

Theoretical Review of the Welfare State on Private Involvement in State-Owned Enterprises

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Abstract

Private involvement in State-Owned Enterprises (SOEs) is a form of strategic transformation aimed at enhancing efficiency, competitiveness, and corporate governance. This study addresses the following questions: a) How is private involvement in SOEs implemented? and b) What is the impact of private involvement on people's welfare? The research method used is normative juridical. This study concludes that private involvement is implemented through privatization schemes with the main objective of increasing efficiency, capital, and modernizing BUMN management. The impact of private involvement in SOEs includes increased operational efficiency, more transparent and accountable governance, and increased contribution to the national economy. However, this involvement also brings challenges such as the potential for excessive commercialization, conflicts of interest, and the risk of weakening public service functions. Therefore, strong regulations and consistent supervision are needed to ensure synergy between state and private interests in the management of SOEs.

1. Introduction

In today's complex and dynamic era of globalization, the welfare state remains a central concept in socio-economic development. The state is expected to not only function as a regulator but also act as a provider and guarantor of public welfare.¹ Philosophically, the welfare state in Indonesia is found in the Preamble of the 1945 Constitution, which states that the purpose of the state is to protect the whole nation and all of Indonesia, as well as to promote the general welfare and intellectual life of the nation.² These principles reflect the state's commitment to ensuring that every individual has the right to access basic services, such as education, health and other basic necessities.³ In Indonesia, state-owned enterprises (SOEs) play a strategic role in realizing these goals.⁴

State-Owned Enterprises (SOEs) serve dual purposes: increasing national revenue and delivering accessible, high-quality public services.⁵ In this context, the positive impacts of private involvement in the management of SOEs merit thorough examination, where private companies have the potential to bring a climate of innovation, efficiency, and investment needed to enhance SOE performance in delivering services to the community.⁶

In addition to the aforementioned positive impacts, private involvement also poses challenges and risks that may occur if this private involvement is not properly supervised, especially regarding resource and public service control, which should remain under state responsibility.⁷ Consequently, it is essential to examine private sector involvement in the management of SOEs through the lens of the welfare state theory. This analysis is grounded in Article 33 of the 1945 Constitution, which mandates that vital sectors of production be controlled by the state for the public

¹ Cipta Indralestari Rachman, "CORRELATION OF THE CONCEPT OF THE STATE OF JUSTICE ACCORDING TO GOSTA ESPING-ANDERSEN WITH PANCASILA IN THE REGULATION OF REGIONAL AUTONOMY IN INDONESIA," *Journal of Pancasila Actualization* 1, no. 1 (2023): 1-13.

² Yeti Sumiyati, "The Role of SOEs in Implementing Corporate Social Responsibility to Improve People's Welfare," *Journal of Law IUS QUIA IUSTUM* 20, no. 3 (20 .13): 460-481

³ Harlin Sabrinda Rasya and Irwan Triadi, "Access to Justice and Social Inequality: Transformation Through the Role of Constitutional Law," *Indonesian Journal of Law and Justice* 1, no. 4 (2024): 12.

⁴ Susanto Susanto, "The Position of Investigative Audit Results on the Wealth of Persero State-Owned Enterprises in Criminal Evidence Law in Indonesia," *Journal of Legal Cita* 6, no. 1 (2018): 1-23.

⁵ Rasya and Triadi, "Access to Justice and Social Inequality: Transformation Through the Role of Constitutional Law."

⁶ Neni Sri Imaniyati Sri Redjeki Hartono, Husni Syawali, *Kapita Selektta Hukum Perusahaan* (Bandung: Mandar Maju, 2000). pp. 43

⁷ Ofan Sofiyan and Denok Kurniasih, "THE ETHICAL DILEMMA OF PUBLIC CONTRACTS WITH PRIVATE PARTIES: A REVIEW OF ETHICS AND ACCOUNTABILITY," *Journal of Education and Teaching Review* 7, no. 4 (2024): 16634-16640

benefit. It is necessary to understand the implications and impacts on public welfare when private involvement is implemented in the management of SOEs. The objective of this study is to analyze the compatibility between the welfare state theory and the increasing role of private entities in SOE governance. It further seeks to provide policy recommendations to ensure that such involvement aligns with Indonesia's constitutional commitment to public welfare.

