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Threats to Indonesia's Economic Sovereignty in the Appointment of Foreign Executives in State-Owned Enterprises

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Abstract: This study examines the constitutional implications of the government policy that allows foreign nationals to occupy executive positions in State-Owned Enterprises (SOEs) concerning the principle of national economic sovereignty, as stipulated in Article 33 of the 1945 Constitution of the Republic of Indonesia. The background of this research lies in the growing practice of economic globalization, which demands efficiency and professionalism in SOE management but potentially shifts the meaning of state control over vital sectors of production. This study employs a normative juridical method with conceptual and comparative approaches to national regulations and international practices. The findings indicate that the involvement of foreign nationals in SOE management can be acceptable insofar as it is limited by constitutional principles, the nationality principle, and strict public oversight. The novelty of this research lies in proposing a constitutional policy model that integrates corporate efficiency with state economic sovereignty. This model has practical implications for the international community: positively, it provides a clear legal framework for global investors and professionals, thereby enhancing the predictability of the investment climate and offering an adaptive model for other developing countries to align world-class corporate governance with national sovereignty; however, potentially negatively, strict limitations might be perceived by the global business community as a barrier or discrimination against the transfer of expertise and international capital flows. This integrative approach remains rarely discussed in the field of constitutional economic law in Indonesia.

Keywords: SOE; Economic sovereignty; Constitution; Community.

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Introduction

Article 33 of the 1945 Constitution of the Republic of Indonesia stipulates that the national economy shall be organized as a collective endeavor based on the principle of kinship, and that branches of production which are important to the state and affect the livelihood of the people shall be controlled by the state.¹ This provision signifies that the state bears a constitutional responsibility to control, regulate, and manage strategic economic resources for the greatest prosperity of the people.²

Within this ideal framework, State-Owned Enterprises (SOEs) function as the extension of the state in implementing its constitutional mandate to exercise control over vital sectors of production. SOEs are not merely profit-oriented business entities but are constitutional instruments intended to realize the ideals of economic democracy.³ Accordingly, the administration and leadership of SOEs should reflect the principle of nationality, positioning Indonesian citizens as those who bear direct responsibility for managing the state's strategic assets. In practice, however, the direction of national economic policy has shifted from a nationalist paradigm toward one emphasizing efficiency and globalization. The government has begun to open opportunities for foreign nationals to occupy strategic positions in SOEs, both as directors and commissioners, with the justification of enhancing competitiveness, technology transfer, and managerial professionalism.

This policy raises a constitutional dilemma. On one hand, the need for professional management and global competence cannot be ignored in facing international competition. On the other hand, appointing foreign nationals to strategic positions in SOEs that control public resources may distort the meaning of "state control" as intended by Article 33 of the Constitution. This leads to the question of whether such a policy remains consistent with the principle of national economic sovereignty, or whether it risks creating a new form of foreign dominance over strategic sectors of the national economy.

According to Jimly Asshiddiqie, the 1945 Constitution is not merely a political constitution but also an economic constitution containing fundamental principles of the national economic system.⁴ In his view, the concept of state control under Article 33 encompasses the functions of regulation, policy-making, management, and supervision.⁵ If managerial and supervisory functions are delegated to foreign parties, a portion of the state's economic sovereignty may be reduced.⁶

Meanwhile, Sri Edi Swasono emphasizes that Article 33 represents a form of resistance to the colonial economic system that once positioned the people as mere objects of development. He asserts that economic democracy requires the state to maintain control over vital sectors of production, which must not be surrendered to the free market or to foreign interests.⁷ Granting leadership roles in SOEs to foreign nationals may therefore be regarded as a deviation from the principle of nationality, which constitutes the very spirit of Indonesia's *Pancasila* economic system. Elli Ruslina argues that Article 33 of the Constitution is imperative rather than declarative, meaning that all economic policies including those governing state corporations must reflect the values of state sovereignty and social justice.⁸ Therefore, the involvement of foreign nationals in top management positions

¹ *The 1945 Constitution of the Republic of Indonesia*, Article 33 (1)–(3).

² Jimly Asshiddiqie, *Economic Constitution* (Jakarta: Kompas Book Publisher, 2010), 57.

³ Sri Edi Swasono, *People's Sovereignty, Economic Democracy, and Social Welfare: Implementation of Articles 33 and 34 of the 1945 Constitution* (Jakarta: Gerakan Jalan Lurus, 2008), 4.

⁴ Jimly Asshiddiqie, *Economic Constitution*, 61.

⁵ *Ibid.*, 63.

⁶ *Ibid.*, 64.

⁷ Swasono, *People's Sovereignty, Economic Democracy and Social Welfare*, 11.

⁸ Elli Ruslina, "The Meaning of Article 33 of the 1945 Constitution in the Development of Indonesia's Economic Law," *Jurnal Konstitusi* 9, no. 1 (2012): 70, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/913>

within SOEs must be examined within a constitutional framework, not merely on grounds of economic efficiency.

