turn into competitive privileges. In this context, the assignment of SOEs needs to be clearly distinguished between non-commercial activities that are public service obligations and commercial activities that should follow market mechanisms.

Sixth, the study found that the issue of competitive neutrality is not only related to monopoly rights, but also concerns access to state resources. SOEs often have greater access to financing, government guarantees, strategic assets, policy information, bureaucratic networks, or government projects. This advantage can create first-mover advantages that are difficult for private business actors to match. Gong (2025) shows that the initial advantages of state-owned enterprises in strategic sectors can arise due to institutional proximity to the state. In the Indonesian context, similar conditions have the potential to arise when SOEs gain access to projects or markets that cannot be accessed in a balanced manner by other business actors.

Seventh, the results of the study show that the role of ICC is very important in maintaining a balance between public interest and healthy business competition. However, ICC's authority faces challenges when practices that allegedly restrict competition come from regulations, government policies, or state assignments. In such conditions, ICC is not only dealing with business actors, but also with the design of public policies that provide the basis for SOEs' actions. Therefore, supervision of SOEs is not enough to be carried out ex post after alleged violations, but needs to be strengthened through an ex ante review mechanism of regulations or policies that have the potential to limit competition.

Eighth, compared to previous studies, this study found a difference in focus. International studies generally discuss competitive neutrality in the context of state capitalism, subsidies, industrial policy, and SOE reform globally (Martyniszyn, 2025; Duso & Peitz, 2026). Meanwhile, studies on Indonesia highlight more on Article 51, ICC's ruling, and the position of SOEs in certain sectors. The contribution of this research lies in the effort to connect the two clusters, namely using the principle of competitive neutrality as an analytical tool to re-read the SOE exemption in Indonesian business competition law. Thus, this study not only assesses whether SOEs can obtain exemptions, but also assesses how these exemptions should be limited so as not to damage the level playing field.

Ninth, the results of the study resulted in the construction that the application of competitive neutrality to SOEs needs to be based on four main parameters: legality, necessity, proportionality, and transparency. Legality means that any exception must have a clear legal basis. Necessity means that an exception is only granted if the market mechanism is unable to guarantee public services or strategic interests. Proportionality means that the exception space must not exceed the goal to be achieved. Transparency means that any assignments, subsidies, compensation, and exclusive rights must be openly testable. These four parameters can be the basis for ICC, the government, and lawmakers in designing a more balanced SOE supervision model.

Tenth, overall, this study finds that Indonesia's business competition law already has a normative basis to supervise monopolistic practices and unfair competition, but is not fully adequate to explicitly address the problem of the competitive neutrality of SOEs. Therefore, it is necessary to strengthen norms, guidelines, and supervisory mechanisms that are able to distinguish between SOEs as implementers of public mandates and SOEs as commercial business actors. The main findings of this study answer the purpose of the article that competitive neutrality is not intended to eliminate the role of SOEs, but to ensure that these roles are carried out in a limited, accountable, and non-discriminatory manner.

## 2. Discussion

The findings of this study show that the issue of the competitive neutrality of SOEs in Indonesian business competition cannot be understood only as a problem of the existence of state monopolies, but must be seen as a problem of legal limits on state privileges in the market. In the Indonesian economic system, SOEs do have a constitutional and legal basis to manage strategic sectors, especially those related to important production branches and the livelihood of many people. However, when SOEs act as business actors in a market that is also open to the private sector, the preferential treatment given by the state can cause distortions of competition. This is where the principle of competitive neutrality becomes important, because it does not reject the role of the state in the economy, but demands that state intervention does not create a disproportionate competitive advantage for SOEs (Healey & Bai, 2026; Lewis et al., 2022).

The results of this study fill the gap in the study of Indonesian business competition law by placing Article 51 of Law No. 5 of 1999 as the critical point of analysis. So far, Article 51 has often been understood as the basis for exceptions for state monopolies through state-owned enterprises, but it has not been studied in depth using the perspective of competitive neutrality. In fact, such an exception should not be understood as absolute immunity from competition law supervision. Putri and Joesoef (2025) show that the interpretation of Article 51 still leaves problems when the appointment or assignment to SOEs has the potential to close the opportunities of other business actors. Thus, the main contribution of this study is to offer a reading that Article 51 needs to be interpreted restrictively, proportionately, and based on public needs, not as a general legitimacy for every form of SOE privilege.

The findings on the dual position of SOEs reinforce the theory that competition law cannot be separated from the relationship between the state, the market, and the public interest. Martyniszyn (2025) explains that in crisis situations and the increasing role of the state, competition law faces new challenges because the state not only acts as a regulator, but also as an economic actor. This is relevant to Indonesia, because SOEs often carry out public service functions as well as commercial activities. When the two functions are not clearly separated, there is a risk of cross-subsidization, the use of state assets for commercial business purposes, and privileged access to projects or government financing. Therefore, the results of this study confirm that the separation of public functions and commercial functions of SOEs is an important prerequisite for maintaining equality of competition.

This discussion also shows that the concept of public interest should not be used too broadly to justify all the privileges of SOEs. In modern competition law, the public interest can indeed be the basis for exception, but it must be tested against standards of legality, necessity, proportionality, and transparency. Long (2025) in his study of Vietnam shows that considerations of public interest in competition law can become problematic if they are not accompanied by clear institutional boundaries. The same can happen in Indonesia when public service reasons are used to justify direct assignments, exclusive rights, or restrictions on market access without competitive testing. Thus, the public interest needs to be understood not as a reason to eliminate competition, but as a basis for regulating competition in a more fair and responsible manner.