This research is driven by the need to understand how private involvement influences the management of SOEs and its impact on the achievement of welfare state goals. In this case, it is important to realize that SOEs do not only act as commercial entities, but also as instruments for realizing broader social and economic goals.⁸ As such, the management of SOEs needs to consider the public interest and the overall welfare of society, not just be profit-oriented.⁹ This view is in line with the principle that the state is responsible for ensuring that resources managed by SOEs are utilized for the benefit of society.¹⁰

Previous studies have examined various models of SOE management and private sector involvement, with results showing that partnerships between the public and private sectors can improve operational efficiency and encourage innovation in public service delivery.¹¹ While there is a large body of literature discussing the advantages of private sector involvement, many of these studies focus on the implementation of private sector involvement in developed countries, and do not take into account the dynamics and challenges faced by developing countries such as Indonesia.¹² This has led to imbalances in drawing conclusions when applied to developing countries. Therefore, the results of these studies cannot be generalized to serve as a reference for the success or failure of the implementation of private involvement in the management of SOEs in Indonesia. The positive impact of private involvement found in developed countries may not necessarily apply in the same way in developing countries such as Indonesia.

Previous research has analyzed the effectiveness of the implementation of regulations on private involvement in the management of SOEs in Indonesia, as well as the challenges and obstacles that arise in their implementation. Therefore, this study aims to examine in depth the impact of private involvement in the

⁸ Erni Istiyanti, "Competition Law Analysis of the Implementation of SOEs Based on the Concept of 'Single Economic Entity' Doctrine," *Sanskara Hukum dan HAM* 2, no. 03 (2024): 137-143

⁹ Kirmizi, "Analysis of Financial Performance of State-Owned Enterprises Before and After Privatization in Indonesia," *Journal of State Administration* 9, no. 2 (2009): 103– 113

¹⁰ Jejen Hendar et al., "The Urgency of State Administration Attitude for Good Governance," *MIMBAR: Journal of Social and Development* 39, no. 2 (2023): 239-249

¹¹ April Laksana Putri Handayani, "Efficiency Strategies for Public Asset Maintenance in the Government Sector," *Journal Politics And Government* 1, no. 2 (2024): 222-231

¹² Karisma Karisma et al., "The Impact of Privatization Policy on the Economy in Indonesia," *Journal of Caraka Prabhu, Journal of Government Science* 5, no. 2 (2021): 242-250

management of SOEs in Indonesia, focusing on potential risks to state sovereignty and the realization of welfare state goals. This study will analyze the potential challenges and obstacles in the implementation of private involvement, and provide recommendations that can be implemented by policymakers and relevant stakeholders.

From a legal perspective, laws and regulations governing the management of SOEs, such as Law No. 19/2003 on State-Owned Enterprises, emphasize the importance of SOEs as tools of the state to achieve national development goals. In practice, private involvement is often carried out without thorough consideration of the long-term impact on sectors that should be controlled by the state. For example, in some cases, the privatization of SOEs has resulted in the loss of state control over strategic resources, which should remain under government oversight to ensure that public interests are safeguarded.¹³

By considering these various factors, this research is expected to enrich the literature on constitutional law and public policy, as well as offer a new perspective on how private involvement in the management of SOEs can potentially threaten state control. This research is expected to provide a deeper understanding of how collaboration between the public and private sectors can be maximized without compromising state sovereignty, and it is expected to provide a scientific contribution that serves as a reference for future research.

With a solid foundation and clear objectives, this research seeks to answer important questions regarding how private involvement can be integrated in the management of SOEs, as well as how it can support the achievement of welfare state goals in Indonesia. Through a thorough approach and in-depth analysis, this research is expected to make a significant contribution to the development of theory and practice in the fields of constitutional law and public policy, as well as provide new insights that can enrich academic and policy discussions regarding private involvement in the management of SOEs.