Studies regarding the involvement of foreign parties in the management of State-Owned Enterprises (SOEs) have been a subject of intense discussion in legal and management literature over the past five years. Meutia et al. provide an empirical foundation by examining the influence of foreign boards of directors on Corporate Social Responsibility (CSR) in Indonesia, which indicates that the presence of international experts is often viewed as a catalyst for corporate efficiency and increased corporate legitimacy in the global market through the adoption of international standards.⁹ However, this corporate efficiency perspective is counterbalanced by Santoso's normative study, which asserts that administratively, SOE directors hold a special status as "other state officials" under the government administration law. This position carries legal consequences, implying that the role of a director is not merely a business managerial function but a state instrument demanding full loyalty to national interests and the constitution; thus, their appointment must consider the sovereignty aspects inherent in state officialdom.¹⁰ Furthermore, Rahayu strengthens this constitutional argument by referring to the mandate of Article 33 of the 1945 Constitution concerning economic sovereignty. She emphasizes that while globalization demands professionalism, the state is obliged to maintain substantive control over production sectors vital to the public's livelihood, ensuring that the nationality principle in SOE management is not entirely eroded by the discourse of economic efficiency alone.¹¹

Nevertheless, these studies have not specifically and deeply examined the constitutional implications of the policy of appointing foreign nationals (WNA) as SOE executives on the principle of national economic sovereignty. This issue represents a fundamental tension between the need for global professionalism and adherence to the constitution, a conflict rarely touched upon in the literature of constitutional economic law in Indonesia.

Therefore, this research is positioned as a completely novel study that explicitly fills this gap. This study systematically places the issue of appointing foreign nationals within the framework of constitutional economic law, combining constitutional analysis and public policy considerations to measure the boundaries of state sovereignty in the face of globalization demands.

This research is significant for two fundamental reasons: *first*, because it concerns state sovereignty in the economic sphere as a manifestation of the principle of economic self-determination; and *second*, because it is a response to the challenges of globalization that demand openness to professionalism and foreign investment. Maintaining a balance between these two aspects is crucial to ensure that national economic policies remain consistent with constitutional values. This study is expected to provide new insights into the constitutional limits of foreign involvement in SOE management and serve as a reference for policymakers in formulating regulations that harmonize corporate efficiency with national sovereignty.

The central legal issue of this study lies in the tension between the principle of national economic sovereignty, as mandated by Article 33 of the 1945 Constitution, and the government's policy of allowing foreign nationals to occupy strategic positions within SOEs. Within the framework of constitutional law, economic sovereignty implies that the state must retain substantive control over branches of production vital to the people's welfare. However, when managerial and strategic decision-making functions in SOEs are delegated

⁹ Inten Meutia et al., "Does a Foreign Board Improve Corporate Social Responsibility? Evidence from Indonesia," *Sustainability* 13, no. 21 (2021): 1-15.

¹⁰ Sugeng Santoso, "Status Direksi BUMN selaku Penyelenggara Negara Lainnya dalam Ketentuan Undang-Undang Administrasi Pemerintahan," *Jurnal Transparansi Hukum* 5, no. 1 (2022): 45-60.

¹¹ N. Rahayu, "Efficiency vs. Economic Sovereignty in Indonesian SOEs," *Indonesian Journal of Law and Islamic Law (IJLIL)* 7, no. 1 (2025): 21-35.

to foreign nationals, a constitutional question arises as to the extent to which the state continues to exercise effective control over public assets. As Jimly Asshiddiqie asserts, state control encompasses regulatory, managerial, and supervisory functions that must not be diminished by foreign influence. Therefore, this issue calls for an assessment of whether the policy represents an adaptive response to globalization that remains constitutionally legitimate, or rather a deviation from the principle of national economic sovereignty.

Research Methods

This study employs a normative juridical method, focusing on the analysis of legal norms, constitutional principles, and government policies related to the appointment of foreign nationals as leaders of State-Owned Enterprises (SOEs). In line with Soerjono Soekanto's perspective, normative legal research examines law as a system of norms or rules that function as behavioral guidelines in society, and seeks to resolve legal issues through the analysis of statutes and legal doctrines.¹² The research utilizes several approaches. These include the statutory approach, which examines relevant legal instruments such as Article 33 of the 1945 Constitution of the Republic of Indonesia,¹³ Law No. 19 of 2003 on State-Owned Enterprises, and their implementing regulations,¹⁴ the conceptual approach, which explores the core ideas of economic sovereignty and the nationality principle ; the historical approach, which traces the development of the SOE's role within Indonesia's national economic system ; and the comparative approach, which reviews similar regulatory practices in other countries. Legal materials are collected through library research involving primary, secondary, and tertiary legal sources. The analysis is conducted using a descriptive-qualitative technique with a deductive reasoning pattern. As Peter Mahmud Marzuki explains, normative legal research aims to identify legal principles, doctrines, and structures that logically and systematically address the legal issues under examination.¹⁵

