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Legal Analysis of the Policy on Appointing Foreign Nationals as Directors of State-Owned Enterprises

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Abstract. *The amendment to Law Number 19 of 2003 on State-Owned Enterprises through Law Number 16 of 2025 has opened the possibility for foreign nationals to serve as directors of State-Owned Enterprise Limited Liability Companies (Persero BUMN). This policy has generated debate as it is considered a means of enhancing professionalism, corporate governance quality, and the competitiveness of SOEs. This study aims to examine the rationale behind the appointment of foreign nationals as directors of Persero BUMN and to assess its compatibility with the principle of state control as stipulated in Article 33 of the 1945 Constitution. Employing a normative juridical method with statutory and conceptual approaches, the study finds that the policy emerged as a response to structural challenges faced by SOEs, including limited competitiveness, corporate governance issues, and the need for professional leadership in an increasingly competitive global environment. Furthermore, the appointment of foreign directors is not inconsistent with the principle of state control, provided that the state retains effective authority over their recruitment, appointment, and supervision. To safeguard national interests, a specific vetting mechanism should be established, particularly for SOEs operating in strategic and sensitive sectors.*

Keywords: *Constitutional Principles; Foreign Directors; Persero BUMN; State Control; State-Owned Enterprise Governance.*

1. Introduction

State-Owned Enterprises (SOEs) play a strategic role in Indonesia's national economy by managing key sectors, delivering public services, and supporting sustainable economic development. As instruments of the state, SOEs are expected not only to generate economic value but also to implement the constitutional mandate of state control over strategic economic resources for the greatest prosperity of the people. Regulations regarding state-owned enterprises (SOEs) have undergone several changes. The last, the fourth amendment, was enacted on October 6, 2025, which subsequently became Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (hereinafter referred to as Law Number 16/2025). The birth of Law Number 16/2025 is a form of reform of the SOE institution as conveyed by the Minister of State Secretary (*Menteri*

Sekretaris Negara/Mensesneg), Prasetyo Hadi, that the transformation of SOE institutions is very important to provide a more optimal contribution to the national economy (Humas Kementerian Sekretariat Negara RI, 2025). He also believes that SOEs as an extension of the state and government are responsible for realizing the welfare of the people by maintaining economic sovereignty as a form of national economic development. One of the articles included in the law permits foreign nationals (*Warga Negara Asing*/WNA) to serve as directors of state-owned enterprises (*Badan Usaha Milik Negera Perusahaan Perseroan*/BUMN Persero), as implicitly stated in Article 15A paragraph (3) of Law Number 16/2025. This is a new policy in the state-owned corporation system, where previously all high-ranking positions in BUMNs were required to be held by Indonesian citizens (*Warga Negara Indonesia*/WNI). This new policy has generated both pros and cons, sparking public debate regarding the urgency and direction of state policy regarding BUMN management.

The creation of this new policy stems from various problems inherent in BUMNs. Ferdy Hasiman, a researcher from Alpha Research Database Indonesia, explained that several problems faced by BUMNs include the large number of strategic positions held by political party appointees, creating the risk that decisions are driven more by party interests than by the company (Saleh, 2019). This data is supported by a statement from politician Adian Napitupulu, who reported that in 2020, at least 6,200 director and commissioner positions in state-owned enterprises (SOEs) were “given” positions, not through an open selection mechanism (Azanella & Hardiyanto, 2020). This practice of “given” positions on boards of directors not only degrades SOEs' internal performance but also erodes public trust in state institutions (Awalia & Arwan, 2025).

In addition to the practice of “given” positions, Ferdy Hasiman also frequently emphasizes the need to improve SOE competitiveness to avoid being pushed out of global competition by private competitors (Saleh, 2019). Many SOEs in developing countries, including Indonesia, are still perceived as inefficient, less profitable, and lagging behind in modern management practices compared to private companies, often becoming a fiscal burden and hampering overall economic competitiveness (Nachrawi, 2022). A number of emerging SOEs in Asia face significant challenges in service quality, productivity, and the business environment, preventing them from consistently surpassing the performance and improvement of private companies, despite receiving government support (Ginting & Naqvi, 2020). Other research confirms that SOEs tend to be rigid, bureaucratic, and hierarchical, making it difficult for them to adapt to market dynamics and aggressive innovation from private competitors (Maslani et al., 2024; Rahma et al., 2024). The quality of corporate governance, including the size, composition, and professionalism of the board, has been shown to significantly impact the financial and operational performance of SOEs, ultimately determining their ability to compete in both domestic and global markets (Pertiwi, 2024). Therefore, selecting directors with strategic capacity, international experience, and market orientation is crucial for driving innovation, efficiency, and increasing the competitiveness of SOEs amidst competitive pressures from the private sector.