2. Research Method

In this research the author uses a normative juridical approach,¹⁴ which focuses on analyzing applicable legal norms and official documents relating to private involvement in the management of state-owned enterprises (SOEs) in Indonesia. The approach is expected to provide a deeper understanding of how applicable

¹³ Mohamad Fandrian Adhianto, "Constitutionality of Holding Sub Holding SOEs in the Field of Electricity Supply Business," *Constitutional Journal* 20, no. 4 (2023): 661-677

¹⁴ Bachtiar, *Designing Legal Research*, ed. Gofur Dyah Ayu (Sleman: Deepublish Publisher, 2021). pp. 82-86

regulations and policies can influence the interaction between the public and private sectors, as well as the impact on achieving the goals of the welfare state. Therefore, this study aims to review and analyze various relevant legal norms and their impact in the context of SOE management.

The type of research conducted in this study is a type of normative legal research (doctrinal), which prioritizes the study of written legal sources, including laws, government regulations, and other official documents.¹⁵ This study relies on secondary data collected from various written sources, such as legal documents, reports of related institutions, as well as papers and journals relevant to the research theme.¹⁶ Data collection was conducted through literature study techniques, in which researchers reviewed and analyzed various literatures related to private involvement in SOEs and welfare state theory.

The data analysis used in this research includes systematic interpretation and teleological interpretation.¹⁷ Systematic interpretation is carried out by examining legal norms in a broader context, including the relationship between norms and the underlying legal principles. Meanwhile, teleological interpretation focuses on the purpose and intent of the legal norms, so as to provide a clearer picture of how private involvement in the management of SOEs can contribute to or even hinder the achievement of the objectives of the welfare state. With this approach, it is hoped that this research can make a significant contribution to the understanding of the interaction between law, public policy and public welfare.

3. Results and Discussion

Implementation of Private Involvement in State-Owned Enterprises

Monopoly is regulated in BUMN regulations as the right to manage all state resources as mandated by Article 33 of the 1945 Constitution and Law Number 19 of 2003 concerning BUMN. One form of monopoly that is carried out is the establishment of government-owned companies in the form of limited liability companies, so that the presence of the state is still felt in fulfilling the primary needs of the community.¹⁸

¹⁵ I Made Pasek Diantha, *Normative Legal Research Methodology in Justifying Legal Theory* (Jakarta: Kencana, 2016). Page. 156

¹⁶ Soetandjo Wignjosoebroto, *Legal Paradigms, Methods and the Dynamics of the Problem* (Jakarta: Huma, 2002). pp. 48

¹⁷ Afif Khalid, "Legal Interpretation by Judges in the Indonesian Judicial System," *Al'Adl* VI, no. 11 (2014): 53-68

¹⁸ Armaidy Armawi, *Nationalism in the Dynamics of National Resilience* (YOGYAKARTA: Gadjah Mada University Press, 2019). Page. 124

Every state enterprise plays an important role in realizing social justice as the embodiment of the fifth principle of Pancasila.¹⁹ Its management must involve stakeholders to ensure that every resource is managed optimally. According to Bagir Manan, the state is obliged to: (1) ensure that the utilization of natural resources improves people's welfare; (2) protect people's rights to natural resources; and (3) prevent actions that harm or eliminate people's rights to these resources.²⁰

Every government business sector must be viewed not just as an economic commodity, but also as a strategic infrastructure in an effort to improve the social and economic life of the community.²¹ Its management must prioritize the fulfillment of people's basic needs in a fair manner, not merely seeking profit. Therefore, the state has the main role to ensure that business entities in strategic sectors remain under state control for the public interest.

