

ENSURING JUSTICE AND UTILITY: Addressing Alleged Monopolistic Practices in Ibu Kota Nusantara

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Abstract

This paper investigates the potential implications of establishing PT Karya Logistik Nusantara regarding Indonesia's antimonopoly law, particularly concerning the production and distribution of concrete for construction in Ibu Kota Nusantara (IKN). PT Karya Logistik Nusantara is a joint venture adhering to the procedures for forming a Limited Liability Company (LLC). As an LLC, it does not qualify as a State-Owned Enterprise (SOE). Utilising a normative legal research method, this study highlights critical findings regarding the establishment of a Special Purpose Vehicle (SPV) for concrete production and logistics services in the new capital. There are concerns that this arrangement may violate trust

provisions, mainly due to the merger of six construction State-Owned Enterprises (SOEs), which raises the possibility of monopolistic practices. Such practices could hinder competition by creating barriers to entry for other businesses, as the merged entities control approximately 60% of the market share for concrete in Ibu Kota Nusantara (IKN). In conclusion, the study emphasises the need to scrutinise these developments to ensure compliance with competition law and promote a fair market environment. Recommendations for further research and regulatory oversight are also suggested to mitigate potential monopolistic behaviours.

Artikel ini menyelidiki implikasi potensial dari pendirian PT Karya Logistik Nusantara dalam kaitannya dengan UU Antimonopoli Indonesia, khususnya mengenai produksi dan distribusi beton untuk konstruksi di Ibu Kota Nusantara. PT Karya Logistik Nusantara adalah perusahaan patungan yang telah mematuhi prosedur yang diperlukan untuk membentuk Perseroan Terbatas (LLC). Sebagai LLC, itu tidak memenuhi syarat sebagai Badan Usaha Milik Negara (BUMN). Memanfaatkan metode penelitian hukum normatif, penelitian ini menyoroti temuan penting mengenai pembentukan Special Purpose Vehicle (SPV) untuk layanan produksi dan logistik beton di ibu kota baru. Ada kekhawatiran bahwa pengaturan ini dapat melanggar ketentuan kepercayaan, terutama karena penggabungan enam BUMN konstruksi, yang meningkatkan kemungkinan praktik monopoli. Praktik semacam itu dapat menghambat persaingan dengan menciptakan hambatan masuk bagi bisnis lain, karena entitas yang digabungkan menguasai sekitar 60% pangsa pasar beton di Ibu Kota Nusantara. Kesimpulannya, studi ini menekankan perlunya pengawasan yang cermat terhadap perkembangan ini untuk memastikan kepatuhan terhadap hukum persaingan dan untuk mempromosikan lingkungan pasar yang adil. Rekomendasi untuk penelitian lebih lanjut dan pengawasan peraturan juga disarankan untuk mengurangi potensi perilaku monopoli.

Keywords: *barrier to entry, Ibu Kota Nusantara, monopolistic practices.*

Introduction

The authority vested in the President of the Republic of Indonesia to relocate Ibu Kota Nusantara (henceforth referred to as IKN) is derived from Law Number 12 of 2011 concerning the Formation of Legislation. The initiative to move the capital city from DKI Jakarta to IKN was formulated with the presentation of the draft law. This strategic move is part of Indonesia's development efforts, aiming to achieve the economic target of more inclusive and equitable economic growth by 2045 through accelerated development in Eastern Indonesia.¹

In addressing legal aspects, the government ensures legal certainty by issuing regulations related to the relocation of IKN. These regulations include Law No. 3 of 2022 concerning the National Capital, Presidential Regulation No. 63 of 2022 concerning Details of the Master Plan for IKN, Presidential Regulation No.64 of 2022 concerning Spatial Planning for the National Strategic Area of IKN. The IKN area is strategically divided into three planning areas: IKN Development Area (KP IKN), IKN Area (KIKN), and Government Centre Core Area (KIPP). Administratively, the IKN area spans two existing districts, Penajam Paser Utara Regency and Kutai Kartanegara Regency, covering an area of 256,142 hectares.² The IKN Master Plan, established through Presidential Regulation No. 63 of 2022, follows a comprehensive five-stage development process.

The increasing number of construction projects has increased the demand for basic materials such as concrete. To address this, the government is preparing an integrated project by Government Regulation Number 22 of 2020 concerning Regulations concerning the Implementation of Law Number 2 of 2017 concerning Construction Services and Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services.

¹ Sri Maryanti, Prama Widayat, and Nurhayani Lubis, "Economic Transformation To Get Out of the Middle Income Trap Condition To Reach Indonesia Gold 2045," *ADPEBI International Journal of Business and Social Science* 3, no. 1 (May 2023): 63–78, <https://doi.org/10.54099/aijbs.v3i1.356>.

² Tri Rizkiana Yusnikusumah et al., "Environmental Management Effort of Ex-Coal Mining Pit (Void) in the New Capital City of Indonesia (IKN)," 2024, 020016, <https://doi.org/10.1063/5.0204989>.

This Presidential Regulation emphasises the Government's inclination to support micro, small, and cooperative businesses and promote domestic product use.³ It achieves this by mandating Ministries/Institutions/Regional Governments (M/I/RG) to allocate a minimum of 40% of the budget value for goods/services.⁴ The dynamic business environment within IKN presents ample opportunities for potential monopolistic practices and unfair business competition in IKN. On the other hand, fostering fair competition benefits project owners by providing them with choices in selecting goods and services at competitive prices and high quality⁵.

Following the mandate of Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (henceforth referred to as Law No. 5/1999), the Business Competition Supervisory Commission (KPPU), was established to oversee its implementation, as regulated in Chapter VI, Articles 30-37 of Law No. 5/1999, empowering the KPPU to impose administrative sanctions on business actors. Despite this statutory enactment, its preventive efficacy could have been more optimal, as evidenced by the emergence of various issues that have gained public attention and involved actions by business actors.⁶

An illustrative example is the formation of a Joint Venture for the creation of a Concrete Special Purpose Vehicle (SPV) by seven State-Owned Enterprises (SOEs) in the construction sector on February 2, 2023. This collaborative effort culminated in the establishment of a company, PT Karya Logistik Nusantara. The company's formation was predicated on a Memorandum of Understanding among the seven construction companies. According to Ian Hewitt, Joint Venture represents an essential form of

³ Setiyono Setiyono et al., "Has Indonesia Safeguarded Traditional Cultural Expressions?," *Jambura Law Review* 6, no. 2 (July 2024): 206–39, <https://doi.org/10.33756/jlr.v6i2.24106>.

⁴ Adam Khafi Ferdinand and Rinaldy Amrullah, "Micro Small-Level Enterprises (MSES) and Cooperatives in Presidential Regulation Number 12 of 2021," *JASSP* 1, no. 2 (October 2021): 103–13, <https://doi.org/10.23960/jassp.v1i2.9>.

⁵ Timothy I. Ramjaun et al., "Strength in Numbers: Collaborative Procurement and Competitiveness of Craft Breweries," *International Journal of Operations & Production Management* 44, no. 3 (February 2024): 643–65, <https://doi.org/10.1108/IJOPM-08-2022-0503>.

⁶ David S. Lucas, Caleb S. Fuller, and Mark D. Packard, "Made to Be Broken? A Theory of Regulatory Governance and Rule-Breaking Entrepreneurial Action," *Journal of Business Venturing* 37, no. 6 (November 2022): 106250, <https://doi.org/10.1016/j.jbusvent.2022.106250>.

business entity cooperation, emerging as a strategic choice for numerous businesses, particularly those operating on an international scale.⁷ Agreements made in Joint Ventures are deemed exceptions according to Article 5, paragraph (2) of Law no. 5/1999, stipulating that "The provisions referred to in paragraph (1) do not apply to a) an agreement made in a joint venture and b) an agreement based on applicable law."