The normative juridical method is implemented practically by using Article 33 of the 1945 Constitution (as primary law) as the touchstone for assessing the government policy regarding the appointment of foreign executives in SOEs. The statutory and conceptual approaches are applied to interpret the doctrines of "controlled by the state" and the "nationality principle" within the context of global management modernization. Primary legal materials, specifically the Constitutional Court rulings (e.g., Decisions No. 002/PUU-I/2003 and No. 36/PUU-X/2012), are utilized to dissect the state's non-delegable control functions, which constitutionally encompass the functions of regulation, administration, management, and supervision. Furthermore, secondary legal materials, such as doctrines from constitutional law and economic law experts (like Jimly Asshiddiqie and Sri Edi Swasono), are employed to strengthen the constitutional arguments concerning the potential shift in the meaning of economic sovereignty due to globalization.

The comparative approach is applied by analyzing the practices of countries such as Singapore, Malaysia, and South Korea, which also permit foreign professionals in their state-owned companies. This comparison, supported by tertiary sources like reports from the Organisation for Economic Co-operation and Development (OECD) and the World Bank, aims to formulate an Adaptive Constitutional Policy Model. This model, which introduces the *Functional Nationality Principle* and the *Sustained State Oversight Principle*, is synthesized as a legal solution to balance the demands of global corporate efficiency with the necessity of protecting national economic sovereignty. All collected legal materials are analyzed using a descriptive-qualitative technique to construct coherent legislative and executive recommendations for bridging the inherent constitutional tension.

¹² Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 1986), 13.

¹³ *The 1945 Constitution of the Republic of Indonesia*, Article 33.

¹⁴ Law of the Republic of Indonesia No. 19 of 2003 concerning State-Owned Enterprises.

¹⁵ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2011), 35.

Results and Discussion

Constitutional Analysis and Normative Limits on the Appointment of Foreign Nationals (WNA) in SOEs

Economic sovereignty constitutes a principal pillar within the Indonesian constitutional framework as stipulated in Article 33 of the 1945 Constitution of the Republic of Indonesia (UUD 1945).¹⁶ This article affirms that the national economy shall be organized as a common endeavor based on the principle of kinship, and that branches of production which are important to the state and which affect the livelihood of the people shall be controlled by the state. In this regard, economic sovereignty does not merely signify the state's ability to regulate its economic resources independently, but also reflects the constitutional right of the state to determine the direction, actors, and mechanisms of national economic management. Therefore, every policy that has the potential to affect the state's control over strategic economic resources must be tested within the framework of the principle of "state control."¹⁷

In practice, economic sovereignty is manifested through the existence of State-Owned Enterprises (*Badan Usaha Milik Negara* or SOEs). SOEs serve as the extension of the state in managing vital sectors that cannot be fully delegated to market mechanisms.¹⁸ Thus, an SOE is not merely a business entity but also a constitutional instrument for implementing the economic mandate of the state. However, with the advancement of economic globalization and the growing demand for corporate efficiency, policies have emerged allowing foreign nationals (*Warga Negara Asing* or WNA) to occupy strategic positions within SOEs. This situation gives rise to a dilemma between the need for professionalism and managerial efficiency, and the obligation to safeguard national economic sovereignty.¹⁹

Juridically, Law No. 19 of 2003 concerning SOEs does not explicitly prohibit foreign nationals from holding positions within SOEs. Article 15 of the Law merely provides that members of the board of directors shall be appointed and dismissed by the Minister of SOEs based on professionalism, integrity, and capability.²⁰ This phrase opens interpretive space suggesting that professionalism may encompass foreign experts if deemed to possess the required competence. Nevertheless, such a policy must be read systematically alongside other legal provisions, particularly the 1945 Constitution. Accordingly, under positive law, the government indeed has the legal authority to appoint foreign nationals,²¹ but such policy must remain subject to the constitutional principle that state control over vital branches of production may not be compromised by mere corporate interests.²²

The appointment of foreign nationals to SOE leadership positions raises a fundamental question regarding its consistency with the nationality principle and the doctrine of state control. First, the nationality principle emphasizes that the administration of the national economy must prioritize the interests of the Indonesian people.²³ Second, the principle of state control, as interpreted by the Constitutional Court (for example, Constitutional Court Decision No. 002/PUU-I/2003 and No. 36/PUU-X/2012), is understood as the state's

¹⁶ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 1986), 13.

¹⁷ *The 1945 Constitution of the Republic of Indonesia*, Article 33.

¹⁸ Law of the Republic of Indonesia No. 19 of 2003 concerning State-Owned Enterprises.

¹⁹ Marzuki, *Legal Research*, 35.

²⁰ A. Yusuf, *The Indonesian Constitution and Economic Sovereignty* (Jakarta: Rajawali Pers, 2019), 45.