Article 74 of Law No. 19/2003 on SOEs (SOE Law) states that the privatization of SOEs aims to increase efficiency and productivity.²² Privatization and restructuring of SOEs must improve company performance without reducing state control over strategic sectors. Private involvement is complementary and does not replace the state's role in electricity management. In this case, regulations that lead to the ideals of the nation become the main source in realizing the boundaries between the role of the state and the role of the private sector must be strictly regulated in fulfilling the availability of every basic need of society.²³ The principle of "controlled by the state" according to Mohammad Hatta allows management by the private sector or cooperatives with strict supervision, in order to prevent exploitation by private organs so that it still prioritizes the interests of the people.²⁴

Article 76 of the SOE Law stipulates that private involvement in state-owned enterprises can only be carried out for companies engaged in competitive business sectors or in

¹⁹ Wisnu Sabdono Putro, "The Implementation Of Supervision Regional Financial And Asset Management Perspective Justice Of Pancasila," *Pena Justisia: Media for Communication and Legal Studies* 23, no. 3 (2024): 1-23

²⁰ M. Luthfan HD Darus, *The Right to Control the State Philosophical, Conception and Constitutional Review*, ed. Erwin Asmadi, Pe Mold (Medan: UMSU PRESS, 2022). pp. 5

²¹ Brett M. Frischmann, *Infrastructure: The Social Value of Shared Resources* (New York: Oxford University Press, 2012). pp. 252-265

²² "Law of the Republic of Indonesia Number 19 Year 2003 on State-Owned Enterprises" (Jakarta: Ministry of Law and Human Rights, 2003). Article 74

²³ Nugroho Imam Santoso, "Accelerating the TRANSITION OF ELECTRIC ENERGY IN SUPPORT OF GREEN ECONOMY TO DEVELOP NATIONAL ENERGY RESILIENCE," *LEMBAGA KETAHAN NASIONAL RI*, 2024. pp. 12

²⁴ Tri Hayati, "State Control Rights over Natural Resources and Their Implications for the Form of Mining Business," *Journal of Law & Development* 49, no. 3 (2019): 768

business fields with rapidly changing technology.²⁵ Meanwhile, Article 77 of Law No. 19/2003 on SOEs stipulates that privatization is prohibited for companies that by law must be managed by SOEs, including SOEs that operate in the defense and security sector, have special tasks from the government, or are engaged in natural resources. This confirms that strategic sectors such as electricity, natural resources and energy security must remain under state control, not fully managed by the private sector.²⁶

Privatization of SOEs in strategic sectors, such as electricity, should be pursued even though Article 77 of the SOE Law excludes it. This privatization should adopt the concept of collaboration between the state as a public servant and private entities to improve services to the public.²⁷ This collaboration aims to ensure that strategic needs remain under state control for public welfare, while still enabling private sector participation. Thus, restructuring and privatization are expected to improve the efficiency of state finances.²⁸

In practice, the involvement of private companies through restructuring and privatization shifts the paradigm from public welfare *oriented to profit oriented/money oriented*.²⁹ For example, in the electricity sector, the involvement of the private sector through the *Independent Power Producers* (IPP) scheme, a power plant owned by the private sector that produces electricity and then sells the produced electrical energy to PLN with a *Power Purchase Agreement* (PPA) scheme between PLN and IPP which uses a *take or pay (ToP)* system is a system on the power purchase contract in which the buyer is required to pay for an agreed amount of electrical energy.³⁰ This burdens state finances, as well as violates the principles of efficiency and accountability as stipulated in Article 72 of the BUMN

²⁵ "Law of the Republic of Indonesia Number 19 Year 2003 on State-Owned Enterprises", Ministry of Law and Human Rights, Jakarta, 2003. Article 76

²⁶ Indah Budiarti, "The Danger of Unbundling, Electricity Privatization That Will Eliminate State Control While Straddling the Nation's Constitution," 2024, <https://psisaskenergyprojectindonesia.org/2024/01/16/bahaya-unbundling-privatisasi-listrik-yang-akan-menghilangkan-kontrol-negara-sekaligus-mengangkangi-konstitusi-bangsa/>. Accessed on November 24, 2024, Pkl. 22.15 WIB.