Yet another exception provision pertains to the monopoly and/or centralisation of goods and/or service activities that control the lives of many people and branches of production important for the state (strategic), as outlined in Article 51 of Law No. 5/1999. This provision remains systematically based on rational considerations, encompassing professionalism, legality, and effectiveness in achieving the objectives of implementing a monopoly and concentrating activities.⁸ Implementing a monopoly in this strategic sector aligns with Article 33 of the 1945 Constitution, with the implementation entrusted to a state-owned legal entity (SOE). Provisions regarding business entities are set out in Law No. 40 of 2007 concerning Limited Liability Companies (henceforth referred to as LLCs). Functioning as an incorporated company and being the most perfected form among others, LLCs are prevalent businesses of various scales, both at the national and regional levels, extending even to the international arena.⁹

The latest development of LLCs introduces a company concept known as a Special Purpose Vehicle (SPV). SPV for project financing in Indonesia is not specifically regulated but is referred to as another term, Implementing Business Entity (BUP)¹⁰. An SPV is almost entirely controlled by the business entity that establishes it. In Presidential Regulation Number

⁷ Inna Kormakova et al., "Actual Strategies for Businesses Penetrating Foreign Markets in the Modern Economy: Globalisation Aspect," *International Journal of Professional Business Review* 8, no. 5 (May 2023): e02148, <https://doi.org/10.26668/businessreview/2023.v8i5.2148>.

⁸ "Research on Subject Qualification of Anti-Monopoly Civil Public Interest Litigation," *The Frontiers of Society, Science and Technology* 5, no. 8 (2023), <https://doi.org/10.25236/FSST.2023.050814>.

⁹ Marek Dudek et al., "Methodology for Assessment of Inclusive Social Responsibility of the Energy Industry Enterprises," *Journal of Cleaner Production* 394 (March 2023): 136317, <https://doi.org/10.1016/j.jclepro.2023.136317>.

¹⁰ Novian Dika Setya, "Apakah Penjaminan Infrastruktur Telah Mendukung Bankability Proyek KPBU Jalan Tol?," *Ministry of Finance of the Republic of Indonesia*, July 13, 2022, <https://kpbu.kemenkeu.go.id/read/1117-1278/umum/kajian-opini-publik/apakah-penjaminan-infrastruktur-telah-mendukung-bankability-proyek-kpbu-jalan-tol>.

38 of 2015 concerning Government Cooperation with Business Entities in Providing Infrastructure, Article 1 number (8) defines BUP as "a PPP Implementing Business Entity (henceforth referred to as the Implementing Business Entity), is a Limited Liability Company (henceforth referred to as LLC) established by a Business Entity Bid Winner or appointed directly." Despite being in the form of a PT, an SPV consistently follows the orders and directives of its founder, including in project financing transactions. This poses an issue as an LLC is expected to have its rights and obligations and maintain independence.¹¹

According to Article 1, paragraph (6) of Law No. 5 of 1999, unfair business competition remains relevant today. When examining the provisions of Antimonopoly Law No. 5 of 1999, actions related to markets that require regulation by antimonopoly law fall within its scope. In this context, no specific provisions prohibit business entities from establishing concrete Special Purpose Vehicles (SPVs) through collaboration or carrying out their business operations. The establishment of a Concrete Special Purpose Vehicle (SPV) by a Joint Venture comprising seven Construction SOEs, including PT Hutama Karya, PT Wijaya Karya, PT Pembangunan Perumahan, PT Adhi Karya, PT Brantas Abipraya, and PT Nindya Karya. As this Joint Venture evolves, concerns arise about the potential to impede other companies from entering production and construction projects involving concrete materials. This is because their business scheme also involves participating in the procurement process, making partner companies and project contractors integral to the company that capitalises the concrete. In a broader legal and industrial context, the relationships between entities in such a scheme may require formal agreements to address evolving needs or clarify obligations. A Collective Agreement, for instance, is not merely a post-dispute mutual understanding but can also serve as a proactive legal instrument. It enables parties, such as employers and workers (trade unions), to address legal events or actions in employment relations, including modifying provisions in a Collective Labour Agreement to reflect the dynamic nature of industrial relations. This adaptability ensures that agreements remain relevant and legally binding while

¹¹ Amrul Akbar, Nyulistiowati Suryanti, and Aam Suryamah, "Hubungan Dan Kedudukan Hukum Atas Special Purpose Vehicle Dalam Transaksi Pembiayaan Proyek," *Jurnal Sains Sosio Humaniora* 6, no. 1 (2022): 987–1003.

supporting sustainable collaboration among all stakeholders.¹²

The government's procurement of goods/services is regulated by Presidential Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018. In addressing this case, the term "entry barrier" becomes relevant. To determine whether there is an entry barrier created by (a group of) business actors, the KPPU employs two legal approaches: the rule-of-reason approach and *per se* illegality.¹³ The rule-of-reason approach involves a verification procedure starting with defining the relevant market. Assessments and decisions about the competitive implications of business actions depend on the market size (share) and structure.¹⁴ The rule-of-reason approach focuses on the consequences of business actions (competition) on other business actors and the national economy. The regulation requires a causality clause, such as "which may result" and/or "reasonably foreseeable".¹⁵ A monopoly with a large market share prevents other companies from entering its field of operation, leading to the demise of small and/or start-up companies.¹⁶

On October 25, 2022, the KPPU issued a letter to the deputy for legislation at the Ministry of LCCs, particularly Letter No. 180/DKA/S/X/2022 related to the formation of a Joint Venture (JV) by a construction SOE. The letter emphasises that the process of establishing and operating a Joint Venture company cannot be exempted from the application of Law No. 5 of 1999, specifically referring to Article 50 sub-article a and

¹² Andari Yurikosari and P. N. Sugeng Santoso, "Collective Agreement as Evidence with Binding Legal Force in Decision of Industrial Relations Court," *Jambura Law Review* 6, no. 1 (2024): 66–87, <https://doi.org/10.33756/jlr.v6i1.20757>.

¹³ Anna Maria Tri Anggraini, Ahmad Sabirin, and Yoel Nixon A Rumahorbo, "The Form and Pattern of Business Actors Requirements in Exclusive Dealing: A Rule of Reason Approach," *Yustisia Jurnal Hukum* 12, no. 2 (August 2023): 107, <https://doi.org/10.20961/yustisia.v12i2.73316>.

¹⁴ Wilhelmus Jemarut, "Pendekatan Rule Of Reason Dan Per Se Illegal Dalam Perkara Persaingan Usaha," *Widya Yuridika* 3, no. 2 (November 2020): 377, <https://doi.org/10.31328/wy.v3i2.1688>.

¹⁵ Ahmad Sabirin and Anna Maria Tri Anggraini, "Competition Law and Artificial Intelligence: Solution or Threat," *Jurnal Persaingan Usaha* 4, no. 1 (July 2024): 77–90, <https://doi.org/10.55869/kppu.v4i1.63>.

¹⁶ Ahmad Sabirin and Raafid Haidar Herfian, "Dampak Ekosistem Digital Terhadap Hukum Persaingan Usaha Di Indonesia Serta Optimalisasi Peran Komisi Pengawas Persaingan Usaha (KPPU) Di Era Ekonomi Digital," *Jurnal Persaingan Usaha* 1, no. 2 (2021): 75–82.

Article 51 of the Antimonopoly Law. The establishment of a joint venture by seven construction SOEs, namely the PT Karya Logistik Nusantara joint venture, followed the procedures for establishing an LCC based on Law Number 40 of 2007 concerning Limited Liability Companies. Due to its status as an LCC, it cannot be classified as a SOE or excluded from the SOE's synergy program. Consequently, when carrying out business activities, PT KLN is not subject to the laws and regulations governing SOEs. The formation of the Joint Venture has been considered to potentially violate the provisions for forming limited liability companies in Law No. 5 of 1999.