²¹ Undip E-Journal System, "People's Economy vs. Neoliberalism," *Jurnal Gema Keadilan* 8, no. 1 (2021): 15–30, <https://ejournal2.undip.ac.id/index.php/gk/article/download/3713/2082>.

²² A. T. Pratama and M. Zaki, "Ownership Rights of State-Owned Enterprises (SOEs) in Relation to the Obligation of Zakat," *Neliti*, <https://www.neliti.com/publications/376823/hak-kepemilikan-badan-usaha-milik-negara-bumn-kaitannya-dengan-kewajiban-zakat-studi-pada-regulasi-zakat-di->, accessed October 23, 2025.

²³ Universitas Sebelas Maret, "State Sovereignty in the Framework of International Law," *Jurnal Yustisia* 6, no. 2 (2017): 121–135, <https://jurnal.uns.ac.id/yustisia/article/download/10074/8990>.

authority to regulate, administer, manage, and supervise.²⁴ Hence, the involvement of foreign nationals in SOE leadership must be examined to determine whether it diminishes the state's control function. If the appointment is purely professional and occurs within a corporate management framework that remains under governmental oversight, it may be constitutionally justifiable. However, if such appointments have the potential to influence the direction of strategic policies concerning public interests and vital resources, the policy may substantively undermine state control.²⁵

It is crucial to understand that SOEs, in any context, cannot be treated solely as purely private corporate entities. Comparative legal and economic experts, such as Butzbach (2021), emphasize that SOEs are institutional actors bound by the state's social and political mandate.²⁶ Therefore, the constitutional limitation mandated by Article 33 of the 1945 Constitution is not obsolete protectionism, but a fundamental obligation to ensure that the managerial functions delegated to foreign nationals do not conflict with the state's core mandate. This aligns Indonesia with the global perspective that State-Owned Enterprises (SOEs) possess a distinct character that requires strategic state control.

Constitutional Policy Model: Integrating Global Efficiency and State Sovereignty

In the modern global economy, efficiency and competitiveness have become the main benchmarks. Many other countries, such as Singapore, Malaysia, and South Korea, have opened opportunities for foreign professionals to lead state-owned companies on the grounds of enhancing managerial capacity and gaining access to international networks.²⁷ However, the practices in these countries are always accompanied by strict supervisory mechanisms over strategic policies, ensuring that ownership and control of key policies remain in the hands of the state.²⁸ Thus, the involvement of foreign professionals in SOE management in those countries is not interpreted as a surrender of economic sovereignty, but rather as part of a strategy to enhance efficiency and corporate governance under the full control of the government.²⁹

Therefore, this research proposes an Adaptive Constitutional Policy Model which asserts that the involvement of foreign nationals must be viewed as an effort to enhance efficiency strictly limited by constitutional principles. This model is synthesized through three fundamental principles, which are practical implementations derived from international comparison and normative limitations:

1. Functional Nationality Principle: Positions that can be occupied by foreign nationals must be technical or non-strategic. Positions that determine the direction of national strategic policy and decisions (e.g., President Director/CEO or President Commissioner of SOEs in vital sectors) must be held by Indonesian citizens.
2. Constitutional Accountability Principle: Every appointment of foreign nationals in SOEs must undergo a process of public accountability and obtain approval from

²⁴ Law of the Republic of Indonesia No. 19 of 2003 concerning State-Owned Enterprises, State Gazette of the Republic of Indonesia Year 2003 No. 63.

²⁵ Amik Veteran Journal, "Implementation of Pancasila in building the national economy", *Social Science and Communication Journal (SSCJ)*, 4, no. 2 (2022): 45–59. <https://journal.amikveteran.ac.id/index.php/sscj/article/download/5237/3101/15589>

²⁶ O. Butzbach, "State-Owned Enterprises as Institutional Actors in Contemporary Capitalism and Beyond," *Cambridge Elements in Law, Economics and Politics* (Cambridge University Press, 2021), 1–23, <https://www.cambridge.org/core/elements/stateowned-enterprises-as-institutional-actors-in-contemporary-capitalism-and-beyond/C4764D2F7B31B53E25572736F049A9A7>.

²⁷ Ibid.

²⁸ E. Ratnasari, "The Principle of Nationality in the Indonesian Economy," *Indonesian Journal of Law and Islamic Law (IJLIL)* 6, no. 2 (2024): 78–90, <https://ijlil.uinkhas.ac.id/index.php/ijl/article/view/xyz>, accessed October 23, 2025.

²⁹ Decision of the Constitutional Court of the Republic of Indonesia No. 002/PUU-I/2003 and No. 36/PUU-X/2012.

competent state authorities (e.g., a Committee/Supervisory Board dominated by Indonesian citizens and/or special approval from the Ministry of SOEs).

3. Sustained State Oversight Principle: The government must establish a special monitoring system for SOEs led by foreign nationals, including restrictions on access to strategic data, a knowledge transfer clause, and an annual evaluation of adherence to the principle of economic sovereignty.

