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Pertamina's Quasi-Monopoly: How Restrictions on Basic Fuel Imports Impact the Downstream Oil and Gas Investment

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Abstract: Penelitian ini membahas implikasi monopoli semu yang muncul akibat dominasi Pertamina dalam pengelolaan sektor minyak dan gas bumi, khususnya terkait kebijakan pengaturan impor BBM melalui Surat Edaran Kementerian ESDM Nomor T-19/MG.05/WM.M/2025 tertanggal 17 Juli 2025. Monopoli semu terjadi ketika dominasi pasar terbentuk melalui kebijakan administratif yang membatasi akses pasar bagi pelaku usaha lain. Penelitian ini menggunakan pendekatan yuridis normatif, dengan analisis kualitatif-deskriptif terhadap peraturan perundang-undangan, literatur hukum, dan dokumen kebijakan. Hasil analisis menunjukkan bahwa kebijakan pengaturan impor BBM yang memberi preferensi kepada Pertamina dapat menghambat partisipasi investor swasta, meningkatkan risiko persaingan tidak sehat, dan menimbulkan ketidakpastian hukum yang berdampak pada menurunnya minat investasi. Penelitian ini merekomendasikan perlunya kebijakan yang menjamin akses pasar yang adil, transparansi impor, kepastian hukum kontraktual, dan mekanisme evaluasi dampak kebijakan secara berkala. Implementasi rekomendasi tersebut diharapkan dapat meminimalkan monopoli semu, mendorong iklim investasi yang sehat, dan memastikan pengelolaan energi nasional yang berkelanjutan.

Keyword: Monopoli, Impor, Hilir Minyak dan Gas Bumi, Investasi

Abstract: This study discusses the implications of quasi-monopolies that arise due to Pertamina's dominance in the management of the oil and gas sector, especially related to the policy of regulating fuel imports through the Circular Letter of the Ministry of Energy and Mineral Resources Number T-19/MG.05/WM. M/2025 dated July 17, 2025. A quasi-monopoly occurs when market dominance is achieved through administrative policies that limit market access for other business actors. This study uses a normative juridical approach, with qualitative-descriptive analysis of laws and regulations, legal literature, and policy documents. The results of the analysis show that the fuel import regulation policy that gives preference to Pertamina can hinder private investor participation, increase the risk of unfair competition, and create legal uncertainty, thereby contributing to declining investment interest. This study recommends policies to ensure fair market access, import transparency, contractual legal certainty, and periodic evaluation of policy impacts. The implementation of these recommendations is expected to minimize quasi-monopolies, encourage a healthy investment climate, and ensure sustainable national energy management.

Keywords: Monopoly, Imports, Downstream Oil and Gas, Investment

INTRODUCTION

The oil and gas (oil and gas) sector is at the core of Indonesia's national development because it is crucial for the economy and people's welfare. This strategic position is firmly rooted in Article 33 of the 1945 Constitution, which requires the state to control vital branches of production that affect people's lives. The management of natural resources such as oil and gas is a manifestation of the Right to Control the State (HMN). This HMN gives the state full authority to regulate, supervise, and manage the potential and the entire process of natural resource exploitation. (Disemadi & Lasmadi, 2019).

The management of the oil and gas sector must absolutely involve the dominant role of the state, represented by State-Owned Enterprises (SOEs), especially PT Pertamina (Persero). In practice, Pertamina leads and controls national energy production, distribution, and supply, thereby fulfilling the constitutional mandate. Pertamina's dominance in the oil and gas sector is not a coincidence but the result of a solid, structured legal framework. This framework is structured in a regulatory hierarchy, ranging from the level of laws (such as the Oil and Gas Law and the SOE Law) to technical implementing regulations, Regulation of the Minister of Energy and Mineral Resources Number 14 of 2025 Concerning Cooperation in the Management of Working Areas to Increase Oil and Gas Production.

Among the existing regulations, Presidential Regulation Number 61 of 2024 (amended by Presidential Regulation Number 7 of 2025) is the instrument with the most direct influence on the current oil and gas market structure. Presidential Regulation 61/2024, issued on May 21, 2024, to replace Presidential Regulation 32/2022, is an essential regulation because it establishes a much more detailed framework for regulating the needs and supply of strategic commodities, including oil and gas products. The primary mechanism of this regulation is the Commodity Balance. This planning tool uses accurate data on consumption and production to ensure the availability of commodities to society and industry. Significant improvements occurred through Presidential Regulation 7 of 2025 (stipulated on February 2, 2025), which strengthened coordination by appointing the Coordinating Minister for Economic Affairs as the primary coordinator and controller for the non-food Commodity Balance, including oil and gas. This change is more than just an administrative adjustment; it shows substantial centralization of authority in the regulation of strategic oil and gas commodities. The Commodity Balance serves as a data management system that is the absolute basis for issuing import and export permits for oil and gas products. These regulations directly determine who is allowed to operate in the market and the extent to which they may participate. Presidential Regulation 7/2025 further clarifies that strategic decisions related to oil and gas are now entirely at the highest level of the central government.