In the "1 Year of the Prabowo-Gibran Administration" event hosted by Metro TV, Danantara Chief Investment Officer (CIO), Pandu Sjahrir, revealed that the use of foreign nationals in state-owned enterprises (SOEs) is common in other countries and is an effort to boost the competitiveness of SOEs in the global era. He also provided examples of how SOEs abroad use foreign nationals as directors and produce significant results (Wulandari & Samosir, 2025). The "results" referred to in this case are increased competitiveness and the amount of profit generated after recruiting foreign national directors. The purpose of using foreign nationals is in line with the statement of the President of the Republic of Indonesia, Prabowo Subianto, delivered at the Forbes Global CEO Conference. President Prabowo stated that the use of foreign nationals as directors must go through a strict selection process in an effort to find the best talent to strengthen the competitiveness and professionalism of state-owned enterprises (SOEs) (Presidential Secretariat, 2025). It is hoped that the competencies and experience possessed by these foreign nationals can be applied to state-owned enterprises, resulting in the transfer of knowledge and technology, particularly regarding modern corporate practices (Bairizki, 2020). This policy is seen as a strategic step to accelerate the transformation of state-owned enterprises (BUMN Persero) to enable them to compete globally.

Every policy concerning BUMN management should be viewed as part of the state's responsibility to regulate and oversee the management of strategic sectors, not merely managerial management (Daffa & Herwiyanti, 2023). This is because BUMNs are the driving force of the national economy and pioneers of national development. BUMNs are not simply ordinary business entities, but rather act as state instruments that carry out the function of state control (Nachrawi, 2021: Disyon & Sibarani, 2023). Therefore, every policy made must have a strong legal basis and be oriented towards national interests, including national economic development, as stipulated in Article 2 letter b of Law Number 16/2025. To ensure that every policy made aligns with the role of a state-owned enterprise (BUMN) as a state-owned company, at least eight indicators must be met. Article 10 paragraph (1) of Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as Law Number 30/2014) states that government officials are required to adhere to the general principles of good governance in every decision-making or action, which include: legal certainty, benefit, impartiality, accuracy, non-abuse of authority, transparency, public interest, and good service.

However, the policy of appointing foreign nationals as directors of state-owned enterprises (BUMN) must not only be assessed from an administrative and good governance perspective, but must also be placed within a constitutional framework that affirms the state's role in controlling production sectors that are important to the state and affect the livelihoods of many people. As the implementer of the state's direct management function in carrying out its control over important production sectors, SOEs have the authority to manage, exploit, and control strategic resources. This is in line with the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) and the affirmation of the Constitutional Court in Decision Number 001-021-022/PUU-I/2003 which states that state control includes direct management functions (beheer) through State-Owned Enterprises (BUMN). However, the use of foreign nationals in board positions in Persero BUMN (State-Owned Enterprises) that manage strategic sectors has the potential to have implications for the country's economic sovereignty and information security (Kholifah & Baso, 2022; Haris & Mahendra, 2024).

One of the problems arising from the phenomenon of using foreign nationals as directors of state-owned enterprises (BUMN Persero) is the lack of clear and detailed regulations regarding this mechanism. For example, Article 15A paragraph (3) of Law Number 16/2025 does not explicitly state that the use of foreign nationals as directors of state-owned enterprises is permitted, but is only implied through the sentence "The requirements as referred to in paragraph (1) letter a may be determined otherwise by the BP BUMN". This raises the question of why provisions that have the potential to have major implications for the leadership structure and state control over strategic sectors are not explicitly regulated by the lawmakers. The absence of a clear explanation regarding the limitations, criteria, and oversight mechanisms for the appointment of foreign nationals as directors opens up room for multiple interpretations and creates legal uncertainty in its implementation. In addition, the use of foreign nationals as directors of state-owned enterprises requires a policy regarding more in-depth background checks. Meanwhile, so far, the examination of BUMN director candidates only has 3 (three) indicators, namely: competency standards, professional qualifications, and character (traits) (Kholifah & Baso, 2022). These three indicators are explicitly regulated in the Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number PER-3/MBU/03/2023 concerning the Organs and Human Resources of State-Owned Enterprises (hereinafter referred to as Regulation of the Minister of BUMN Number PER-3/MBU/03/2023). The lack of clarity and ambiguity in these norms creates numerous legal loopholes that should be addressed through more robust policies, particularly those related to potential conflicts of interest and the protection of state secrets. This situation underscores the need for further analysis of how the policy for appointing foreign nationals as directors of state-owned enterprises is structured and to what extent it aligns with the principle of state control.

Based on the problem formulation previously explained, this research has 2 research questions that will be discussed, namely:

1. How is the appointment of foreign nationals as directors of state-owned enterprises regulated under Indonesian law?
2. How does the appointment of foreign nationals as directors of state-owned enterprises affect the principle of state control over strategic sectors?