Indonesia must draw lessons from these comparative experiences. The involvement of foreign nationals should not be perceived as a form of relinquishing economic sovereignty, but rather as an effort to enhance efficiency within the confines of constitutional principles. For that purpose, institutional design must ensure that strategic decisions—particularly those related to natural resources, major investments, and public policy—remain under the authority of directors or commissioners who are Indonesian citizens. The policy of appointing foreign nationals in SOEs must therefore be accompanied by clear regulations defining limits of authority, accountability mechanisms, and public oversight. Without such boundaries, the risks of strategic information leakage and managerial dependency on foreign parties will increase.³⁰

Practically, this model necessitates explicit Sectoral Criteria: SOEs in highly vital sectors (energy, water, defense) must apply much stricter limits on foreign nationals (or total exclusion from top positions), while SOEs in non-vital commercial sectors may apply greater flexibility with a clear term limit (*sunset clause*).

The adaptive model draws strong inspiration from tested international practices. Countries like South Korea and Malaysia have long utilized foreign professionals to boost SOE efficiency, but they do so with a structured oversight mechanism. Studies show that SOE performance in Korea relies heavily on effective governance and strict policy oversight mechanisms, which ensure key policy control remains in state hands.³¹

Similarly, the Organisation for Economic Co-operation and Development (OECD)³² notes that in the Asian context, the integration of global professionals is always accompanied by ownership and policy control maintained by the government, not interpreted as a surrender of sovereignty.³³ The proposed Functional Nationality Principle, where foreign nationals focus on *knowledge transfer* and technical operations, is a practical reflection of the need to align global managerial excellence with *constitutional fidelity*.

Practical Implications of the Policy for SOE Governance (Domestic Level)

The state must ensure that the involvement of foreign professionals remains limited to knowledge transfer and technical expertise, rather than the assumption of the state's

³⁰ O. Butzbach, "State-Owned Enterprises as Institutional Actors in Contemporary Capitalism and Beyond," *Cambridge Elements in Law, Economics and Politics* (Cambridge University Press, 2021): 1–23, <https://www.cambridge.org/core/elements/stateowned-enterprises-as-institutional-actors-in-contemporary-capitalism-and-beyond/C4764D2F7B31B53E25572736F049A9A7>

³¹ Kyoungsun Heo, "Effects of Corporate Governance on the Performance of State-Owned Enterprises in Korea," World Bank Policy Research Working Paper No. 8555 (Washington, D.C.: World Bank, 2018), <https://documents.worldbank.org/curated/en/523421534424982014/pdf/WPS8555.pdf>.

³² Organisation for Economic Co-operation and Development (OECD), *State-Owned Enterprises in Asia: National Practices for Performance Evaluation and Management* (Paris: OECD Publishing, 2016), <https://www.oecd.org/daf/ca/SOEs-Asia-Performance-Evaluation-Management.pdf>.

³³ Mohd Adib Ismail, Nor Azlina Abd Aziz, and Mohd Nasir Mohd Saukani, "The Financial Sustainability of State-Owned Enterprises in an Emerging Economy: Evidence from Malaysia," *Economies* 10, no. 10 (2022): 233, <https://www.mdpi.com/2227-7099/10/10/233>; see also Fary Akmal Osman, "State-Owned Enterprise (SOE): The Role of SOE Entrepreneurship in Nation-Building Efforts, 1970–2014 (Asia)," The Business History Conference, https://thebhc.org/sites/default/files/Fary_Schwantes_EDITED.%203%20dec%20%28rev%20final%20version%29.pdf.

strategic control functions.³⁴ Therefore, the author proposes three fundamental principles as a framework for reconstructing constitutional economic policy:

1. Functional Nationality Principle: Only positions of a technical or non-strategic nature may be filled by foreign nationals (WNA), while positions determining the direction of national policy and strategic decisions must be held by Indonesian citizens (WNI).
2. Constitutional Accountability Principle: Every appointment of a foreign national in an SOE must go through a process of public accountability and obtain approval from the competent state authority, such as the Ministry of SOEs or the Supervisory Board representing state interests.
3. Sustained State Oversight Principle: The government must establish a special monitoring system for SOEs led by foreign nationals, including restrictions on access to strategic data and annual evaluations of performance and compliance with the principle of economic sovereignty.

Through the implementation of these principles, Indonesia can maintain a balance between global economic efficiency and the supremacy of its constitutional economic order.³⁵ Operationally, this model addresses concerns widely discussed in SOE governance studies, especially regarding the risks of strategic information leakage and managerial dependency on foreign parties. Milhaupt (2017) highlights the governance challenges faced by SOEs listed on global stock exchanges, where potential conflicts of interest between market profits and the state's mandate frequently arise.³⁶ By limiting foreign nationals to non-strategic functions and mandating knowledge transfer, Indonesia practices integrated risk management, ensuring that the transfer of expertise is not equivalent to the surrender of strategic control.