The study of Presidential Regulation Number 61 of 2024 jo. Presidential Regulation Number 7 of 2025 shows a significant structural impact on the oil and gas market through two key provisions. First, Article 10 stipulates that the Needs Plan for strategic oil and gas commodities can be proposed by ministries/institutions that foster the sector, not only from private business actors, indicating the centralization of planning in the hands of the government. This centralization is strengthened by Presidential Regulation 7/2025, which places the Coordinating Minister for Economic Affairs as the central controller of the entire non-food Commodity Balance process to ensure supply and price stability. Second, the most impactful provision is Article 18, paragraph (5), which provides legal legitimacy for the assignment of supplies to SOEs or other business actors. However, in practice, the phrase "or other business actors" is rarely realized due to bureaucratic constraints, thereby consistently establishing Pertamina as the dominant entity in the import and distribution of national oil and gas products. This administrative regulation has become an effective instrument that strengthens Pertamina's market dominance.

The concrete implementation of Presidential Regulation Number 61 of 2024 jo. Presidential Regulation Number 7 of 2025 is realized through specific operational policies, such as the Circular Letter of the Ministry of Energy and Mineral Resources Number T-19/MG.05/WM. M/2025, dated July 17, 2025, which limits the increase in non-subsidized gasoline imports to a maximum of 10% of 2024 sales volume. This policy is a direct manifestation of the Commodity Balance mechanism, with coordination now increasingly centralized under the Coordinating Minister for the Economy. Technically, every business actor who wants to import oil and gas products is required to submit a proposal for needs through the National Commodity Balance System (SINAS NK). These proposals must undergo layered verification by the sector development ministry before the Needs Plan is established and the Import Approval is issued. While these layered bureaucratic mechanisms aim to ensure data accuracy and responsible supply control, in practice, they create a highly centralized decision-making structure and limit the room for private business actors.

All strategic decisions related to the allocation of oil and gas imports and distribution are now highly dependent on coordination at the coordinating ministerial level and, most importantly, on direct assignments to SOEs, namely Pertamina. The centralization of this decision-making, which is further strengthened by Presidential Regulation Number 7 of 2025 Concerning Amendments to Presidential Regulation Number 61 of 2024 Concerning Commodity Balance By placing coordination under the Coordinating Minister for the Economy, it is not only a matter of efficiency, but also creates significant structural barriers for private business actors who do not have access to the highest level of decision-making.

This matter raises a striking paradox between the normative purposes of Article 2 paragraph (1) Presidential Regulation Number 61 of 2024 Concerning Commodity Balance, namely providing accurate data, giving certainty of doing business, and ensuring the availability of goods, with the reality of implementation in the field. In practice, Pertamina's dominance is facilitated and systematically strengthened by this centralization of authority, which risks creating a "quasi-monopoly". This phenomenon is at the heart of the problem because it results in a concentration of markets that are structural and systemic, rather than derived from natural competitive advantages in an open market. To understand the issue of quasi-monopolies in the oil and gas sector, it is essential to distinguish them from the classic monopolies prohibited by antitrust laws. Although the principle *of competitive neutrality* ideally requires equal treatment for SOEs and the private sector (Siswanto & Hutajulu, 2019)It is noted that the dominance of SOEs is vulnerable to being abused to benefit subsidiaries.

The culmination of this research is to formulate strategic, practical, and balanced policy recommendations to unite three fundamental interests that are often considered to be in conflict in the management of oil and gas resources such as, (1) national interests and energy sovereignty Article 33 Constitution of the Republic of Indonesia in 1945, the role of SOEs in ensuring the availability of energy for the community, as well as (2) the creation of a competitive and sustainable investment climate for business actors. Departing from the premise that these three interests can be integrated rather than seen as a zero-sum game, the results of this study serve as an essential reference for policymakers to formulate strategies that simultaneously uphold state sovereignty while optimizing private-sector participation through healthy competition. The ultimate goal is to achieve an ideal balance between effective state control, healthy business competition, as provided for in Law Number 5 of 1999 Concerning the Prohibition of Monopoly Practices and Unfair Business Competition, and sustainable oil and gas investment. This balance must be implemented through an inclusive, transparent, and pro-competition mechanism (beyond just normative goals as stated in Presidential Regulation No. 61 of 2024) to provide fair opportunities for all business actors and ensure that the benefits of oil and gas management are truly enjoyed by all Indonesian people in the long term.

METHOD

This research method adopts a normative legal research approach, focusing on the analysis of positive legal norms using a logical-deductive reasoning model and emphasizing that normative legal research portrays law as a prescriptive discipline and is identical to legal literature research, as the data sources are primary, secondary, and tertiary legal materials. (Sonata, 2015). This research is oriented towards two main approaches: first, the Statute Approach, which is absolute in doctrinal law (Setia Negara, 2023). This approach examines all regulations related to oil and gas management, state-owned enterprises, and private investment to understand legal consistency and find the ratio legis and ontological basis of a law. The goal is to map out a formal legal framework that creates the potential for quasi-monopolies. Second, the Conceptual Approach, which analyzes various theories and principles of civil law (such as the theory of engagement, the principle of freedom of contract, and the principle of contractual justice) to evaluate the alignment of oil and gas law practices with fundamental legal principles (Marzuki, P. M., 2016). Data analysis was carried out using a qualitative-descriptive method through a series of steps of interpretation (interpretation), comparison (comparison), and decomposition (description) of legal norms. (Wiraguna, 2025). The results of this analysis are then used to formulate policy recommendations to create a fair and sustainable business climate in the oil and gas sector.