Monopolistic behaviour, particularly when facilitated by the state, poses risks to market fairness and economic competitiveness. Allegations against PT Karya Logistik Nusantara focus on its market control and the potential violation of Article 17 of Law No. 5 of 1999, which prohibits companies from engaging in activities that could lead to market dominance or unfair competition. To contextualise this legal issue, reviewing recent research on monopolistic practices, mergers, and competition law is essential, particularly in large-scale infrastructure projects involving SOEs. The previous research conducted by Anselm Küsters, entitled "Ordoliberalism Goes China? A Comparison of Recent Developments in EU and Chinese Competition Law Considering the Digital Economy" explores the relationship between SOE mergers and monopolistic behaviour, highlighting the challenges of maintaining competition in markets dominated by government-backed entities.¹⁷ Other research conducted by Tianqi Gu entitled "The Latest Round of China's State-Owned Enterprise Reforms: Grasping the Large and Releasing the Small?" investigates market concentration and entry barriers in monopolistic industries, offering insights into the implications for new market entrants.¹⁸

While previous research has extensively examined the implications of SOE monopolies and competition law enforcement in Indonesia and other Southeast Asian countries, there are notable gaps in understanding the specific

¹⁷ Anselm Küsters, "Ordoliberalism Goes China? A Comparison of Recent Developments in EU and Chinese Competition Law Considering the Digital Economy," *Constitutional Political Economy*, June 2023, <https://doi.org/10.1007/s10602-023-09407-y>.

¹⁸ Tianqi Gu, "The Latest Round of China's State-Owned Enterprise Reforms: Grasping the Large and Releasing the Small?," *SSRN Electronic Journal*, 2023, <https://doi.org/10.2139/ssrn.4566642>.

impact of these monopolistic practices on large-scale national projects like IKN. Many studies highlight the challenges in regulating SOE mergers but often fail to address the unique legal and economic dynamics of infrastructure monopolies. This research aims to fill these gaps by providing a detailed legal analysis of the formation of PT Karya Logistik Nusantara, examining whether the merger of six SOEs violates Article 17 of Law No. 5 of 1999. Additionally, the study will assess the broader impact of monopolistic behaviour on market competition, particularly the creation of barriers to entry for private companies in the concrete and logistics sectors. This analysis will contribute to the ongoing discussion on how to regulate SOEs in Indonesia's evolving economic landscape.

Research Methods

This research adopts a normative approach, focusing on legal analysis and statutory regulations, and relies on secondary data for the compilation of articles. Normative jurisprudence, which examines the moral foundations of law, is particularly relevant in this context as it allows for an exploration of the ethical implications of legal frameworks. Within this subfield, the research can be further divided into interpretive and critical branches. The interpretive aspect seeks to understand the moral underpinnings of existing laws, such as the rationale behind punitive measures in criminal law and whether they aim to deter or rehabilitate offenders. By employing this normative methodology, the study aims to provide insights into the ethical dimensions of competition law and its application in practice.¹⁹ This approach, which relies on statutory regulations and legal analysis, focuses on interpreting and applying legal standards, offering a comprehensive understanding of how laws function in practice.²⁰

The reliance on secondary data such as archival documents, government reports, and other published sources enables a thorough examination of the legal framework governing business competition, especially as it pertains to monopolistic practices and entry barriers. Secondary legal materials, such as judicial decisions, legal commentaries, and academic writings, play a pivotal role in clarifying the meaning and intent of primary legal sources like statutes and

¹⁹ Soerjono Soekanto, "Penelitian Hukum Normatif: Suatu Tinjauan Singkat," 2007.pp.5.

²⁰ Soerjono Soekanto, "Pengantar Penelitian Hukum," (*No Title*), 2006.pp.9.

regulations. These materials provide interpretive guidance, helping to apply the rule-of-reason approach, which evaluates whether a business actor's behaviour is anti-competitive or merely aggressive but lawful. This is particularly relevant when investigating potential monopolistic practices by PT Karya Logistik Nusantara under Article 17 of Law No. 5 of 1999.²¹ The deductive reasoning employed in the research further emphasises the relevance of this methodology. By applying general legal doctrines, such as the rule of reason and barriers to entry, to specific actions of PT Karya Logistik Nusantara, the study offers insights into whether these actions may lead to monopolistic behaviour or unfair competitive advantages. The descriptive nature of the research detailing business actors' behaviours provides a clear link between theoretical legal concepts and real-world business practices. Thus, this methodology ensures that the analysis remains grounded in both legal theory and practical application, offering readers a deeper understanding of how business competition laws function in practice.²²

Discussion

Establishment of PT Karya Logistik Nusantara as a Concrete Special Purpose Vehicle (SPV) and Indications of Monopolistic Practices

The preceding section explained that the relocation plan for the IKN would escalate the demand for basic construction materials, particularly concrete, due to the large number of construction projects anticipated by the government of the Republic of Indonesia. In response to these circumstances, the construction SOEs initiated an SPV for concrete production services to cater to basic construction needs. The initiation of PT Karya Logistik Nusantara was supported by the construction SOEs to address the market for concrete needs in IKN construction, ensuring the fulfilment of concrete production capacity and fostering synergy among construction SOEs.

The author describes actions that potentially lead to "alleged" violations of Law Number 5 of 1999 concerning Monopolistic Practices and Unfair Business Competition in forming the SPV company for concrete production and logistics services, PT Karya Logistik Nusantara. In general, the SPVs are formed to manage financial risks by segregating company-owned assets. PT

²¹ Soekanto Soerjono and Sri Mamudji, "Penelitian Hukum Normatif Suatu Tinjauan Singkat" (PT Raja Grafindo Persada, Jakarta, 1995).pp.52.

²² Soekanto, "Pengantar Penelitian Hukum."pp.5.

Karya Logistik Nusantara, a limited liability company in the form of a special purpose vehicle, functions as a safeguard with limited liability through separate capital.²³ The capital structure of PT Karya Logistik Nusantara adheres to the principle of forming a limited liability company, providing a natural mechanism to shield the parent company from financial repercussions if the IKN development project is halted. SPVs often lack transparency, an essential procurement principle in strategic projects at IKN. The lack of regulations or legal foundations governing SPV management and establishment poses challenges in accessing SPV ownership information where the identity of the directors can be suspected of causing legal violations not fundamental to the principles of procurement, namely, being non-discriminatory, accountable, open, transparent, efficient, competitive, effective, and fair. In this case, PT KLN is an incorporated LLC as a legal entity, where its ownership is under the joint control of several holding companies sharing the same business domains by making a capital deposit as a condition for establishing the SPV. SPV companies need employees or have very limited assets. In this case, PT KLN only has directors as a condition for forming a limited liability company without having employees.

The formation of the PT KLN joint venture by six state-owned construction companies is related to Article 12 of the Antimonopoly Law regarding trust, which stipulates that business actors are prohibited from making agreements with other business actors to collaborate through the creation of a joint venture or larger company while preserving the existence of each company or its member companies. Such collaboration aims to control the production and/or marketing of goods and/or services, leading to monopolistic practices and/or unfair business competition²⁴. Proving whether the formation of the PT Karya Logistik Nusantara joint venture violates Article 12 of Law Number 5 of 1999 necessitates evidence of trust practices. To prove the elements of trust, the following criteria must be met:

Based on Article 1 sub-article 5 of the Antimonopoly Law, "business actors" refer to every individual or legal/non-legal business entity, established

²³ C. Machmudya Salsabilla, "Mengenal Special Purpose Vehicle Lebih Jauh Dalam Hukum Ekonomi," *Justika*, July 2022.

