



## Critique of the Policy Requiring Private Gas Stations to Purchase Fuel From Pertamina: Implications for Competition and the Fuel Market

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### ABSTRACT

The downstream oil and gas sector in Indonesia is currently facing a regulatory shift where the government mandates private gas stations to procure base fuel exclusively from Pertamina to ensure national energy security. However, this policy creates a paradox between state sovereignty and the principles of fair business competition. Objective: This research aims to analyze the synchronization of the single-supply policy with Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and to evaluate its impact on market efficiency. Method: This study employs a normative-juridical research method with a statute and conceptual approach, utilizing primary and secondary legal materials. Findings: The results indicate that the current market structure functions as a monopoly by law, which diminishes the strategic autonomy of private operators and creates consistent price disparities (IDR 250 to IDR 600 per liter). This dependency on a sole supplier who also acts as a primary competitor violates the essential facilities doctrine and creates significant barriers to entry. Conclusion: The study concludes that while energy security is a constitutional mandate, its implementation must not result in discriminatory practices that harm consumer welfare. The research recommends regulatory reforms, such as granting limited independent import quotas or ensuring fair third-party access to distribution infrastructure, to balance national interests with fair market competition.

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## INTRODUCTION

The downstream oil and gas sector in Indonesia is currently undergoing policy changes that have sparked significant debate. Based on the mandate of national energy security, the government requires private gas station operators to purchase base fuel from Pertamina. This policy is intended to limit independent fuel imports by private parties while simultaneously strengthening Pertamina's role as the pillar of national energy security. However, from the perspective of business competition law, this policy has triggered serious debate because it is deemed to legalize monopolistic practices (monopoly by law).

The presence of private sector players such as Shell, Vivo, and BP-AKR is expected to stimulate healthy competition, ultimately improving market efficiency and providing benefits to consumers. However, full dependence on a single supply source that is also their main competitor in the retail market has eliminated the ability of private operators to set prices independently. The impact not only hinders service innovation but also triggers price disparities that ultimately harm the wider community.

Various previous studies have examined the dynamics of Indonesia's downstream oil and gas sector, albeit with varying emphases and perspectives. In their research, Salim et al. (2020) focused on analyzing the government's fiscal burden and the effectiveness of the fuel subsidy program in supporting low-income communities. Meanwhile, Firmansyah and Anggraini (2024) analyzed monopoly in the aviation turbine fuel (avtur) industry. The research findings indicate that exclusive control over essential facilities without opening access to third parties has caused concrete market inefficiencies. As for the study by Manehat et al. (2024), it provided a different analytical focus, namely examining the socio-economic consequences of fuel pricing on community life in remote areas.

The novelty of this research lies in its analytical focus on the single supply policy from Pertamina to private gas stations a recent phenomenon that is still rarely studied through the lens of business competition law under Law No. 5 of 1999. Unlike previous studies that focused on subsidy and operational topics, this article directs the discussion toward the legality of forced vertical integration and its implications for the paralysis of private operators' autonomy.

This research aims to analyze the alignment (synchronization) of fuel trading policies with the provisions in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Through a normative-juridical approach, this article will examine whether the state's mandate to Pertamina has exceeded proportional limits, thereby creating market entry barriers for competitors. This study is highly important for formulating policy directions that can integrate national energy sovereignty interests with fairness in business competition in Indonesia.

## LITERATURE REVIEW

This research develops a theoretical framework based on key concepts that bridge energy policy and business competition law. The analysis is conducted

comprehensively by examining the evolution of fuel distribution and the legal doctrines related to monopoly.

### **The Essential Facilities Doctrine and Market Access**

In competition law, the essential facilities doctrine serves as a key tool for analyzing market dominance. A facility is considered "essential" when it is controlled by a dominant player, cannot be practically or economically duplicated by competitors, and is highly necessary for competitors to reach the public. The research by Firmansyah and Anggraini (2024) in the aviation turbine fuel (avtur) sector demonstrates that exclusive control of infrastructure and the absence of fair access for third-party access (TPA) result in tangible market inefficiencies. This study applies the doctrine to the retail fuel (BBM) market, asserting that Pertamina's distribution network acts as a bottleneck that restricts the strategic independence of private gas stations (SPBU).