RESULTS AND DISCUSSION

The oil and gas (oil and gas) sector has a dual and strategic role in national development, namely as a vital source of energy and the primary contributor to state revenue. Its management is not solely economically based; it is firmly rooted in the principle of state sovereignty and is governed by a layered legal framework. This legal framework seeks to balance national interests, the role of SOEs (such as Pertamina) as state instruments, and legal certainty for private investors. The fundamental basis is Article 33 paragraphs (2) and (3) of the 1945 Constitution, which requires essential production branches to be controlled by the state and natural resources to be used for the prosperity of the people. This article continues to apply to test-related laws, including Law Number 22 of 2001 concerning Oil and Gas. (Redi, 2015).

This constitutional principle serves as the foundation for SOEs in regulating the national energy chain. However, since the concept of "the right to rule the state" is abstract, it requires an authoritative interpretation. Conceptually, this right stems from the Pancasila, which grants the state the authority to intervene for the prosperity of the people, while still opening up opportunities for civil ownership so long as it does not degrade the state's role in decision-making. (Nizammudin, 2016). This interpretation is in line with the Constitutional Court's decision, which provides an operational basis for implementing this right.

Through Decision No. 002/PUU-I/2003, the Constitutional Court (MK) comprehensively interpreted the "right to control the state" through five functions: policy (*beleid*), management (*bestuurdaad*), regulation (*regelendaad),* management (*beheersdaad*), and supervision (*toezichthoudensdaad)*. This decision, later affirmed by Decision No. 36/PUU-X/2012, stipulates that these five functions form a tiered hierarchy. In the hierarchy, direct management by the state or SOEs is determined as the first and foremost ranking, because this function is considered the most effective in ensuring maximum benefits for the state and the most significant benefits for the people; followed by policy and management functions in the second rank, as well as regulation and supervision in the third rank. Although this hierarchy serves as a normative guideline, there are inconsistencies between these constitutional norms and the government's administrative practices in their implementation. (Riza & As, 2024). The operationalization of the right to control the country is realized through Law Number 22 of 2001 concerning Oil and Gas, which regulates upstream and downstream oil and gas business activities. Under the umbrella of the right to control the state, the state has the right to regulate the legal status of oil and gas management and, in principle, accepts competition among business actors, as long as it does not undermine the essence of state control. (Azhar, 2018).

The Constitutional Court Decision Number 36/PUU-X/2012 identifies several provisions of Law Number 22 of 2001 as contrary to the Constitution, especially those related to BP Migas. The Court stated that Article 1 number 23, Article 4 paragraph (3), Article 41 paragraph (2), Article 44, Article 45, Article 48 paragraph (1), Article 59 letter a, Article 61, and Article 63 as well as several phrases related to the Implementing Agency (BP Migas) in Law Number 22 of 2001 concerning Oil and Gas are contrary to the 1945 Constitution and do not have binding legal force.

The cancellation of the previous Oil and Gas Law by the Constitutional Court (MK) was due primarily to the view that the relationship model between BP Migas and business entities was deemed to undermine the meaning of state control over oil and gas resources, thereby contradicting Article 33 of the 1945 Constitution. In its decision, the Constitutional Court emphasized that oil and gas management must be carried out directly by the state or SOEs and should be handed over to the private sector only when the state lacks capital, technology, or management. This constitutional affirmation triggers a sustainable institutional reform of SOEs, which is strengthened through Law No. 1 of 2025, which is about the third amendment to Law No. 19 of 2003 concerning State-Owned Enterprises (SOEs), while Law No. 16 of 2025 is about the fourth amendment to Law No. 19 of 2003 concerning SOEs.

These two laws aim to strengthen the position of SOEs as a vital instrument of the state in ensuring energy sovereignty and security. Specifically, reforming SOE governance through strengthening the business judgement rule, the establishment of the Daya Anagata Nusantara Investment Management Agency (BPI Danantara), as well as the mandate to establish Investment Holding and Operational Holding (Law Number 1 of 2025 Concerning the Third Amendment to Law Number 19 of 2003 Concerning State-Owned Enterprises., n.d.; Law Number 16 of 2025 Concerning the Fourth Amendment to Law Number 19 of 2003 Concerning State-Owned Enterprises)

Meanwhile, Law Number 16 of 2025 changes the Ministry of SOEs to the SOE Regulatory Agency (BP SOEs), establishes the division of authority with BPI Danantara, and regulates the BPK's audit jurisdiction. All of these reforms are designed to improve the efficiency, accountability, and professionalism of SOEs in managing strategic sectors. In addition to strengthening SOE institutions, investment is a crucial aspect of oil and gas management. Law No. 25 of 2007 concerning Investment (Circular Letter of the Director General of Oil and Gas of the Ministry of Energy and Mineral Resources Number T-19/MG.05/WM. M/2025 Dated July 17, 2025 Concerning Restrictions on the Increase in Non-Subsidized Gasoline Imports., n.d.) provides a legal basis to ensure certainty and protection for investors, including foreign investors in the oil and gas sector. In accordance with this provision, foreign investment in the oil and gas sector must be in the form of a Limited Liability Company under Indonesian law, given the nature of this industry as an international business. (Mokalu, 2016).