²⁴ "Business Agreements That Cause Unfair Business Competition," *International Journal Reglement & Society (IJRS)* 1, no. 1 (May 2020), <https://doi.org/10.55357/ijrs.v1i1.5>.

and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, engaging in various business activities in the economic sector, either independently or based on agreements.”²⁵ PT KLN, a limited liability company (LCC or PT) established under Law No. 40 of 2007 concerning Limited Liability Companies, qualifies as a business entity and is domiciled in Indonesia. PT KLN conducts its business activities in Indonesia, particularly in the East Kalimantan region. The concrete production for construction needs in IKN is carried out by six SOEs, which are also its shareholders. With the formation of the PT Karya Logistik Nusantara joint venture by these six construction SOEs, the business actor element is fulfilled.

First, It is prohibited to make agreements with other business actors to collaborate in forming a combined company or a larger company while simultaneously preserving and maintaining the viability of each company or member company. PT KLN is a limited liability company formed by 6 (six) state-owned companies in the construction sector, namely PT Hutama Karya (Persero), PT Wijaya Karya (Persero) Tbk., PT Pembangunan Perumahan (Persero) Tbk., PT Adhi Karya (Persero) Tbk., PT Brantas Abipraya (Persero), and PT Nindya Karya (Persero). The six SOEs act as shareholders in PT KLN, and each of them continues to maintain the continuity of their operations in the construction sector. Article 1 sub-article 7 of the Antimonopoly Law defines an agreement as “an act of one or more business actors to bind themselves to one or more other business actors under any name, whether written or unwritten.”²⁶ In a trust, the legal subjects forming a “combined company or a larger company” maintain their identity by placing shares of various business entities in trust, resulting in unity in collective action and a more extensive sharing of joint profits compared to a situation without a trust. In this case, the formation of the PT KLN joint venture by the six construction SOEs satisfies these elements.

Second, The Antimonopoly Law was enacted to ensure that every person doing business in Indonesia engages in fair and reasonable competition, preventing the concentration of economic power in certain business actors,

²⁵ Daniela M. Salvioni and Alex Almici, “Transitioning Toward a Circular Economy: The Impact of Stakeholder Engagement on Sustainability Culture,” *Sustainability* 12, no. 20 (October 2020): 8641, <https://doi.org/10.3390/su12208641>.

²⁶ Jens-Uwe Franck and Nils Stock, “What Is ‘Competition Law’?—Measuring EU Member States’ Leeway to Regulate Platform-to-Business Agreements,” *Yearbook of European Law* 39 (March 2021): 320–86, <https://doi.org/10.1093/yel/yeaa006>.

thereby controlling the production and/or marketing of goods and/or certain services, Therefore, if business actors enter into agreements to control the production and/or marketing of goods and/or services, leading monopolistic practices and/or unfair business competition, their actions violate the articles of the Antimonopoly Law. PT KLN's joint venture action may indicate market domination in concrete production in IKN, as evidenced by the market share data. If selected as the winner of the tender, PT KLN is projected to have a 60% share of the total concrete requirements in IKN at stage 1 in range 3 for the period 2022-2024, amounting to 3,159,283 m³, and such a condition meets this element²⁷.

Third, It could lead to monopolistic practices and/or unfair business competition. The phrase "could lead to" indicates the need for assessment and/or research to determine whether the actions of business actors may result in monopolistic practices and/or unfair business competition. Examining market share data reveals that the existence of PT KLN could lead to monopolistic practices, grounded on the consideration that, based on the concrete needs for the construction of phase 1 of IKN totalling 3,159,283 m³, PT KLN would control 60% of concrete production, equivalent to 1,895,570 m³. Considering the trust elements outlined by the author, the formation of the PT Karya Logistik Nusantara joint venture can be deemed a violation of Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition, specifically Article 12 concerning trust.²⁸

Collaboration in establishing joint ventures or larger companies may come under the scrutiny of company mergers (a structural approach) as long as the merger criteria outlined in Article 28 of the Antimonopoly Law are fulfilled. On one hand, it is necessary to assess the compliance of the joint venture with Article 12. On the other hand, supervision over company mergers can also be carried out according to the provisions of Article 28 and Article 29 of the Antimonopoly Law. Supervision at one stage will determine the method and

²⁷ Yuvanda Hardyan Saputra and Siti Mahmudah, "Juridical Analysis Of Cooperation Between Soes Through Company Formation Join Venture," *Journal of Social Research* 3, no. 6 (May 2024): 1156–67, <https://doi.org/10.55324/josr.v3i6.2068>.

²⁸ Tiffany Nur Yacub, "Case Analysis of Tender Contracts in Violation of Law Number 5 of 1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition," *Journal Social Sciences and Humanioran Review* 1, no. 03 (2024): 132–49.

level of supervision at the subsequent stage.²⁹ The establishment of a limited liability company as a joint venture is generally considered the most suitable, as the participating companies will maintain independent legal status, thereby limiting the risk of liability. Such a combination could eventually become a joint venture with several possible forms of legal entities. Based on the presentation material in the meeting on Thursday, August 11, 2022, construction SOEs expressed the need for concrete for the development of IKN, considering the estimated construction costs for the project’s 3 phases. This calculation relies on the data of the National Development Planning Agency of the Republic of Indonesia (Bappenas) outlining development plans and cost estimates, assuming that construction accounts for 68% of the budget and concrete usage represents 13% of the budget at an assumed price of Rp. 1,429,831/m³. Consequently, the concrete requirement for the entire IKN construction, totalling 28,316,079 m³, is calculated for different development stages as outlined below:

Figure 1: Independent Consultants, Concrete Companies Supporting IKN Infrastructure

Timeframe	Development Plan	Estimated Development Cost (Rp)	Assumptions for Construction	IKN Construction Budget (Rp)	Concrete Usage Assumptions	Budget of Beron (Rp)	Assumed Concrete Price	IKN Concrete Requirement
		a	b	c=a*b	d	e=c*d	f	g=e/f
First Phase (2022-2024)	Presidential Palace State Agency Office Cultural Park & Botanical Garden Military Base & National Policy HG	51,100,000,000	68% from budget	34,748,000,000	13% from budget (Assumptions of Average Concrete Needs in Infrastructure and Building Project)	4,517,240,000,000	Rp1,429,831/m ³	3,159,283

²⁹ Diah Hari Suryaningrum et al., “Mergers and Acquisitions: Does Performance Depend on Managerial Ability?,” *Journal of Innovation and Entrepreneurship* 12, no. 1 (May 2023): 30, <https://doi.org/10.1186/s13731-023-00296-x>.

Second Phase (2025-2029)	State Agency, Military, and Policy Housing	233,700,000,000,000	158,916,000,000,000	20,659,080,000,000	14,448,619 m ³
	Education Facilities				
	Health Care Facilities				
	Correctional Facilities				
Third Phase (2023-2045)	Other Infra & Facilities	173,200,000,000,000	117,776,000,000,000	15,310,880,000,000	10,708,176 m ³
	Urban Green Space				
Total		Rp458.000,000,000,000	Rp311.440,000,000,000	Rp40.487,200,000,000	28,316,079 m³

Source: Feasibility Study Prosva Consulting Jakarta

Based on studies conducted by independent consultants, several concrete production companies located around IKN actively take part in concrete production for infrastructure development in IKN. As a result, the market share for concrete requirements will be distributed according to the number of participating companies. In this scenario, PT KLN is projected to secure a 60% share of the overall market, distributed as follows:

Figure 2: Material Requirements up to 2024 in IKN

MATERIAL REQUIREMENTS UP TO 2024					
No	Material	2022	2023	2024	Total
1	Material Requirements				
1.1	Cement (Tonnes)	128,667	984,135	830,290	1,943,092
1.2	Precast Concrete (Tonnes)	29,600	397,113	321,720	748,433
	Total (tonnes)	158,267	1,381,248	1,152,010	2,691,525
2	Estimated Concrete Requirements				
2.1	Assumed cement consumption per m ³	350	350	350	350