Based on the foregoing discussion, this study aims to analyze the legal framework governing the appointment of foreign nationals as directors of Indonesian state-owned enterprises and to examine its implications for the constitutional principle of state control over strategic sectors. Furthermore, this study seeks to evaluate whether the existing regulatory framework provides adequate legal certainty, accountability, and protection of national interests, while proposing legal recommendations to strengthen governance and safeguard Indonesia's economic sovereignty.

2. Research Methods

This research uses a juridical-normative legal research method. Juridical-normative research is a form of legal research that positions law as a construction of a normative system that discusses the principles, norms, rules of legislation, court decisions, agreements, and doctrine. The approaches used in this research are the statutory approach and the conceptual approach. The Statute Approach is an approach that uses legislation and regulations related to the legal issue being handled to create a conclusion (Marzuki, 2019). The laws and regulations used in this study include: the 1945 Constitution of the Republic of Indonesia, Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 30 of 2014 concerning Government Administration, Law Number 17 of 2011 concerning State Intelligence, Law Number 6 of 2023 concerning the Stipulation of the Job Creation Perppu into Law, Law Number 20 of 2023 concerning State Civil Apparatus, Law Number 34 of 2004 concerning the Indonesian National Armed Forces, Law Number 2 of 2002 concerning the Indonesian National Police, Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises, Constitutional Court Decision Number 001-021-022/PUU-I/2003 concerning the Judicial Review of Law Number 20 of 2002 concerning Electricity against the 1945 Constitution of the Republic of Indonesia, Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers, Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number PER-3/MBU/03/2023 concerning Organs and Human Resources of State-Owned Enterprises, and Regulation of the Minister of State-Owned Enterprises Number PER-7/MBU/09/2022 concerning Amendments to the Regulation of the Minister of State-Owned Enterprises Number PER-11/MBU/07/2021 concerning Requirements, Procedures for Appointment, and Dismissal of Members of the Board of Directors of State-Owned Enterprises. The Conceptual Approach is carried out by understanding the legal views and doctrines that have developed in legal science which will later produce a problem solving based on the understanding, concepts, and principles that are relevant to the issue at hand (Marzuki, 2019).

3. Results and Discussion

3.1. Legal Regulation of the Appointment of Foreign Nationals as Directors of State-Owned Enterprises

In the organizational structure of a State-Owned Enterprise (BUMN), the board of directors occupies the most central position and is the most determinant of the company's direction and performance (Supriatna & Ermond, 2019). Normatively, this is reflected in Article 1 number 9 of Law Number 16/2025 which defines the board of directors as an organ of a BUMN that is authorized and fully responsible for the management of the BUMN for the benefit of the BUMN, in accordance with the intent and objectives of the BUMN, both inside and outside the court in accordance with the provisions of the articles of association. This definition is substantially in line with the provisions in Article 1 number 5 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as Law Number 40/2007), which also places the board of directors as an organ that is authorized and fully responsible for the management of the company. Although they have the same form, namely a Limited Liability Company (PT), the board of directors of a Persero BUMN and a PT are two different objects in terms of carrying out their duties. This is because the requirements for holding the position of director in a Persero BUMN are not only regulated in Law Number 40/2007 as lex generalis, but also subject to Law Number 16/2025 as *lex specialis*, which comprehensively regulates state-owned enterprises (SOEs). As the corporate organs responsible for managing state-owned enterprises (SOEs), directors exercise the state's management function over companies whose capital is wholly or predominantly owned by the government. Given their strategic authority and direct impact on public interests, SOE directors are expected to achieve optimal performance while upholding the principles of good corporate governance (GCG). Consequently, the effectiveness of SOE management largely depends on the directors' ability to foster an organizational culture aligned with the company's vision and mission, ensuring that their decisions contribute positively to corporate performance (Destalia & Yulianti, 2019).

However, in practice, various problems remain in SOEs, with some unable to generate profits and even experiencing losses to the point of nearing bankruptcy (Sugiharto, 2021). These problems include inefficiency, corrupt practices, weak corporate governance, and political intervention that hinders objective decision-making based on business needs (Suastuti, 2022). One common problem related to political intervention is the prevalence of dual positions within state-owned enterprises (BUMN). An example of this problem is the interlocking directorate held by the Board of Directors of PT Garuda Indonesia (Persero) Tbk. In this case, I Gusti Ngurah Askhara (President Director of Garuda), Pikri Ilham Kurniansyah (Commercial Director of Garuda), and Juliandra Nurtjahyo (President Director of Citilink) held dual positions as Commissioners at PT Sriwijaya Air (Pratiwi, 2019). This case began when there was an alleged cartel conducted by PT Garuda Indonesia (Persero) Tbk and its subsidiaries, PT Citilink Indonesia, PT Sriwijaya Air Group, and Lion Air Group, which resulted in soaring airline ticket prices (Qur'ani, 2019). After further investigation, it was discovered that the President Director of Garuda Indonesia actually has 6 other positions, namely as a commissioner in the subsidiary and grandchild of PT Garuda Indonesia (Persero) Tbk. It is known that the reason for the dual position by the directors of PT Garuda Indonesia (Persero) Tbk as Commissioner of PT Sriwijaya Air is a joint operation or Operational Cooperation (KSO) decision to take over operational management to save PT Sriwijaya Air assets and pay off Sriwijaya Air's debts to BUMN (Kusuma, 2019).