To further increase investment attractiveness, Law Number 6 of 2023 Concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 Concerning Job Creation into Law was introduced to simplify licensing and improve the investment ecosystem. One example of this commitment is data from the Ministry of Energy and Mineral Resources for 2023, which shows a 21% increase in upstream oil and gas investment in the first semester of 2023, reaching USD 5.7 billion. (The Ministry of Energy and Mineral Resources, 2023)

However, efforts to create a conducive investment climate face serious challenges from counterproductive administrative policies. Although laws and regulations guarantee investment certainty, the government, through the Ministry of Energy and Mineral Resources, Pertamina, and private business entities, agreed on a technical fuel import regulation scheme.

Although the scheme for regulating the import of fuel oil (BBM) technically aims to maintain the domestic trade balance and energy supply, this administrative policy is implemented through the Circular Letter of the Director General of Oil and Gas of the Ministry of Energy and Mineral Resources Number T-19/MG.05/WM. M/2025, which limits the increase in non-subsidized gasoline imports to a maximum of 10%, even though private business entities are highly dependent on imports, could create a quasi-monopoly. This monopoly arose because the SE gave practical preference to Pertamina, thereby directly limiting market access and hindering competition for other business actors. The negative impact is unfair business competition, increasing legal uncertainty, and declining investment interest in the downstream oil and gas sector. If SE T-19/2025 operationally interferes with the principles of inclusivity and fair competition through import/distribution dominance, this will lead to potential conflicts of interest and significant regulatory inconsistencies, which should be addressed through a comprehensive regulatory framework such as Presidential Regulation Number 61 of 2024 (amended by Presidential Regulation Number 7 of 2025) concerning Commodity Balances, which aims to provide accurate export-import data as a policy basis.

The complexity of oil and gas sector regulations shows that although the goal is to maintain national energy stability, its implementation risks creating market distortions that are contrary to the principles of healthy business competition. This distortion can be understood through the concept of quasi-monopoly, a form of market domination by one entity that does not arise from explicit legal prohibition of monopoly, but rather from administrative policy intervention, market restrictions, or government preferences for certain parties (such as SOEs). This phenomenon differs from monopolies, which are strictly prohibited under Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. Although Article 51 of the same law excludes monopolies organized by SOEs over essential branches of production and that control the lives of the people, the Constitutional Court has emphasized that this monopoly exemption does not automatically apply to all SOEs.

According to the Constitutional Court's interpretation, monopolies are generally prohibited in Indonesia. However, exceptions are given to State-Owned Enterprises (SOEs) as long as three conditions are met: the business activities must control people's lives and be stipulated by law. The government explicitly appoints the SOEs to carry them out. (Imantaka et al., 2023). Although SOEs function as an extension of the government in managing strategic sectors (Yanto et al., 2023)Implementing this monopoly still faces serious challenges, including ineffective SOE management that fails to maximize profits and the creation of barriers to private companies' competition. These findings show that SOE monopolies do not automatically result in optimal efficiency or welfare. Furthermore, from a philosophical perspective, the practice of monopoly and unfair business competition is contrary to the values of justice and benefit, because it can cause severe market distortions in which prices are determined by entities that control market forces rather than by market laws (supply and demand) (Tarigan, 2016).

To operationalize the legal limitations on SOE monopolies, the Business Competition Supervisory Commission (ICC) issued ICC Regulation Number 3 of 2010. This regulation serves as a technical guideline for the implementation of Article 51 of Law Number 5 of 1999 Concerning the Prohibition of Monopoly Practices and Unfair Business Competition, to clarify the article's purpose and elements. Although technical guidance has been available, the exception for monopoly rights, which is only one sentence in Article 51, continues to cause serious legal confusion regarding the implementation of monopoly practices by SOEs. This legal confusion is often used to legitimize quasi-monopoly practices that fail to meet strict constitutional requirements. (Yusro et al., 2021).

Given the complexity and potential for abuse, effective oversight mechanisms are needed to ensure that monopoly practices, both explicit and quasi-explicit, can be appropriately identified and addressed. In fact, there is already a bridge to address the gap between existing regulations and the potential for quasi-monopoly practices. Article 35 letter e of Law Number 5 of 1999 has given ICC the task to "provide advice and consideration on Government policies related to monopolistic practices and/or unfair business competition". Along with the implementation of these tasks, ICC, on March 31, 2023, issued ICC Regulation Number 4 of 2023 concerning Providing Advice and Consideration to Government Policies Related to Monopoly Practices and/or Unfair Business Competition (ICC Regulation 4/2023). This Regulation introduces two innovative instruments, the Business Competition Policy Checklist (DPKPU) and the Business Competition Policy Assessment (AKPU)

The DPKPU (Business Competition Policy Question List) is the primary tool for the Government to align its policies with the principles of healthy business competition and to revise provisions that could trigger monopolies or unfair business competition. The operational mechanism regulated by ICC Regulation 4/2023 is systematically designed. ICC can provide suggestions and considerations based on the request of government agencies or public institutions, or on the Commission's own initiative (the Commission's initiative). This suggestion is based on the Business Competition Policy Analysis (AKPU) using the DPKPU.