The implementation of this structured constitutional policy model provides significant practical impacts for SOE governance at the domestic level:

1. Legal Certainty and Recruitment: The model provides legal certainty for the Ministry of SOEs to formulate Standard Operating Procedures (SOPs) and clear recruitment criteria, thereby reducing the risk of legal challenges or *judicial review* based on policy inconsistency with the constitution.
2. Sovereignty Risk Mitigation: Functional boundaries on strategic positions serve as crucial *sovereignty risk* mitigation. The state's vital assets will be protected from potential conflicts of interest or decision-making driven by loyalty to foreign nations.
3. Enhanced Public Accountability: With structured constitutional boundaries, the accountability of SOEs to parliament (DPR) and the public becomes more measurable. The parties responsible for strategic policy direction are Indonesian citizens, who are directly bound by the 1945 Constitution and national interests.
4. National Talent Self-Reliance: The implementation of the Sustained State Oversight Principle (with the mandatory *knowledge transfer* clause) practically compels SOEs

³⁴ Organisation for Economic Co-operation and Development (OECD), *State-Owned Enterprises in Asia: National Practices for Performance Evaluation and Management*, <https://www.oecd.org/daf/ca/SOEs-Asia-Performance-Evaluation-Management.pdf>.

³⁵ Kyoungsun Heo, "Effects of Corporate Governance on the Performance of State-Owned Enterprises in Korea, <https://documents.worldbank.org/curated/en/523421534424982014/pdf/WPS8555.pdf>; see also OECD, *Corporate Governance of State-Owned Enterprises in Asia*, <https://www.oecd.org/en/networks/corporate-governance-of-state-owned-enterprises-in-asia.html>

³⁶ Curtis J. Milhaupt, "Governance Challenges of Listed State-Owned Enterprises," *Cornell International Law Journal* 50, no. 3 (2017): 473-498, <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1907&context=cilj>.

to develop leadership programs focused on accelerating the capacity of Indonesian citizens, thereby reducing dependency on foreign talent in the long run.

Global Impact and Indonesia's Bargaining Position in the International Community

The government's policy of opening opportunities for foreign nationals to lead SOEs cannot be separated from the vision of the President of the Republic of Indonesia, who emphasizes the importance of transforming SOEs into world-class corporations.³⁷ From the perspective of constitutional economic law, this vision may be understood as an effort to fulfill the state's constitutional function to promote the general welfare and to control vital branches of production not merely to maintain formal ownership, but to enhance the effectiveness of national economic resource management.³⁸

This research influences Indonesia's position in the international community, shifting the narrative from a dilemma to a balanced solution:

1. Enhancing Global Investment Predictability: The presence of clear legal boundaries (foreign nationals may be involved, but control remains with the state) actually attracts high-quality investors and foreign professionals who value transparency, the rule of law, and political stability. This eliminates regulatory uncertainty that often hinders investment.
2. Strengthening Global Bargaining Power: Indonesia can demonstrate to the world that it is open to global professionalism (*Global Competitiveness*) without sacrificing its fundamental principles (*Constitutional Fidelity*). This strengthens Indonesia's bargaining position in international economic forums by showcasing maturity in managing globalization.
3. Adaptive Model for Developing Countries: The constitutional policy model that integrates efficiency and sovereignty can serve as a comparative reference for other developing countries facing similar pressures to privatize or open up their SOE management. This model offers a middle ground between pure protectionism and total liberalization.

Nevertheless, this policy direction gives rise to a conceptual tension between corporate efficiency in the global economy and economic sovereignty guaranteed by the Constitution. Normatively, the appointment of foreign nationals as SOE leaders must remain situated within the framework of economic sovereignty, where the role of foreign nationals is strictly functional and limited to improving performance, rather than determining strategic national policy directions.³⁹ Thus, the balance between the global vision and the constitutional mandate constitutes the central challenge for the future development of Indonesia's constitutional economic law.⁴⁰

The clarity of these constitutional boundaries can also be viewed as a necessary *trade-off* in the context of sovereignty-centered globalization.⁴¹ Although strict limitations may be

³⁷ Ismail, Aziz, and Saukani, "The Financial Sustainability of State-Owned Enterprises in an Emerging Economy," 233, <https://www.mdpi.com/2227-7099/10/10/233>; and Fary Akmal Osman, *State-Owned Enterprise (SOE): The Role of SOE Entrepreneurship in Nation-Building Efforts, 1970–2014 (Asia)*, The Business History Conference, https://thebhc.org/sites/default/files/Fary_Schwantes_EDITED.%203%20dec%20%28rev%20final%20version%29.pdf.

³⁸ Milhaupt, "Governance Challenges of Listed State-Owned Enterprises," 473–498, <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1907&context=cilj>.