### **Monopoly by Law vs. Competitive Efficiency**

Article 33 of the 1945 Constitution serves as the constitutional basis for the concept of monopoly in Indonesia, stipulating state control over vital sectors. However, the boundaries of this control remain debated among legal scholars. Although the research by Salim et al. (2020) focused on fiscal implications and the effectiveness of subsidies, their findings still highlight the significant role of the state in price interventions. This study examines further whether the state's authority has been applied excessively, thereby hindering the entry of new competitors. In addition, Manehat et al. (2024) also investigated the socio-economic impacts of pricing policies in remote areas, finding that a lack of competition can exacerbate social inequality. By integrating various perspectives, this research evaluates the impact of the single-supplier mandate on the legal position of private operators and the overall efficiency of the national fuel market.

### **Regulatory Capture and Structural Conflict of Interest**

A substantial body of literature examines the risks associated with entities holding dual roles in regulated markets. Conflicts of interest arise when the same entity acts as both a business player and a technical regulator. According to the Business Competition Supervisory Commission (KPPU), such dual roles in Indonesia's fuel (BBM) sector risk causing inefficiencies that threaten long-term economic sovereignty. This research investigates regulatory capture a condition in which policy implementation tends to favor the existing dominant player over healthy market competition.

## **RESEARCH METHODS**

This article employs a normative legal research method with a policy analysis approach. Contrary to field-based qualitative research, this study focuses on analyzing legal norms, synchronization of regulations, and the implications of government policies on the fuel market structure in Indonesia. The researcher acts as the primary instrument in interpreting legal documents and policy data to build a comprehensive knowledge base.

## **Data Sources**

To ensure the validity of the analysis, data were collected in detail from the following sources:

- **Primary Data:** Binding legal materials, including Law No. 22 of 2001 concerning Oil and Gas, Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, and derivative regulations from the Ministry of Energy and Mineral Resources (ESDM) and the Regulatory Body for Upstream Oil and Gas (BPH Migas).
- **Secondary Data:** Legal materials that provide explanations of primary legal materials, including official BPH Migas reports, Business Competition Supervisory Commission (KPPU) reports or decisions, fuel import policy drafts, annual reports of business entities (Pertamina and private operators), as well as academic literature and news articles from credible media.
- **Data Analysis Technique:** The collected data were analyzed using **content analysis** to evaluate the consistency of policies against the principles of an open market economy and economic justice as mandated by the 1945 Constitution.

## **DISCUSSION**

### **1. Overview of the Fuel Distribution Policy in Indonesia**

Within the current framework of Indonesia's downstream oil and gas policy, Pertamina plays a dual role: in addition to being a commercial enterprise, it also serves as a government agent to ensure national energy security. Based on the latest policy draft, private gas stations are required to fulfill all their base fuel needs through Pertamina. This regulation aims to recentralize supply in order to reduce the risk of energy shortages and address the trade balance deficit stemming from fuel (BBM) imports.

On the other hand, this policy fundamentally transforms the market landscape. The flexibility that private gas stations should have in selecting the most competitive supply sources is lost, as they are now bound to a single supply chain. Consequently, significant operational dependence is created, where the smooth operation of private businesses becomes highly reliant on Pertamina's internal decisions and logistical capabilities. This situation underlies the emergence of price disparities and competition distortions, which will be the focus of discussion in the following subchapter.

### **2. Empirical Evidence: Price Disparity and Market Structure**

To assess the effectiveness of the single procurement policy, this study analyzes the comparison of retail fuel prices between Pertamina and private operators. In a competitive market, business actors have the freedom to access various supply sources to optimize cost efficiency. However, the obligation of a single supply from Pertamina results in the loss of control by private gas stations over their Cost of Goods Sold (HPP) structure.