If a policy is suspected of violating the principle of fair business competition, ICC will analyze its impact within 60 days (extendable). The results are outlined in ICC's Recommendations, which can be suggestions to consider the effect, change, or repeal the policy. After submitting the suggestion, ICC will monitor for 60 days. Although ICC's recommendations are not legally binding, ICC Regulation 4/2023 provides a stronger enforcement mechanism, where if the agency does not implement the advice, ICC can publish the suggestions, conduct hearings, and/or report to the agency's superiors. The effectiveness of this mechanism is evident in ICC's in-depth analysis of the policy of restricting non-subsidized gasoline imports (through the Energy and Mineral Resources Circular Letter Number T-19/MG.05/WM. M/2025), which limits the increase in imports to a maximum of 10% of sales volume in 2024 (Heri Purnomo, 2025).

The primary analysis by the Business Competition Supervisory Commission (ICC) shows that the policy of restricting non-subsidized gasoline imports has had a worrying impact on Indonesia's market structure, namely by affecting the operational continuity of private businesses that depend on imports, eliminating consumer choice, and strengthening Pertamina's market dominance. Quantitative findings using the DPKPU support this, as the distribution of import volumes shows that Pertamina Patra Niaga Ltd received a much larger additional volume (around 613,000 kiloliters). In comparison, private business entities received a further range of 7,000 to 44,000 kiloliters. This disparity is reflected in the market share of non-subsidized gasoline, where Pertamina Patra Niaga controls around 92.5%, while private business actors account for only 1-3%. This highly concentrated market condition shows that efforts to maintain a balance in business competition are crucial so that consumers continue to benefit from the presence of various business actors. Based on this data, ICC continues to assess business competition in accordance with ICC Regulation No. 4 of 2023 (Hanifah Dwi Jayanti, 2025).

Moreover, the Government stated that the rules for importing Fuel Oil (BBM) are flexible and will be adjusted to actual field conditions, including the availability of domestic supply, national consumption levels, smooth distribution, and the country's financial situation. In an effort to ensure the availability of non-subsidized fuel, the government is also actively encouraging business-to-business (B2B) cooperation between Pertamina and private petrol station operators. (The Ministry of Energy and Mineral Resources, 2025). In support of this policy, Pertamina Patra Niaga is reported to have still a significant remaining import quota of 34 percent, or approximately 7.52 million kiloliters. The remaining amount of import quota is considered more than enough to meet the additional allocation of 571,748 kiloliters needed by private petrol stations until the end of the year. (Tribun-Medan, 2025).

ICC identified that the policy of limiting the increase in import volume by 10% violated DPKPU (List of Business Competition Policy Questions) number 5, letter b, regarding indicators that restrict the number of sales or the supply of goods and/or services. In addition, the directive for private business entities to buy supplies from their main competitor, PT Pertamina Patra Niaga, when they run out of stock, or the policy of importing non-subsidized gasoline through a single channel, intersects with the DPKPU number 6, letter c, related to the indicator for the appointment of certain suppliers. Based on this identification, ICC emphasized that these conditions have the potential to pose serious challenges to a healthy business competition climate, including the risk of market foreclosure, price and supply discrimination, and the dominance of certain actors. The subsequent impact is limited use of private infrastructure and potential inefficiencies, which, overall, sends a negative signal to new investment in the downstream oil and gas sector. ICC considers it essential that the policy of importing non-subsidized gasoline be periodically evaluated. This evaluation is crucial to create a balanced business climate, which can ultimately support economic growth targets through increased investment and the participation of private business entities, in addition to strengthening the role of SOEs (Inkana Putri, 2025).

In line with its analysis, ICC (Business Competition Supervisory Commission) encourages that every policy formulated remains in line with the indicators in the DPKPU (Business Competition Policy Question List), so that the targets of energy stability and oil and gas trade balance can be achieved without sacrificing healthy business competition and consumer choice. Pursuant to Article 35, letter e, of Law Number 5 of 1999 and the mechanism outlined in Article 10 of ICC Regulation Number 4 of 2023, ICC officially recommends that the government periodically evaluate the policy on importing non-subsidized gasoline. This evaluation is crucial to ensuring that national targets are achieved without compromising the principles of healthy business competition and the sustainability of private investment. Although normatively, a quasi-monopoly does not always violate the law, its impact on civil and economic law is significant, especially in limiting market access for private business actors seeking to participate in the oil and gas sector, such as the management of public wells or gasoline distribution.