2.2	Assumed Ready Mix Volume (m3)	367,620	2,811,814	2,372,257	5,551,692
2.3	The assumed volume of precast concrete (m3)	12,333	165,454	134,050	311,847
	Total concrete demand (m3)	379,953	2,977,278	2,506,307	5,863,539
3	Analysis of Batching Plant Requirements				
3.1	Normal Vatching Capacity per Plant Unit Per Year	250,000	250,000	250,000	
3.2	Planned Number of Batching Plants	3	14	14	
3.3	Normal Capacity of Total Batching Plant	750,00	3,500,000	3,500,000	
3.4	Batching Plant Effectiveness	51%	85%	72%	
	2022	2023		2024	
	3 Matching Plant	+11 batching Plant		14 Batching Plant Existing	

Source: Exposure to Fulfil IKN Needs

Based on the provided data, it is evident that the market share for concrete production requirements in IKN, considering the batching plant operated by PT KLN and several other companies involved in concrete production during the first stage, is estimated at 3,159,283 m³. The following Table illustrates the distribution of market shares for concrete production in IKN:

Figure 3: The Distribution of Market Shares for Concrete Production in IKN

No	Name of Company	Per cent
1	SPV Concrete Production Services	60%
2	The project that Set Up the Batching Plant	10%
3	PT Fortuna Ready Mix (Balikpapan)	10%
4	PT Balikpapan Ready Mix (Balikpapan)	10%
5	PT Artanusa Beton (Samarinda)	10%

Source: Author's Analysis

In Figure 5 explains that PT KLN obtains 60% (sixty per cent) of the market share in concrete production, while PT Fortuna Ready Mix, PT Balikpapan Ready Mix, PT Artanusa Beton, and the company establishing the Batching Plant itself each receive a 10% (ten per cent) market share. The focus of PT KLN's development in IKN is on stage 1 development. Based on consortium calculations assuming 100% equity, the business can achieve an internal rate of return (IRR) of 30.74%, with a Net Present Value (NPV) of IDR 29,123 million and a payback period of 2 years, as per the expected projections below:

Figure 4: Percentage Data of IKN of Income Statement

PHASE 1			
Income Statement (Rp Million)	2022	2023	2024
Concrete Volume (c3)	94,778	631,857	631,857
Revenue	138,271	949,354	992,075
%	100%	100%	100%
COGS	116,971	813,740	849,372
%	85.84%	85.72%	85.62%
Gross Profit	19,300	135,614	142,702
%	14.16%	14.28%	14.38%
Operating Expenses	14,646	36,457	52,324
General Expenses	10,522	19,538	20,416
Cost of sales	409	2,848	2,976
Depreciation & Amortisation	3,715	14,071	28,931
%	10.75%	3.84%	5.27%
EBIT	4,654	99,156	90,379
%	3.42%	10.44%	9.11%
Interest	-	-	-
%	0.00%	0.00%	0.00%
Profit before tax	4,654	99,156	90,379
%	3.42%	10.44%	9.11%
Tax	116	2,479	2,259
%	0.085%	0.261%	0.228%
Net Profit (EAT)	4,538	96,677	88,119
%	3.330%	10.184%	8.882%
Free cash flow (Rp Million)	2022	2023	2024
Net Profit	4,538	96,677	88,119
Depreciation	3,715	14,071	28,931
Interest	-	-	-

CAPEX	(91,463)	(91,463)	-
Total (Rp Million)	(83,210)	19,286	117,051

Source: *IKN development milestones by PT Hutama Karya*

Currently, the construction auction process for Phase 1 of the IKN infrastructure development has been initiated. The project payment scheme by the Indonesian government is a monthly certificate (MC) and includes a down payment of up to 15%. The provided data indicates that the establishment of PT KLN violates Article 17, paragraph (2) sub-paragraph c, as PT KLN controls 60% of the total market share in IKN. This is based on the consideration of the projected needs for PT KLN in phase 1 development, requiring 3,159,283 m³ of concrete for construction; PT KLN will control 60% of concrete production from the total requirements at IKN (1,895,570 m³).

Analysis of PT KLN's Exemption from Monopolistic Practices in Concrete Production for Construction Development in IKN Based on the Antimonopoly Law

Allowed monopoly

Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition regulates provisions covering 1) Prohibited agreements, 2) Prohibited activities, 3) Dominant position, and 4) Sanctions for violations of regulated provisions. Monopoly is classified as one of the prohibited activities.³⁰ In principle, a monopoly is not inherently prohibited under Business Competition Law, provided that the activities conducted do not lead to unfair business competition and are achieved through lawful and fair means. However, actions that exploit a monopoly position are deemed prohibited. To better understand this framework, it is essential to consider the philosophical underpinnings of Competition Law, which emphasise values such as fairness, justice, and market integrity. Philosophical theories, such as utilitarianism, which advocates for the greatest good for the greatest number,

³⁰ Yurniawati Djakaria, "Legal Protection Of Business Activities In Monopoly Practices And Unfair Competition Through Eletronic Transactions," *Estudiante Law Journal* 1, no. 2 (May 2019): 474–89, <https://doi.org/10.33756/eslaj.v1i2.13260>.

and deontological ethics, which focuses on the morality of actions themselves, can provide a robust foundation for interpreting these legal principles. By integrating these philosophical perspectives, we can critically reflect on the implications of monopolistic practices and the ethical responsibilities of businesses. This deeper understanding is crucial for ensuring that the application of Competition Law not only addresses legal compliance but also promotes a fair and competitive marketplace that benefits all stakeholders.³¹ Monopoly can be established by, among others, obtaining exclusive rights. These rights are privileges granted by the government to certain exclusive business actors, excluding other business actors³². These rights typically pertain to the production and/or marketing of goods and/or services crucial to the lives of many people, as well as vital branches of production for the state, as long as they are regulated by law and directly appointed by the government.

In the context of IKN, six state-owned construction companies were granted exclusive rights to form special purpose vehicles (SPV) operating in the field of concrete production and logistics services in IKN. This exclusivity is in line with the provisions of Law Number 3 of 2022 concerning the National Capital, ensuring the fulfilment of concrete production needs to support the development of IKN infrastructure. However, this concentrated control, with PT KLN commanding a 60% market share in total concrete production requirements, poses challenges for other concrete production businesses around IKN. The procurement process has been controlled by larger companies, both financially and competitively, because they have a larger number of companies participating in tenders.

The establishment of PT KLN, as stated in Letter Number 180/DKA/S/X/2022 issued by KPPU regarding business competition in the proposed formation of a concrete SPV by construction SOEs in IKN, falls within actions prohibited by law. This is because there is currently a specific legal

³¹ Rutger Claassen, "Wealth Creation without Domination. The Fiduciary Duties of Corporations," *Critical Review of International Social and Political Philosophy* 27, no. 3 (April 2024): 317–38, <https://doi.org/10.1080/13698230.2022.2113224>.

³² Cecilia Rikap, "Becoming an Intellectual Monopoly by Relying on the National Innovation System: The State Grid Corporation of China's Experience," *Research Policy* 51, no. 4 (May 2022): 104472, <https://doi.org/10.1016/j.respol.2021.104472>.

basis or regulation serving as the legal basis for the formation of a construction SOE joint venture (JV), especially to support IKN development projects. Consequently, the process of forming and operationalising the JV company cannot be exempted from the provisions of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, with specific reference to Article 50 a of the Antimonopoly Law.