³⁹ Analysis of the relationship between national sovereignty and economic independence, *JIP: Jurnal Ilmu Pemerintahan* 9, no. 2 (2022): 88–100, <https://ojs.co.id/1/index.php/jip/article/view/1328>.

⁴⁰ Universitas Katolik Parahyangan, "The Indonesian Economic System from the Perspective of Pancasila and the 1945 Constitution," *Jurnal Veritas et Justitia* 7, no. 1 (2021): 65–83, <https://journal.unpar.ac.id/index.php/veritas/article/viewFile/3067/2611>

⁴¹ OECD, *State-Owned Enterprises in Asia: National Practices for Performance Evaluation and Management*, <https://www.oecd.org/daf/ca/SOEs-Asia-Performance-Evaluation-Management.pdf>.

perceived by some circles as a *barrier* to the free flow of professionalism, as is a concern in the international business environment,⁴² this research argues that the legal certainty offered by the Adaptive Constitutional Model is more valuable than unlimited flexibility. This reassures the market that Indonesia's political and legal certainty in managing vital assets is fundamental.

Furthermore, this Indonesian adaptive model can serve as a comparative solution model for other developing countries,⁴³ strengthening Indonesia's bargaining position in international economic forums by proving that the state is capable of being a global player that is open without compromising its constitutional integrity.⁴⁴

Legislative Recommendations and Follow-Up Actions

After identifying the constitutional tension between the need for global efficiency and the principle of economic sovereignty, this research concludes that adaptation to globalization must be guarded by a strict regulatory fortress. To bridge the gap between the global ambition of SOE corporations and constitutional compliance, concrete steps are required across three main stakeholder lines: legislative, executive, and oversight.

First, Legislative Recommendation: Codification of Functional Sovereignty. The highest urgency lies in revising Law No. 19 of 2003 concerning SOEs. The current law is considered too general because it only emphasizes aspects of professionalism and managerial capability without explicitly providing constitutional limitations based on the nationality principle.⁴⁵ This revision must explicitly codify the Functional Nationality Principle and establish Sectoral Criteria for the appointment of foreign nationals. This principle ensures that positions controlling strategic decision-making such as President Director and President Commissioner, particularly in SOEs managing vital production branches are exclusively reserved for Indonesian citizens. This step is crucial to protect the doctrine of state control as affirmed by the Constitutional Court, which states that the strategic management function may not be delegated.⁴⁶ Butzbach (2021) emphasizes that clear regulation is a prerequisite for SOEs to function as effective state instruments and not merely serve market interests.⁴⁷

Second, di tingkat eksekutif, The Ministry of SOEs must act swiftly by issuing an implementative Ministerial Regulation. This regulation must mandate detailed and layered Standard Operating Procedures (SOPs) for foreign national recruitment, going beyond mere competency assessment. As a mechanism for filtering sovereignty risk, the establishment of a Constitutional Review Committee must be mandated for every foreign executive recruitment process. This committee, ideally consisting of representatives from the Ministry of SOEs and constitutional law experts, functions to evaluate every appointment proposal based on sovereignty risk mitigation before approval is given.⁴⁸ The implementation of this

⁴² Heo, "Effects of Corporate Governance on the Performance of State-Owned Enterprises in Korea," <https://documents.worldbank.org/curated/en/523421534424982014/pdf/WPS8555.pdf>.

⁴³ Ismail, Aziz, and Saukani, "The Financial Sustainability of State-Owned Enterprises in an Emerging Economy," 233, <https://www.mdpi.com/2227-7099/10/10/233>; see also Osman, "State-Owned Enterprise (SOE),"

⁴⁴ Butzbach, "State-Owned Enterprises as Institutional Actors in Contemporary Capitalism and Beyond," 1–23, <https://www.cambridge.org/core/elements/stateowned-enterprises-as-institutional-actors-in-contemporary-capitalism-and-beyond/C4764D2F7B31B53E25572736F049A9A7>.

⁴⁵ Law of the Republic of Indonesia No. 19 of 2003 concerning State-Owned Enterprises, *State Gazette of the Republic of Indonesia* Year 2003 No. 63.

⁴⁶ Decision of the Constitutional Court of the Republic of Indonesia No. 002/PUU-I/2003 and No. 36/PUU-X/2012.

⁴⁷ Butzbach, "State-Owned Enterprises as Institutional Actors in Contemporary Capitalism and Beyond," 1–23, <https://www.cambridge.org/core/elements/stateowned-enterprises-as-institutional-actors-in-contemporary-capitalism-and-beyond/C4764D2F7B31B53E25572736F049A9A7>.