²⁷ Neni Sri Imaniyati et al., "The Political Direction of Indonesian Economic Law as the Conception of Welfare State in the 1945 Constitution," *International Journal of Criminology and Sociology* 10 (2021): 1310-1319

²⁸ Farida Kaplele Lukmanul Hakim, "The Problem Of The Authority To Determine The Financial Losses Of The State On State Owned Enterprises (BUMN)" 23, no. 3 (2024)

²⁹ Bagong Suyanto, *Economic Sociology: Capitalism and Consumption in the Era of Post-Modernism Society*, ed. Y. Rendy, First (Jakarta: Kencana Prenada Media Group, 2013). pp. 79

³⁰ Verda Nano Setiawan, "Indonesia's Electricity is Luber, What is the Fate of Private Electricity Producers?" CNBC Indonesia, accessed January 21, 2025, <https://www.cnbcindonesia.com/news/20221006172506-4-377803/listrik-ri-luber-gimana-nasib-produsen-listrik-swasta>. Accessed November 25, 2024, Pkl. 23.22 WIB

Law and Article 2 of the Electricity Law.³¹

The absence of clear regulations on the boundaries and responsibilities of the private sector in managing SOEs can lead to a decline in accountability and transparency in the management of public resources. This suggests a gap in the legal framework that is supposed to protect the public interest.

Furthermore, the theory of state control and public welfare emphasizes the importance of the state's role in overseeing economic activities related to the livelihood of many people. The transfer of control from the state to the private sector without adequate supervision has the potential to ignore the mandate of Article 33 of the 1945 Constitution which emphasizes that the economy is structured as a joint venture based on the principle of kinship.³² Thus, the involvement of the private sector must be regulated in such a way as not to sacrifice the welfare of the people, which is the main goal of the state.

The use of the systematic interpretation method in this study emphasizes that private involvement cannot only be assessed from the aspect of economic efficiency, but also needs to be seen from the perspective of social goals and community welfare.³³ The systematic interpretation identified that Law No. 19/2003 on SOEs must provide room for private involvement without ignoring the basic principle mandated by the 1945 Constitution that branches of production that are important to the state and control the lives of many people must remain under state control.³⁴ Meanwhile, the teleological interpretation finds that collaboration with the private sector has the potential to shift priorities from the public interest towards achieving financial gains that benefit the private sector. This phenomenon is in line with welfare state theory, which states that the government has the responsibility to ensure the welfare of the people through fair and sustainable resource management.

Impact of Private Engagement on People's Welfare

This research demonstrates that private involvement in the management of State-Owned Enterprises (SOEs) in Indonesia has multifaceted implications for the objectives of the welfare state mandated in Article 33 of the 1945 Constitution.

³¹ "Law of the Republic of Indonesia Number 19 Year 2003 on State-Owned Enterprises", Ministry of Law and Human Rights, Jakarta, 2003. Article 72

³² Aloysius Sahala Butarbutar et al., "The Role of Law in Realizing a Socially Just Republic of Indonesia," *Journal of Justice Law* 2, no. 2 (2025): 123-33.

³³ Panji Adam Agus Putra Neni Sri Imaniyati, *Business Law* (Bandung: PT Refika Aditama, 2017).

³⁴ Nyoni Novia Indriani Mochammad Iqbal Imaduddin, Novita Hapsari Mat Furu, Nurillia Nadratus Saadzah, Nurlia Rahmatin, "LEGAL FINDING AND LEGAL PENFUSION," *Edukatif: Journal of Creativity in Education* 6, no. 1 (2025): 1-23.

From a constitutional law perspective, private involvement can pose a serious threat to state control over strategic resources and public services, especially if policy implementation is not regulated by clear and firm legal provisions.

The research also revealed that while private involvement can improve operational efficiency and innovation in service delivery, these benefits are not equally accessible across all segments of society. Inequalities in access to public services mainly occur in remote areas that are less economically profitable for the private sector. Thus, the effectiveness of private involvement needs to be re-evaluated in order to remain in line with the principles of a welfare state.