Referring to the regulation of the Minister of State-Owned Enterprises Number PER-5/MBU/09/2022 regarding the implementation of risk management in SOEs, SOEs' subsidiaries, including PT KLN, hereinafter referred to as subsidiaries, are LCCs. These subsidiaries are mostly owned by SOEs, with over 50% of the shares, or are under the control of SOEs. In this case, PT KLN is a company formed by six state-owned construction companies, each with a regulated share distribution: 1) PT Hutama Karya (HK) - up to 15%; 2) PT Wijaya Karya (WIKA) - up to 15%; 3) PT Pembangunan Perumahan (PP) - up to 15%; 4) PT Adhi Karya (ADHI) - up to 15%; 5) PT Brantas Abipraya (BAI) - 12.5%; 6) PT Nindya Karya (NINDYAI) - 12.5%

The establishment of the PT KLN joint venture by six state-owned construction companies followed the procedures for forming a limited liability company, as outlined in Law Number 40 of 2007 concerning Limited Liability Companies. However, the business scheme implemented by PT KLN is not included in the SOE synergy program due to the absence of a legal basis for direct appointment, and it is not classified as a SOE's subsidiary. This classification is based on the fact that one of the six SOE companies engages in the same business field, with no single business actor owning the majority shares.

This means that none of the six SOEs have more than 50% share ownership in PT KLN. The absence of a procurement mechanism for LLCs by SOEs can violate the principles of business competition.³³ Article 50 sub-article defines exceptional provisions that often arise due to law or international agreements or to balance national economic conditions, especially regarding control over the production sector, which affects people's lives. Several elements in Article 50 sub-article a, which addresses "acts and/or agreements aimed at implementing applicable laws and regulations" include:

³³ "Denny Julian Risakotta, Interview with KPPU Head of Law Enforcement, Audio Recording, Jakarta, 21 July 2023.," n.d.

The word "action" in this context has the same meaning as carrying out activities. Therefore, the interpretation of the word "act" in Articles 17 to Article 24 implies that if the activity is carried out to implement applicable laws and regulations, it also includes exceptions to prohibitions regarding dominant positions. This exception applies when a business actor, in acting, utilises a dominant position with statutory regulations authorised by the Law³⁴. Article 51 specifies: "Monopoly and/or centralisation of activities related to the production and/or marketing of goods and/or services which affect the lives of many people as well as branches of production which are important for the state are regulated by law and organised by SOEs and/or bodies or institutions formed or appointed by the government." In the case of the formation of PT KLN, it is not established by a company formed or appointed by the government to execute projects in IKN, whether dictated by law or presidential regulations. PT KLN is a limited liability company formed through a collaboration of six state-owned companies, and its formation is not based on direct appointment or a decision by the SEOs minister.

Agreement, Article 1 sub-article 7 of Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition defines an agreement as an act of one or more business actors under any name, whether written or unwritten. In the case of PT KLN, its formation resulted from the collaboration of 6 state-owned companies in the same business field, establishing PT KLN with an ownership division as regulated in the memorandum of understanding for the establishment of PT KLN. The term "agreement" aligns with deeds, signifying an agreement made by a business actor, and its authority is strictly based on the provisions of the Law or the provisions of statutory regulations under the Law.³⁵ The phrase "to carry out" implies that the business actor executes an action not under their authority but based on orders and authority expressly regulated in the Law and delegated by the Law. In this context, PT KLN lacks a specific legal basis, namely laws, statutory regulations, and ministerial regulations explicitly stating that PT KLN will carry

³⁴ Lucas, Fuller, and Packard, "Made to Be Broken? A Theory of Regulatory Governance and Rule-Breaking Entrepreneurial Action."

³⁵ Alfa Desya Andreasari and Lucky Suryo Wicaksono, "Principal's Liability Against Agents for Unlawful Acts Outside the Agency Agreement (Case Study: Decision Number 1666 K/Pdt/2022)," *Actus Legis: Journal of Private and Commercial Law* 1, no. 1 (2024): 1–23, <https://doi.org/https://doi.org/10.20885/JPCOL.vol1.iss1.art1>.

out the concrete production project in IKN. Additionally, it is not classified as a SOE synergy because PT KLN, as a legal entity, is in the form of an LCC that must go through a procurement mechanism.

Implementing statutory regulations cannot be interpreted in the same way as based on statutory regulations, as the former is associated with the authority expressly granted to certain legal subjects by law (legislative regulations)³⁶. Meanwhile, "based on" is not related to the granting of authority but merely indicates a certain matter. Article 50 sub-article a applies to almost all prohibitive provisions in Law Number 5 of 1999, aiming to implement applicable laws and regulations, which have a broad meaning. However, its application still refers to the provisions of the order/hierarchy of statutory regulations. This means that if it is excluded regarding issues regulated by law, the agreement being implemented must also be determined by law or another form of law but based on express delegation from the law.³⁷

The exception does not apply if the business actor carries out acts and/or agreements to implement statutory regulations positioned lower than the Law unless the regulations being implemented receive an express delegation from the law. The position of the provisions on "applicable laws and regulations" in Article 50 sub-article a, when related to the system of laws and regulations in Indonesia, should not be interpreted broadly concerning implementing all types of laws and regulations. The provisions of Article 50 sub-article a can be applied if: 1) Business actors engage in acts and/or agreements to implement the provisions of the law or statutory regulations under the law but receive an express delegation from the law, and 2) The involved business actors are those established or appointed by the Government.³⁸

This is further stipulated in Article 50 sub-article b, where exceptions to Law Number 5 of 1999 include "agreements relating to intellectual property rights such as licenses, patents, trademarks, copyrights, industrial product

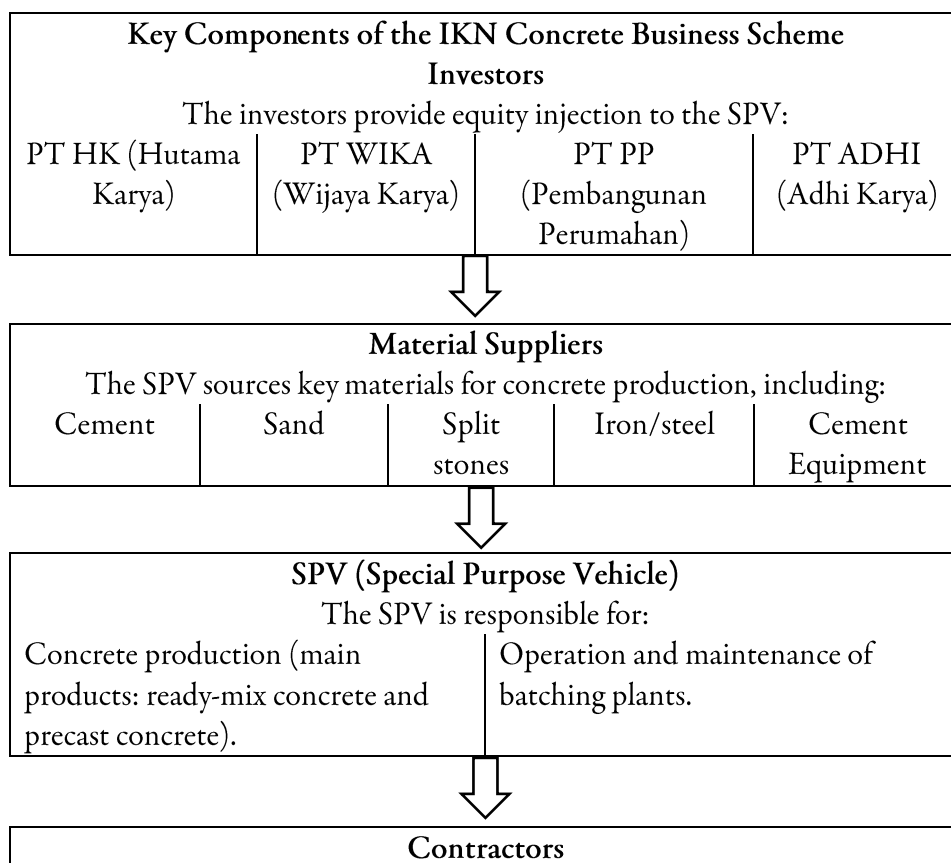
³⁶ Alice Witt et al., "Encoding Legislation: A Methodology for Enhancing Technical Validation, Legal Alignment and Interdisciplinarity," *Artificial Intelligence and Law* 32, no. 2 (June 2024): 293–324, <https://doi.org/10.1007/s10506-023-09350-1>.