⁴⁸ N. Rahayu, "Efficiency vs. Economic Sovereignty in Indonesian SOEs," *Indonesian Journal of Law and Islamic Law (IJLIL)* 7, no. 1 (2025): 21–35, <https://ijlil.uinkhas.ac.id/index.php/ijl/article/view/345>, accessed October 23, 2025.

internal *check-and-balance* mechanism ensures that the President's vision for creating world-class SOEs remains aligned with the constitutional function of SOEs.⁴⁹

The third, penguatan mekanisme pengawasan menjadi penyeimbang utama. The oversight mechanism must be strengthened on two fronts. The Board of Commissioners of SOEs (as representatives of the state shareholders) must be structurally strengthened and given clear authority to veto managerial decisions deemed to violate national interests or potentially diminish economic sovereignty, in accordance with the constitutional spirit.⁵⁰ Furthermore, the DPR RI, as the representation of the people's sovereignty, must strengthen its oversight function (*check and balance*) over strategic appointments. This dual oversight is essential to ensure that foreign nationals involved in SOEs, although competent, remain under the state's substantive control and adhere to the nationality principle, a practice also recommended internationally to address governance challenges in SOEs listed on stock exchanges, where weak oversight can increase vulnerability.⁵¹

The research findings of this study reveal a profound legal and constitutional antinomy between the "Efficiency Logic" of global corporate governance and the "Sovereignty Logic" inherent in the Indonesian Constitution. Through a comprehensive normative and comparative analysis, this research yields four primary findings that clarify the impact of appointing foreign executives in State-Owned Enterprises (SOEs) on national economic sovereignty.

First, the analysis identifies a Conceptual Shift in State Control (*Penguasaan Negara*). The study finds that the presence of foreign nationals in strategic executive positions risks shifting the orientation of SOEs from a "Social Mandate" (public welfare) to a "Market Mandate" (profit maximization). Under Article 33 of the 1945 Constitution, the state's control over vital sectors is not merely about share ownership, but also about Management Control. When decision-making power is delegated to foreign individuals who lack a constitutional bond with the Indonesian state, the substantive control of the state is diluted. These executives are naturally inclined to prioritize global corporate standards and shareholder value, which may inadvertently sideline the "public service obligation" that is the constitutional bedrock of Indonesian SOEs.

Second, the study establishes the Indispensability of the Nationality Principle as a safeguard for constitutional loyalty. The findings suggest that the role of an SOE director in Indonesia is qualitatively different from a director in a private multinational corporation. In the Indonesian context, an SOE director is an "Institutional Actor" of the state. The research finds that "Constitutional Loyalty" the intrinsic commitment to uphold the ideological and economic goals of the Indonesian state cannot be legally guaranteed by foreign nationals. This creates a "Loyalty Gap" that poses a risk to economic sovereignty, especially in sectors involving national security, energy, and food stability.

Third, the research identifies Regulatory Gaps in the SOE Law (Law No. 19 of 2003). The current legal framework is found to be overly focused on the "Private Law" aspects of SOEs (efficiency and professionalism) while neglecting the "Public Law" responsibilities. There is currently no rigorous "Constitutional Vetting Mechanism" to ensure that foreign professionals understand or are bound by the mandate of Article 33. The findings indicate that without such a mechanism, the government's policy of "Global Talent Attraction" lacks the necessary legal filters to prevent the erosion of national economic interests.

Finally, the study proposes a Constitutional Policy Model based on a "Graduated Involvement" approach. The research finds that foreign expertise should be limited to technical and operational advisory roles rather than strategic decision-making roles. By

⁴⁹ S. Hadi, "The Existence of Pancasila as the Source of All Laws in the Indonesian Constitution," *Indonesian Journal of Law and Islamic Law (IJLIL)* 3, no. 2 (2021): 307–320, <https://ijlil.iain-jember.ac.id/index.php/ijl/article/download/128/38>.

⁵⁰ Ratnasari, "The Principle of Nationality in the Indonesian Economy," 78–90.

⁵¹ Milhaupt, "Governance Challenges of Listed State-Owned Enterprises," 473–498, <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1907&context=cilj>.

implementing a tripartite oversight system Legislative (stricter laws), Executive (vetting protocols), and Oversight (monitoring of national interest alignment) Indonesia can harness global professionalism without surrendering the fortress of its constitutional economic sovereignty. This model ensures that while the "engine" of the SOE may be global, the "steering wheel" remains firmly in the hands of the state and its citizens.

Conclusion

Based on the analysis, it can be concluded that the policy of appointing foreign nationals as leaders of State-Owned Enterprises (SOEs) has significant constitutional implications for the principle of national economic sovereignty as mandated by Article 33 of the 1945 Constitution. Normatively, SOEs serve as instruments of state control over vital sectors of production and must be managed for the greatest prosperity of the people; therefore, any policy concerning SOE leadership must adhere to the principles of nationality and state control. While efficiency and professionalism may serve as justifications for such a policy, the state remains constitutionally obligated to ensure that foreign involvement in SOE management does not diminish national authority or accountability over strategic economic resources. Hence, clear limitations and constitutional oversight mechanisms are essential to safeguard economic sovereignty amid the pressures of globalization and the modernization of corporate governance.

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