The results of this study show that private involvement in the management of state-owned enterprises (SOEs) in Indonesia results in various positive and negative impacts. First, private involvement is considered to improve the operational efficiency of SOEs. Studies from various sources show that partnerships between SOEs and the private sector can optimize productivity and improve operational management. This is particularly evident in several SOEs that have implemented partnerships through *Public Private Partnership* (PPP) schemes. Second, improvements in the quality of public services were also found to be one of the positive impacts of private involvement. Several documents show that innovations and technology applications from the private sector can improve accessibility and speed of services, especially in the transportation sector. This indicates that the private sector can bring best practices that support the improvement of public service quality.

However, from the perspective of *welfare state* theory, private involvement can have negative impacts that threaten the welfare of society. The welfare state theory emphasizes that the state has the responsibility to ensure the welfare of the people through control over important resources that should be used for the greatest prosperity of the people, as mandated by Article 33 of the 1945 Constitution. Meanwhile, the *state sovereignty* theory underlines that the state has absolute power in managing natural resources and strategic assets related to public welfare.³⁵ Too dominant private involvement can reduce the state's sovereignty in regulating and managing these resources, which in turn can interfere with efforts to fulfill people's welfare.

Several reports and studies have shown that privatization or transfer of control to private parties has the potential to reduce transparency and accountability in the management of SOEs. This risk is particularly relevant in the Indonesian context, where private involvement is often undertaken without considering the long-term

³⁵ Nurul Mubin David Doresta Wijaya, "The Theory of State Sovereignty," *Journal of Social Sciences and Humanities* 2, no. 4 (2024): 114-121

impact on the state's control over strategic resources. In addition, in certain sectors, such as energy, private involvement may exacerbate inequalities in access to services, especially in remote areas where it is still difficult to get adequate services.

In terms of regulations, this study found that the existing legal framework has not fully accommodated private involvement in the management of SOEs. Some regulations are considered not strong enough in regulating corporate social responsibility and protection of the public interest. This suggests the need to review and strengthen regulations to ensure that private involvement does not conflict with the objectives of the welfare state as mandated by Article 33 of the 1945 Constitution.

Overall, this study provides a more comprehensive understanding of the impact of private involvement in the management of SOEs in Indonesia. While there is potential to improve efficiency and service quality, the challenges of maintaining state control and protecting the public interest remain issues that need to be considered by policymakers. The results of this study are expected to serve as a foundation for future research and provide useful recommendations for the development of more effective policies in the management of SOEs.

4. Conclusion

The conclusions of this study are as follows:

- a. The implementation of private involvement in State-Owned Enterprises (SOEs) is carried out through various strategies and approaches that reflect the transformation of the role of SOEs in the national economy. One form of implementation is through privatization schemes and strategic partnerships, where SOEs open space for private involvement. This is done with the aim of encouraging efficiency, strengthening capital structure, and presenting more professional and competitive corporate governance practices.

In addition, private involvement in the transformation process of SOEs is also driven by the need to increase economic added value, expand market reach, and accelerate the adoption of technology and innovation in corporate management. Although the government retains a primary role in overseeing strategic sectors, private sector involvement is anticipated to make a substantial contribution to strengthening the competitiveness of SOEs in the domestic and global markets.

- b. Private involvement in the management of SOEs has several significant implications for public welfare, across economic, governance, and social aspects. In general, the most prominent positive impact is the increase in operational efficiency and productivity. The entry of the private sector, especially with

strong managerial and technological backgrounds, has encouraged SOEs to adapt to market dynamics and apply the principles of *good corporate governance* (GCG). This has resulted in increased transparency, accountability and improved decision-making systems.

On the other hand, private involvement also poses challenges and risks, such as the potential neglect of public service aspects, inequality in the distribution of benefits, and the emergence of conflicts of interest between private commercial objectives and the social obligations of SOEs. If not balanced with strong regulations and effective supervision, private involvement has the potential to weaken the state's role in managing strategic sectors.

Therefore, the successful implementation of private involvement in SOEs depends on the commitment of all parties to maintain a balance between economic efficiency and social responsibility. A clear legal framework, transparent supervision, and synergy between the government, SOEs, and the private sector are required to maximize the positive impacts and minimize the risks.

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