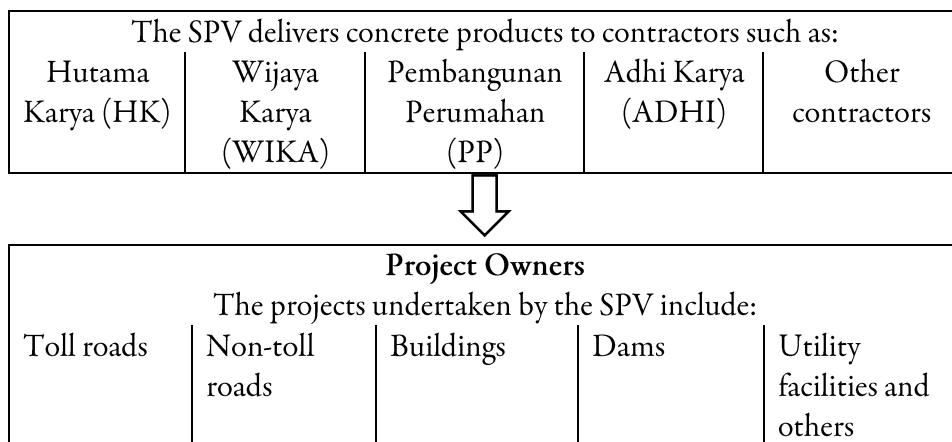
³⁷ Robert Schütze, "'Delegated' Legislation in the (New) European Union: A Constitutional Analysis," *The Modern Law Review* 74, no. 5 (September 2011): 661–93, <https://doi.org/10.1111/j.1468-2230.2011.00866.x>.

³⁸ Sih Yuliana Wahyuningtyas, "Indonesian Competition Law: Up for Renewal," in *Research Handbook on Asian Competition Law* (Edward Elgar Publishing, 2020), <https://doi.org/10.4337/9781785361838.00018>.

designs, integrated electronic circuits, and trade secrets, as well as agreements relating to franchises.” In the case of PT KLN, no elements are excluded under Article 50 sub-article b regarding exceptions in the Antimonopoly Law. The concrete production carried out by PT KLN is a product that can be produced by any business actor involved in the concrete production business. PT KLN does not possess certain specifications required for the IKN development project, and as such, it lacks exclusive rights for direct appointment by the government or SOEs to carry out projects in IKN. The author presents an overview of the business scheme implemented by PT KLN, characterising it as an act of monopolistic practice in construction development projects in IKN, as follows:

Figure 5: An Overview of the Business Scheme Implemented by PT KLN





Source: Feasibility Study Prosva Consulting Jakarta

The author delineates the involvement of six state-owned construction companies in the government’s concrete production procurement. The joint venture’s member companies, including the six investors in PT KLN, participated in the tender, with one of the six state-owned construction companies winning the procurement. The choice of PT KLN for the IKN project is the result of a direct appointment by the tender winner, namely, one of the state-owned construction companies. Due to its status as a regular LCC, PT KLN cannot be subject to the direct appointment mechanism, as it is not a subsidiary of a SOE. Consequently, PT KLN must go through a mechanism when carrying out the project awarded to the winning SOE in construction procurement, aiming to prevent monopolistic practices. The legal mandate for the monopoly position held by a SOE emphasises honest and fair practices that do not harm the public interest or violate the law.

Forms of monopolistic activity prohibited in business competition law are outlined in Article 17. In this case, Article 17 and Article 19 of the Antimonopoly Law are related because Article 19 explains the forms of monopolistic practices and/or unfair business competition arising from market domination³⁹. Article 17 does not explicitly prohibit market control by a company unless it results in monopolistic practices and unfair business

competition, which is detailed in Article 19. Article 19 sub-article d of the Antimonopoly Law stipulates that "obstructing or violating other business actors must not be carried out in unreasonable ways or through methods that cannot be measured, especially in cases that are not economical." Business actors are prohibited from engaging in discriminatory practices against other business actors, either individually or collectively, as such practices can lead to monopolistic practices and/or unfair business competition.^{40 41}

Market control by business actors involves market power, indicating that these "business actors can control the market and determine the prices of goods and/or services in the relevant market. Market control criteria do not necessarily require 100% (one hundred per cent) dominance; even 50% (fifty per cent) or 75% (seventy-five per cent) control qualifies as having market power. In the case of PT KLN, its market share constitutes 60% (sixty per cent) of the total market share of concrete production in IKN, potentially preventing other business actors from participating in fair competition through concrete production procurement procedures at IKN. It is also necessary to pay attention to the provisions of Article 17 of the Antimonopoly Law, stating that:^{42a)} Business actors are prohibited from exerting control over the production and/or marketing of goods and/or services that may lead to monopolistic practices and/or unfair business competition. b) Business actors should be suspected or considered to be controlling the production and/or marketing of goods and/or services as referred to in paragraph (1) if: 1) There is no substitute for the goods and/or services in question; or 2) It causes other business actors not to be able to enter into business competition for the same goods and/or services; or 3) One business actor or one group of business actors controls more than 50% (fifty per cent) of the market share of a particular type of goods or services.

⁴⁰ Marshall Steinbaum, "Establishing Market and Monopoly Power in Tech Platform Antitrust Cases," *The Antitrust Bulletin* 67, no. 1 (March 2022): 130–45, <https://doi.org/10.1177/0003603X211066984>.

⁴¹ Ahmad Sabirin; Anna Mari Tri Anggani, "Quo Vadis Tokopedia Acquisition by Gojek in the Digital Economy Era?," *Amicus Curiae Journal* 1, no. 2 (2024), <https://doi.org/https://doi.org/10.25105/amicus.v1i2.19818>.

⁴² Ni Luh Made Mahendrawati, "Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia: A Legal Mechanism to Balance the Public Interest," *International Journal of Criminology and Sociology* 10 (May 2021): 1023–28, <https://doi.org/10.6000/1929-4409.2021.10.120>.

To establish whether PT KLN violated Article 17, paragraphs (1) and (2) of Law Number 5 of 1999, it is necessary to demonstrate monopolistic practice behaviour. Proving the elements of monopolistic practice involves meeting several criteria,⁴³ such as: a) Absence of substitute products: The need for concrete in the construction of IKN greatly influences the continuity of infrastructure development. The unfulfilled need for concrete, a crucial component in building infrastructure, can lead to delays in government programs in the construction of IKN. Given PT KLN's anticipated market share, dependence on its concrete production may occur, hindering the supply of construction needs if PT KLN's batching plant is disrupted. Potential issues may arise if there are problems at PT KLN, as its substantial control over production and imposed entry barriers prevent other companies around IKN from promptly serving concrete needs.

b) It is difficult for other business actors to enter the competitive market for the same products due to barriers to entry. Considering PT KLN's 60% market share, only four companies are considered capable of being substitutes for production. PT KLN's shareholders consist of six construction SOEs participating in government production services procurement. These entry barriers result in a limited number of competitors in the procurement of government goods/services, as the six construction SOEs, being shareholders, are likely to participate in the procurement tender. Consequently, whoever wins the tender will have the procurement project carried out by PT KLN through a direct appointment mechanism by the SOE. c) These other business actors possess the capability to compete in the relevant market, specifically in the concrete production service around IKN. These actors hold concrete production permits for providing concrete production services, allowing them to fulfil concrete needs on the island of Kalimantan and throughout Indonesia. As detailed in Chapter III, data reveals the existence of seven companies engaging in concrete production in the East Kalimantan region, the closest area to the IKN project. d) One business actor or one group of business actors, in this case, PT KLN, has controlled more than 50% of the market share for a type of

⁴³ Haiqal Riski Ramadhan, Darminto Hartono Paulus, and Giovanni Marcello, "Prohibition of Monopolistic Practices in Business Trials in Indonesia: Reforming on Business Competition Supervisory Commission," *Journal of Law and Legal Reform* 4, no. 2 (April 2023): 163–82, <https://doi.org/10.15294/jllr.v4i2.61043>.

product. PT KLN possesses substantial capital, enabling it to carry out market capitalisation in concrete production and concrete product batching plants. A scrutiny of the total need for concrete in the first stage of IKN development indicates that PT KLN's market share stands at 60% of the total IKN needs.