When compared to international studies, the findings of this study have similarities in terms of the recognition that SOEs often derive structural benefits from their proximity to the state. Gong (2025) shows that state-owned enterprises in China's hydrogen sector gain an early advantage due to policy support, resource access, and strategic position on the country's agenda. Bi and Wang (2026) also show that the mechanism of fair competition review can help suppress distortions that arise due to administrative monopoly. The similarity with the Indonesian context lies in the potential institutional superiority of SOEs, while the difference is that Indonesia does not yet have an explicit instrument such as fair competition review that systematically tests whether a regulation or government policy has an anti-competitive impact.

The results of this study also support the idea that supervision of SOEs is not enough to be carried out ex post, namely after alleged violations of business competition. ICC does have an important role in cracking down on the behavior of business actors who violate Law No. 5 of 1999, but the problem of competitive neutrality is often born from state policies, sectoral regulations, or administrative assignments that precede the actions of business actors. Healey and Bai (2026) show that the mechanism for reviewing competition against government policies can be an important instrument to prevent the birth of discriminatory regulations. In the Indonesian context, this leads to the need to build an ex ante regulatory review mechanism, which is an initial assessment of policy drafts, assignments, or granting exclusive rights to SOEs before causing market impact.

A factor that supports the results of this study is the existence of global developments that increasingly highlight the relationship between industrial policy and competition law. Duso and Peitz (2026) emphasized that industrial policy and competition policy need to be harmonized so that state intervention does not sacrifice market efficiency. In the Indonesian context, the national development agenda, downstreaming, energy transition, infrastructure, and economic resilience often require the role of SOEs. However, the opposite factor to the expectation of competitive neutrality is the strong justification of the state to maintain control over strategic sectors. This means that recommendations to strengthen competitive neutrality in Indonesia cannot be carried out with a full liberalization approach, but must be formulated through a balance model between state control and protection of healthy business competition.

The theoretical contribution of this research lies in the development of an analytical framework that connects three main concepts, namely state ownership, public interest, and competitive neutrality. Previous literature has tended to discuss SOEs from the perspective of corporate governance, economic efficiency, or industrial policy. Meanwhile, this study places SOEs as the object of competition law that must be tested through normative parameters. Thus, this article expands the study of Indonesian competition law by offering the concept that exceptions to SOEs must be tested through four parameters: legality, necessity, proportionality, and transparency. These four parameters can be a bridge between the doctrine of competition law and the constitutional reality of the Indonesian economy.

Practically, the results of this study provide implications for policymakers, ICC, technical ministries, and SOE managers. The government needs to ensure that every assignment to SOEs has a clear legal basis, a limited scope, a measurable duration, and a transparent compensation mechanism. ICC needs to strengthen the assessment guidelines for SOE exemptions so that there is no uncontrollable expansion of the interpretation of Article 51. SOEs also need to separate the recording between public service activities and commercial activities so that there is no cross-subsidy that harms other business actors. Thus, competitive neutrality serves not only as a theoretical concept, but also as a practical instrument for improving market governance.

However, this study has some limitations. First, this research is juridical-normative so that it does not quantitatively measure the economic impact of SOE privileges on private business actors. Second, this study has not conducted interviews with ICC, ministries, SOEs, or affected business actors. Third, the analysis of the decision can still be extended with sectoral case studies, such as energy, aviation, ports, telecommunications, food, or infrastructure. These limitations open up space for further research with an empirical-juridical approach, for example through in-depth interviews, analysis of ICC decisions, comparative studies between ASEAN countries, or measurement of the impact of SOE policies on certain market structures.

Thus, the results of this study fill the gap by showing that the main problem is not whether SOEs can run a monopoly or accept state assignments, but how the law limits, tests, and supervises these exceptions so that they do not turn into distortions of competition. This article offers a direction to update that Article 51 of Law No. 5 of 1999 needs to be read together with the principle of competitive neutrality, not just as an exception norm. Within this framework, SOEs can still carry out constitutional mandates and public services, but must be subject to the principles of accountability, proportionality, and non-discrimination when operating in the market. This is the main contribution of research to the development of Indonesian business competition law.

## CONCLUSION

This study concludes that the competitive neutrality of SOEs is an important issue in Indonesian business competition law because it concerns the boundary between the legitimate role of the state in managing strategic sectors and the potential emergence of competitive privileges that are detrimental to other business actors. SOEs still have constitutional legitimacy to carry out public mandates, especially in sectors related to the livelihood of the people. However, this legitimacy should not be interpreted as absolute immunity from the principle of healthy business competition. The main meaning of this finding is that Article 51 of Law No. 5 of 1999 needs to be read carefully, restrictively, and proportionately so that the exemption for SOEs does not turn into an instrument of justification for monopolies that are not transparent, discriminatory, or hinder the level playing field.

Academically, this article recommends that the study of Indonesian business competition law begin to place competitive neutrality as the main analytical framework in reading the relationship between SOEs, public interests, and market structures. Further research can deepen this issue through sectoral studies, such as energy, food, transportation, telecommunications, ports, or infrastructure, as well as through an empirical-juridical approach involving ICC decision data, regulatory interviews, and affected business actors. Practically, the government and ICC need to formulate clearer guidelines regarding the limits of SOEs exemptions, including standards of legality, necessity, proportionality, transparency, and separation between public service functions and commercial activities.

In the future, the existence of SOEs should not be contradicted by the principle of business competition, but directed so that the two strengthen each other. The state can still be present to ensure public services and manage strategic sectors, but this presence must be carried out with accountable, open governance, and does not close the opportunity for other business actors to participate fairly. Therefore, the issue of competitive neutrality invites readers to see competition law not just as an instrument of enforcement against business actors, but as a correction mechanism for the design of state policies in the market. With this awareness, national economic development can move towards a model that is not only strong in terms of the country, but also healthy, fair, and competitive for all business actors.

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