Investors and private enterprises face serious obstacles in competition because market dominance, including resource allocation and production facilities, is controlled by a single entity, namely, SOEs, which are administratively supported, creating detrimental inequalities due to limited access. From a civil law perspective, this quasi-monopoly practice poses fundamental problems because it is contrary to the principles of the private legal system, such as freedom of contract, legal certainty, contractual justice, and civil liability. Although the principle of freedom of contract initially reflected individual autonomy, in the modern context, this freedom is no longer absolute. It must be regulated to ensure social responsibility and justice. (Fuller, L. L, 1969; Subekti, 2005).

The quasi-monopoly condition in fuel distribution reflects the concept of regulated self-regulation, marking a shift from almost absolute freedom of contract to regulated autonomy, in which business decisions must consider broader social and economic impacts rather than just private profits. This transition to freedom, tied to the public interest, creates complex tensions that could harm various parties. (Teubner, G, 1986).

Quasi-monopoly refers to specific conditions in which market concentration in one entity (e.g., Pertamina) is explicitly legitimized as a monopoly, using regulations such as Presidential Regulation (including Presidential Regulation 61/2024 jo. Presidential Regulation 7/2025), Ministerial Regulation, or circulars. On this basis, Pertamina can dominate the market without formally violating the law on business competition, because legitimate administrative regulations facilitate its dominance. The structural implications of this condition are wide-ranging, limiting private-sector participation, creating legal uncertainty, and potentially damaging the investment climate in the oil and gas sector. Strengthening coordination under the Coordinating Minister for the Economy through Presidential Regulation 7/2025, although aimed at increasing synergy, actually further narrows the space for private business actors due to increasingly centralized and exclusive decision-making.

The phenomenon of quasi-monopoly places Pertamina's dominance in a complex gray area in Indonesia's competition law. The juridical dilemma arises because, on the one hand, ICC Regulation No. 3 of 2010 concerning Guidelines for the Implementation of the Provisions of Article 51 of Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition expressly prohibits monopoly practices and unfair competition. However, on the other hand, law enforcement becomes difficult because the primary driver of market concentration is procedurally valid administrative regulations (such as Presidential Regulation Number 61 of 2024, jo. Presidential Regulation Number 7 of 2025), not market manipulation. This raises the fundamental question: to what extent can administrative regulation legally create a market structure that is anti-competitive and contrary to the principles of fair business competition?

In addition, empirical findings show that problems in the oil and gas sector are multi-level and complex, encompassing not only normative macro regulations but also the implementation of private and operational contracts. In oil and gas management practice, the dominant contractual mechanism is *the Production Sharing Contract* (PSC), which governs the legal relationship between SKK Migas (representing the government) and the Contractor for exploration and exploitation. In general, the clauses in the PSC are considered to meet the principle of proportionality, but a note indicates that some provisions still place the contractor in an unbalanced position. (Satryadin et al., 2016). To improve this system, in 2017, Indonesia made significant changes, shifting from a cost-recovery system to a gross split. This change makes a big difference in the distribution of production and in the return on operational costs. (Floriantina & Muryanto, 2021). Although efforts to improve through this change in the contractual system have been made, it is concluded that the broader legal framework governing the oil and gas sector as a whole still faces fundamental challenges. This complexity is even more pronounced when it is linked to the implementation of the Production Sharing Contract (PSC) in Aceh, which reveals violations of contractual obligations by foreign contractors, resulting in financial losses for regional companies and affecting local communities. (Nurdin MH & Analiansyah, 2025).

In the context of Pertamina's dominance, facilitated by the SOE Law and supported by Presidential Regulation Number 61 of 2024, operational restrictions through verification mechanisms, determination of Needs Plans, and assignment of SOEs not only have an impact on the macro market structure but also have the potential to affect contractual rights and obligations in private oil and gas agreements. This systematic structural imbalance directly harms private investors in three fundamental aspects: freedom of contract, legal certainty in contract execution, and protection of investments. The problem of legal certainty in Indonesia is not new, emphasizing that legal certainty and foreign investment protection are crucial, and regulatory inconsistencies and bureaucratic complexity remain the main obstacles to the entry of foreign direct investment.(Ayu Taduri, 2021)

Pertamina's systematic dominance, if left without a balancing mechanism, risks declining market efficiency, uncertainty about long-term energy security, and a decline in national competitiveness—a paradox that is contrary to the country's constitutional goal of ensuring energy sovereignty and reducing investment and innovation interest in the oil and gas sector. Criticism of this situation further strengthens the inconsistency between government cooperation contracts and private business entities and policies. Another example is criticizing the shift from the Cost Recovery to the Gross Split scheme as a premature step, in response to the decline in state revenue, but not yet supported by adequate concrete regulations, which could potentially reduce contractors' interest in investing in exploration. This shows that oil and gas regulation issues are also systemic and multi-level. Overly strict, centralized regulation of imports/distribution (through mechanisms such as SINAS NK) and total dominance by a single entity increase the risk of unfair business competition. Private businesses face multidimensional challenges, including limited access to import permits, legal uncertainty arising from regulatory changes, and structural barriers to business efficiency stemming from a multi-layered, highly centralized verification process. (Yuniza et al., 2020)