Based on the description above regarding monopolistic practices, PT KLN fulfils the criteria indicative of engaging in monopolistic practices. Additionally, PT KLN has entered into a specific agreement with six construction SOEs, outlined in the memorandum of understanding for establishing an SPV for concrete production and logistics services. Collaboration carried out by business actors in the same field to form a larger company, lacking accompanying legal basis and intending to dominate the market and control production, constitutes a violation of business competition⁴⁴. Regarding the establishment of PT KLN, based on the presentation material during the meeting on Thursday, August 11, 2022, construction SOEs have expressed the need to investigate whether the formation of PT KLN contradicts the provisions regarding the prohibition of monopolistic practices and unfair business competition.⁴⁵ This concern arises from Article 12 of the Antimonopoly and Business Competition Law, which prohibits entering into agreements with other business actors to collaborate in forming a combined company or larger company to control the production and/or marketing of goods and/or services.

The application of the elements of Article 17 of the Antimonopoly Law can be observed in past KPPU decisions as follows: In the decision on case number 04/KPPU-I/2021, dated June 9, 2022, regarding the alleged violation of Article 17 of the Antimonopoly Law, the reported party—PT. Aero Citra Kargo—provides shipping transportation (export) services for lobster larvae. The considerations of the KPPU panel on pages 125, 129, and 151 state:⁴⁶ 1) Considering that the commission panel's assessment of the reported party's control of lobster larvae delivery services is based on the following criteria:

⁴⁴ “Anna Maria Tri, Interview with Lecturer of Business Competition Law FH Trisakti University and Former Commissioner of KPPU for the Period 2006-2012, Jakarta, 19 July 2023,” n.d.

⁴⁵ Ahmad Sabirin and Raafid Haidar Herfian, “Keterlambatan Pelaporan Pengambilalihan Saham Perusahaan Dalam Sistem Post Merger Notification Menurut Undang-Undang Persaingan Usaha Di Indonesia,” *Jurnal Persaingan Usaha* 1, no. 2 (2021): 55–63.

⁴⁶ “Decision of the Competition Supervisory Commission No. 04 of 2021,” n.d.

Substitutability of lobster larvae delivery services; Barriers to entry for other business actors; Control of the market share of lobster larvae delivery services exceeding 50% (fifty per cent). 2) Based on documents from the Directorate General of Customs and Excise, Ministry of Finance of the Republic of Indonesia, the reported party handles 98.71% of lobster larvae export shipping services (vide evidence C63); 3) Based on the facts presented above, the commission panel considers that the exclusive presence of the reported party as the sole lobster larvae delivery transportation service company, coupled with its role in providing explanations to exporters during the KKP socialisation, led to the practice where the exporters only used the services of the reported party for lobster larvae deliveries in the period of June – November 2020; 4) Elements of control over production and/or marketing: The commission panel considers that from June to November 2020, there was no substitute for transportation management services for the release (export) of the lobster larvae outside the territory of the Republic of Indonesia as described in the aforementioned point; The commission panel considers that the reported party's control of lobster larvae export transportation services for purposes outside the territory of the Republic of Indonesia has hindered other business actors from participating in the business competition for the same services, as described in the point above; The commission panel assesses that the reported party has exerted control over more than 50% (fifty per cent) of the market share of lobster larvae expenditure (export) transportation services via air transportation to Vietnam, Taiwan, and Hong Kong in the period of June - November 2020, as referred to in the point above; In this manner, the element of control over production and/or marketing is fulfilled.

Considering the insights provided by the KPPU panel in the aforementioned decision, business actors need to comply with Article 17 of the Antimonopoly Law, which prohibits the exercise of control over the production or marketing of goods and/or services that may lead to monopolistic practices and/or unfair business competition. This prohibition applies when there are no substitutes for the concerned goods and/or services, preventing other business actors from participating in the business competition for the same goods and/or services, or when a business actor controls more than 50% (fifty per cent) of the market share for one type of goods and/or services. Determining the presence of suspected monopolistic actions requires an evaluation within the authority of

the business competition authority to assess the impact of obstructive or supportive agreements or activities. Business competition law employs 2 (two) methods used to assess whether a business actor's actions violate the provisions of the Antimonopoly Law: the *per se* illegal and rule-of-reason approaches. The rule-of-reason approach, utilised by KPPU institutions, involves evaluating the consequences of agreements or activities that hinder or support competition.

In this case, PT KLN's market share could potentially hinder other companies from entering the competition for concrete production at IKN. The total concrete requirement is 3,159,283 m³ for phase 1, and if the government, as the owner of the construction project in IKN, repeats orders by procedures and without significant obstacles, PT KLN's substantial market share might hinder other competitors from participating effectively. PT KLN, having executed the phase 1 project and holding a substantial market share of 60% (sixty per cent) of the total concrete demand in 2022-2024, faces allegations that it might continue to be selected through a direct appointment mechanism even after the completion of the initial project. This would grant PT KLN a consistent 60% (sixty per cent) share of the total three concrete development phases spanning from 2022 to 2045. The calculated concrete requirement under the repeat order mechanism is 36,381,000 m³.

Conclusion

The establishment of PT Karya Logistik Nusantara, a joint venture formed through the merger of six state-owned construction companies, raises significant concerns regarding potential violations of Article 12 on trusts and Article 17, paragraph (2) concerning monopolistic practices, as outlined in Law No. 5 of 1999. This analysis indicates that the merger, which controls 60% of the concrete market share in IKN, may create substantial barriers to entry for competing businesses. By applying a rule-of-reason approach, the study reveals the potential for market dominance that could suppress competition and lead to monopolistic control over concrete production and logistics services. Theoretically, this research contributes to the field of economic law by illustrating the implications of joint venture formations on market competition, particularly in sectors where SOEs hold significant influence. It underscores the necessity of scrutinising mergers and joint ventures under antitrust laws to prevent market monopolisation and ensure fair competition. For future

research, it is recommended to conduct a comparative analysis of best practices in regulating joint ventures and mergers from other countries, particularly those with robust antitrust frameworks. This could provide valuable insights into effective regulatory oversight mechanisms that prevent the abuse of market power in large-scale construction initiatives. Additionally, exploring the long-term effects of such mergers on market dynamics and competition, especially in emerging infrastructure projects like IKN, is crucial. Addressing these issues is essential for maintaining a balanced and competitive economic environment in Indonesia, ensuring that the interests of all market participants are protected.

Future research should focus on conducting a comprehensive comparative analysis of antitrust regulations and enforcement mechanisms for joint ventures and mergers in countries with well-established antitrust frameworks. This analysis should aim to identify effective oversight strategies that prevent monopolistic practices, particularly in markets where state-owned enterprises (SOEs) hold substantial influence. Additionally, longitudinal studies are recommended to evaluate the long-term impacts of mergers like PT Karya Logistik Nusantara on market competition, entry barriers, and pricing dynamics in large-scale infrastructure projects such as IKN. Such research would provide policymakers with evidence-based recommendations to enhance regulatory frameworks, ensuring fair competition and sustainable economic development in Indonesia.

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