Here is the comparison data for non-subsidized fuel prices (RON 92) in January 2025.

**Tabel 1. Retail Price Comparison (RON 92) - January 2025**

Operator	Product Name	Price per liter (IDR)	Supply Mechanism
Pertamina	Pertamax	12.950	Independent Production / Direct Import
Shell	Shell Super	13.540	Mandatory Procurement from Pertamina.
Vivo	Revvo 92	13.200	Mandatory Procurement from Pertamina
BP-AKR	BP 92	13.450	Mandatory Procurement from Pertamina

*Source; Data processed from official operator announcements and energy market report (2025)*

### **Analysis of Empirical Data:**

The data in Table 1 reveals a consistent price disparity, with prices at private gas stations being higher by approximately Rp250 to Rp600 per liter compared to prices at Pertamina gas stations. This price difference creates an additional economic burden for consumers, arising as a consequence of less efficient supply chains. In theory, the distributor margins set by Pertamina must be absorbed into the operating costs of private gas stations, thereby severely limiting their ability to offer competitive prices. This serves as clear evidence of significant operational dependence. The photo above showing empty stock at a Shell gas station functions as empirical evidence that any disruption in Pertamina's distribution can directly paralyze the operations of private gas stations. This condition forms an unbalanced market structure, in which one entity (Pertamina) controls access to the survival of its competitors.

The price differences that occur prove the existence of market imbalance at the retail level. Therefore, this must be investigated based on competition law to ensure whether existing regulations have been violated and are unfair.

### **3. Legal Analysis: Monopoly by Law and Competition Regulations**

The analysis of the policy regarding the mandatory fuel supply obligation for private gas stations must be conducted using two primary legal instruments: Law Number 22 of 2001 on Oil and Natural Gas, and Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Constitutionally, Pertamina's position as the sole supplier is grounded in Article 33 of the 1945 Constitution of the Republic of Indonesia, which stipulates that vital sectors of production important to the state must be controlled by the state and managed through State-Owned Enterprises (BUMN). This condition creates what is known as a "Monopoly by Law." Nevertheless, within the framework of business competition law, such status does not automatically grant absolute immunity to state-owned enterprises (BUMN) to engage in practices that could suppress competition from private players.

**A. Analysis of the Essential Facilities Doctrine and Fair Access.**

According to competition law principles, Pertamina's distribution infrastructure falls into the category of essential facilities. facilities whose control can significantly affect market access. Under Law No. 5 of 1999, the control of essential facilities by a single business entity without providing fair access to competitors can be categorized as a discriminatory violation of fair business competition. By forcing the private sector to depend on supplies from its main competitor (Pertamina), this policy creates barriers to entry that undermine market efficiency mechanisms.

**B. Incongruity with the Oil and Gas Law**

Although Law Number 22 of 2001 on Oil and Natural Gas mandates the creation of healthy business competition in the downstream sector, its derivative regulations such as Regulation of the Downstream Oil and Gas Regulatory Agency (BPH Migas) Number 2 of 2023 actually narrow the scope for competition by tightening supply controls in a manner that tends to favor a single specific player. Complete dependence on prices set by Pertamina as the sole supplier results in the loss of market incentive mechanisms, leaving no drive for innovation or price reductions that would benefit consumers. In principle, this situation runs counter to the vision of an open and competitive economy designed to maximize the welfare of the people.

This issue is not merely about misaligned regulations, but also concerns a fundamental philosophical domain in the Indonesian Constitution: how the state's right to control energy resources is interpreted.

**4. Constitutional Interpretation of "Controlled by the State"**

The Constitutional Court Decision No. 001-021-022/PUU-I/2003 states that the interpretation of the phrase "controlled by the state" in Article 33 of the 1945 Constitution must not be limited to the meaning of operational monopoly by a single state-owned enterprise (SOE/BUMN). The Constitutional Court affirms five functions of the state: regulation, administration/management, policy-making, supervision, and ownership.