The context of this regulatory uncertainty is exacerbated by extensive empirical findings that regulatory uncertainty is a fundamental weakness that seriously undermines the climate and foreign investor confidence. The main problem lies in the pattern of regulatory changes, which are difficult to predict and interfere with long-term investment planning. Ironically, the drafting of oil and gas regulations is at odds with its own normative purpose, which is "to provide convenience and certainty in trying to increase investment and create jobs," as clearly stated in Article 2, paragraph (1) b, of Presidential Regulation Number 61 of 2024. The practical implementation of the Commodity Balance mechanism, especially those involving the assignment of SOEs (Article 18 paragraph (5)), the multi-layered verification process (Article 13), and ministerial coordination (Article 18 paragraphs (2) and (3)), actually creates significant structural barriers to investment. (Indonesia-Investment, 2025)

These structural barriers fundamentally prevent private business actors from competing on equal terms and sustainably in the national oil and gas sector. The large gap between the ideal normative goals and the realities of implementation on the ground suggests a fundamental disconnect between policy design and actual outcomes. This research aims to provide a solution by in-depth analysis of the implications of Pertamina's dominance of private investment in the context of oil and gas contracts, with a special focus on the influence of Presidential Regulation Number 61 of 2024 on the Commodity Balance, which strengthens Pertamina's dominant position. Specifically, this study will: 1) identify and analyze the potential for quasi-monopolies due to the implementation of administrative regulations; 2) review the mechanism for regulating the Needs Plan, Supply Plan, and assignment of SOEs in the Commodity Balance; and 3) analyze the systemic impact of such mechanisms on the climate of business competition and private investment flows. In addition, the research will examine the contribution of the verification mechanism (Article 13) and the Commodity Balance determination system through ministerial coordination meetings (Articles 17 and 18) to the creation of barriers to private-sector market entry.

The phenomenon of bureaucratic monopoly in public services creates a paradox: bureaucracy, which is supposed to serve, becomes difficult to supervise, tends to be arrogant, and lacks accountability. (Lestari & Santoso, 2022). As a consequence, the public and private business actors who need access to fuel lose alternative options and are forced to accept existing provisions, which ultimately weakens their bargaining position in the distribution system. This imbalance dynamic is further exacerbated by the Circular Letter of the Director General of Oil and Gas Number T-19/MG.05/WM. M/2025, which limits non-subsidized gasoline imports to a maximum of 10%. As a result of this policy, private businesses are now required to purchase supplies through Pertamina's business-to-business scheme. At the same time, Pertamina itself is allowed to maintain a much larger import quota (31% until December 2025). This situation reflects a fundamental reversal of roles, in which service users are placed as the party that "serves" the leading provider. This structural imbalance is exacerbated by regulatory dominance, which creates uncertainty across procedural and substantive aspects. This kind of uncertainty is directly contrary to the principle of legal certainty, which demands not only the predictability of the process, but also certainty about concrete legal consequences. (Marmor, A., 2004; Raz, J, 1979).

The quasi-monopoly pattern tends to take the form of a contract of adhesion with a unilateral standard, which ignores proportional justice and harms the weak. This is contrary to the concept of justice as a fair equality of opportunity and the difference principle. (Rawls, J., 1999). In the context of the current fuel contraction, distributive justice must be prioritized to protect the weak. (Collins, H., 2003), because quasi-monopolies have the potential to turn contracts into mere instruments of compliance that ignore substantive justice. This phenomenon creates a deep tension between modern civil law, which emphasizes individual liberty, and public law, which emphasizes regulatory state control. A balanced legal approach is needed between protecting the freedom of private business actors and safeguarding the interests of the wider community. This shift reflects the concept of legal rationalization, in which the legal system shifts from personal trust to formal legitimacy grounded in state authority. When public administrative rules enter the realm of private law, a balance between formal procedure and substantive justice becomes crucial. (Weber, M, 1978). This civil law issue is directly linked to the impact of quasi-monopoly economics, especially on investment, where policies such as the Energy and Mineral Resources Circular Letter, which restricts fuel imports, create long-term economic risks and threaten the sustainable growth of the national energy sector.

The next implication for investment is the potential for a very worrying decline in private investor interest. Although the Job Creation Act was designed to simplify licensing and provide legal certainty, these efforts became ineffective when unilateral administrative policies controlled the market. When administrative regulations dominate the market, investors' financial risks increase sharply, and predictable profits decline. As a result, private sector capital and participation in oil and gas development and related infrastructure have been significantly reduced.

The analysis shows a profound contradiction between the implementation of Presidential Decree No. 61/2024 and that of Presidential Decree No. 7/2025, as set out in the Circular Letter of the Director General of Oil and Gas Number T-19/MG.05/WM. M/2025, in the oil and gas sector, and the basic principles stipulated in Article 3 paragraphs (1) and (2) and Article 4 paragraph (2) letter b of the Investment Law. This new policy, by establishing the Commodity Balance and centralizing authority under the Coordinating Minister for the Economy, has effectively created a concentrated market structure and strengthened Pertamina's Limited Liability Company's dominance. Although administratively, this policy appears efficient for data-driven supply control, it also fails to be fair by limiting market opportunities and access for private investors. This is feared to be contrary to the mandate of the Investment Law to increase economic growth and create jobs, because this centralization actually hinders the participation of new investors. Furthermore, the layered, cross-ministerial licensing mechanism has eroded the legal and business certainty guaranteed by the law. In practice, import and distribution permits now rely heavily on administrative assignments, rather than on transparent market mechanisms. In conclusion, this policy deviates from the legal purpose of investment, which should ensure a conducive business climate, because implementing existing regulations actually strengthens the dominance of SOEs and erodes business certainty for private investors.

Investment in the oil and gas sector, especially upstream, is essential to strengthen national energy security, given the high costs of exploration and production and significant risks. However, real barriers to investment attractiveness include fluctuations in global oil prices, layered licensing, frequent regulatory changes, and a lengthy, complicated permitting process. (Indonesian Petroleum Association, 2025). Above all, quasi-monopolies aggravate the situation by reducing incentives to innovate, increasing operational efficiency, and hindering the development of industrial capacity. In the long run, this threatens the growth of the national oil and gas sector, reduces healthy competition, and creates dependence on a single entity for energy supply and distribution. This dependence is not only economically risky but also threatens national energy security. When energy supply depends on one major operator, operational disruptions or inefficiencies can have a systemic impact on the entire economy. This creates structural vulnerabilities that are contrary to the constitutional goals of sovereignty and energy security.

The complexity of this problem reveals a fundamental paradox in the regulation of Indonesia's oil and gas sector. The paradox lies in the incompatibility between the goals of national sovereignty and the principles of investment law. On the one hand, Law Number 22 of 2001 concerning Oil and Gas and the SOE Law stipulate that the state manages strategic sectors through SOEs. On the other hand, the same law recognizes the participation of private investors through contractual mechanisms. However, administrative regulations, such as restrictions on gasoline imports, implicitly confer a competitive advantage on SOEs without a legal basis, thereby creating quasi-monopolies.

This paradoxical situation requires regulatory harmonization to achieve national interests without sacrificing the principle of healthy business competition. Pertamina's dominance in the distribution of non-subsidized gasoline is clear evidence of this paradox. Restrictions on imports through administrative policies directly limit private companies' access to the gasoline market, reducing business competition. Private investors planning to invest in oil and gas contracts face multiple risks, including limited market liquidity, uncertainty about profitability, and losses due to unpredictable government policies. To overcome this complex problem, a strategic approach is needed that involves four main steps, mutually reinforcing: First, the need to affirm clear SOEs market limits, not just administrative policies such as Circular Letters. This affirmation provides legal certainty for all business actors and prevents ad hoc policy changes that interfere with long-term investment planning.

Second, harmonization of administrative regulations with the principles of civil law and investment law to eliminate inconsistencies. Harmonization must evaluate all administrative policies that give preference to certain business actors without an adequate legal basis, ensuring that each policy is in line with the principles of healthy business competition. Third, increasing transparency and legal certainty in the oil and gas contract mechanism. Transparency in this case is included in the rules on import restrictions because Private Enterprises rely heavily on import mechanisms to meet the needs of their consumers in Indonesia, including pricing mechanisms. Legal certainty in contracts is key to attracting long-term investment needed for the development of the oil and gas sector.

Fourth, strengthening the supervisory mechanism by ICC through the effective implementation of ICC Regulations 4/2023, primarily through the Diagnosis of Business Competition Potential (DPKPU) and Business Competitiveness Capability Analysis (AKPU) to ensure healthy business competition. This strengthening includes giving ICC greater authority not only to provide recommendations, but also to monitor and evaluate its implementation. This integrated approach is essential to safeguard the national interests and strategic role of SOEs, while ensuring the rights of private investors, encouraging fair competition, and improving economic efficiency. The successful implementation of this solution will determine whether Indonesia can create an oil and gas ecosystem that balances state sovereignty, economic efficiency, and legal certainty for investors.

CONCLUSION

The phenomenon of quasy-monopoly in the oil and gas (oil and gas) sector is the result of a complex interaction between national interests, the dominance of SOEs (especially Pertamina), and investment principles, which require comprehensive and sustainable solutions. The core of the problem is administrative regulations, such as Circular Letter T-19/MG.05/WM. M/2025, which restricts fuel imports, implicitly gives a competitive advantage to one entity. This condition significantly threatens the freedom of contract and the principle of contractual fairness for private investors, increasing risk and decreasing investment interest in oil and gas contracts, creating uncertainty about profitability. To overcome this complexity and balance national interests with healthy business competition, four steps of strategic reform are needed: first, limit the role of the SOE market through legislation to provide solid legal certainty. Second, harmonization of administrative regulations with investment principles and civil law to eliminate inconsistencies. Third, increase transparency and legal certainty in the oil and gas contract mechanism to attract long-term capital. Fourth, strengthen ICC's supervisory authority by effectively implementing ICC Regulation 4/2023. This integrated approach is crucial to creating an oil and gas ecosystem that balances state sovereignty, economic efficiency, and legal certainty for investment.

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