The government should focus on strengthening the regulatory function to ensure market justice in the supply of fuel (BBM), rather than granting exclusive management rights to Pertamina, which in fact hinders healthy competition among other business actors, even though the ultimate goal is the interest of the people.

**5. International Comparative Analysis: Indonesia, Malaysia, and Thailand**

As a comparison, Malaysia and Thailand prove that energy sovereignty and a competitive climate can coexist side by side. Malaysia guarantees margins for private operators through the Automatic Pricing Mechanism, while Thailand provides import facilitation for qualified private entities. This means that Indonesia's total dependence on a single supplier is

an outdated policy compared to the more open and efficient regional energy management trends.

By learning from international practices, Indonesia needs to establish an independent institution authorized to assess the extent to which current policies have deviated from the principles of economic efficiency.

## 6. Evaluation from the Perspective of the Indonesia Competition Commission (KPPU).

KPPU has consistently warned about the potential conflict of interest in the current downstream oil and gas market structure. KPPU assesses that Pertamina's dual role as controller of supply and retail competitor is highly prone to abuse in order to dominate the market. KPPU recommends transparency in infrastructure access and regulatory reform so that private gas stations (SPBU) can become competitive partners, rather than mere complements, in promoting national efficiency.

The core of KPPU's recommendations and concerns is to encourage an analysis of the consequences that must be borne by the business community and the public.

## 7. Implications for Business Competition and Consumer Welfare

This monopolistic supply policy generates dual implications that are counterproductive to the downstream oil and gas ecosystem. From a business competition perspective, this policy creates an unnatural price ceiling. Private gas stations are unable to compete fairly, given that their base purchase prices are locked-in and determined by Pertamina. As a result, the incentive to operate efficiently disappears, since the primary cost (raw materials) is no longer under their control. On the other hand, from the consumer welfare perspective, this monopolistic structure restricts society's right to access competitively priced energy in the market. As illustrated in the data in subchapter 3.2, consumers are forced to bear higher prices at private gas stations for fuel products that technically originate from the same refinery sources. If private players were granted independent import permits or equal access to distribution facilities, price competition would emerge. Ultimately, the wider public would benefit through more affordable fuel prices as well as more diverse and innovative services.

## 8. Research Limitations

This study has several limitations that need to be considered for future research development:

- **Financial Data Access:** The scope of this analysis is limited by the availability of publicly accessible retail price data and annual reports. The researcher does not have access to the details of confidential Business-to-Business (B2B) contracts between Pertamina and private operators.
- **Geographical Coverage:** The empirical data presented in this study is predominantly drawn from the Jabodetabek region, given that private gas stations are most heavily concentrated in that area. The impact of the policy in non-metropolitan or remote regions may exhibit different

patterns, considering the higher complexity of logistical constraints in those areas.

- **Regulatory Focus:** The legal analysis in this study focuses on efforts to synchronize the Oil and Natural Gas Law (Oil and Gas Law) with the Business Competition Law. However, aspects of international law governing the trade of energy commodities have not been examined in depth.

## CONCLUSION

The policy mandating that private gas stations obtain their fuel supplies through Pertamina creates a tension between two primary interests: ensuring national energy security and upholding the principles of a competitive market. The research findings conclude that the resulting market structure tends to be a "Monopoly by Law," a condition that ultimately generates economic inefficiencies. Empirical data reveals significant price disparities stemming from the loss of strategic autonomy for private operators in determining prices. This situation arises due to their absolute dependence on a single supplier that simultaneously acts as their key competitor. Its implementation raises questions about compliance with Law No. 5 of 1999, particularly the articles prohibiting discriminatory control over essential facilities. Although state sovereignty over strategic resources is recognized, its implementation must respect the principles of healthy business competition to avoid adverse effects on consumer welfare. As an implication, this study recommends regulatory reforms that provide for two options: fair third-party access to facilities or the granting of limited independent import quotas to private players, accompanied by strict oversight. Such efforts are necessary to strike a balance between national oversight interests and the creation of fair business conditions in Indonesia's downstream oil and gas sector.

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