However, the investigation of this case was stopped by the Business Competition Supervisory Commission (*Komisi Pengawasan Persaingan Usaha*/KPPU) because it was considered that this dual position was carried out based on government policy, where the dual position of the three directors was a directive from the Ministry of State-Owned Enterprises (BUMN) as the majority shareholder of PT Garuda Indonesia (Persero) Tbk (Heriani, 2019). However, KPPU

Commissioner, Guntur Saragih emphasized that the facts found during the investigation process could be used to open other cases, especially in the cartel sector which was proven to have an impact on soaring airline ticket prices. He also regretted the decision of the Ministry of State-Owned Enterprises to appoint the three directors to occupy the position of commissioner at PT Sriwijaya Air which in essence had violated Article 26 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition which states "A person who holds a position as a director or commissioner of a company, at the same time is prohibited from concurrently serving as a director or commissioner in another company, if the companies are in the same relevant market, or have close ties in the field and/or type of business, and or can jointly control the market share of certain goods and/or services, which could result in monopolistic practices and/or unfair business competition.

This aligns with Point E.2.F concerning Concurrent Positions for Members of the Board of Commissioners and Directors of the Indonesian Corporate Governance Roadmap issued by the Financial Services Authority (*Otoritas Jasa Keuangan*/OJK). Point E.2.F explains that excessive concurrent positions can result in members of the Board of Commissioners and Directors losing focus and accountability in carrying out their fiduciary duties, which can be detrimental to the company. Specifically for Issuers and Public Companies, excessive concurrent positions can also be detrimental to shareholders. The Company Law and capital market regulations do not yet regulate concurrent positions for members of the Board of Commissioners and Directors of Issuers and Public Companies.

From this case, it can be concluded that directors of state-owned enterprises (BUMN) holding concurrent positions as commissioners is very common and easy to do. Furthermore, the accountability process for such cases has the potential to face obstacles because strategic decisions of state-owned enterprises (BUMN) fall within the authority of the State-Owned Enterprises Supervisory Agency (*Badan Pengawas Badan Usaha Milik Negara*/BP BUMN), such as permitting directors to hold concurrent positions as commissioners of the relevant BUMN subsidiary. As a result, actions taken by corporate bodies can be viewed as implementing government policy even though they ultimately have a negative impact on the public, thus giving rise to debate regarding the boundary between corporate responsibility and the implementation of state policy. This problem can be addressed by implementing a policy allowing foreign nationals to serve as directors in state-owned enterprises (BUMN). The use of foreign nationals can reduce the political interests that arise in cases of dual positions. This is because foreign nationals are generally less likely to have political affiliations within state-owned enterprises. Moreover, the policy governing the appointment of foreign nationals in SOEs limits their eligibility to the position of director, excluding them from serving as commissioners. Existing practices indicate that multiple office holdings predominantly occur between directors and commissioners or among commissioners themselves, rather than between directors. Accordingly, restricting foreign nationals to director positions may reduce the potential for overlapping appointments and strengthen corporate governance within SOEs.

Furthermore, state-owned enterprises are often considered unable to compete with other private competitors (Nachrawi, 2022). This phenomenon can be seen in the shift in consumer preferences for fuel (BBM), with some people shifting from PT Pertamina (Persero) products to those offered by competitors such as Shell, BP-AKR, and Vivo (Rahma et al., 2024). Irto Ginting, Corporate Secretary of Pertamina Patra Niaga, stated that there was a decrease in fuel sales in September 2022, particularly for diesel, Pertalite, and Pertamax, which decreased by around 12-13% compared to the previous month (CNN Indonesia, 2022). This fact aligns with the increase in fuel sales by competitors in the same month. Inggrid Siburian, President Director and Country Chair of Shell Indonesia, confirmed an increase in the volume of vehicles visiting Shell gas stations since September 2022 (Rasyid, 2022). Although he did not explicitly state an increase in fuel sales, he did mention a positive trend and a profit increase of more than 50% compared to the previous year (Amani, 2023). Another statement also came from BP-AKR's Marketing Director, Vanda Laura, who verified that Pertamina's fuel price increase had an impact on BP-AKR's business. The company's financial report for the third quarter of 2022 recorded an upward trend in net profit to IDR 1.5 trillion, a 96% increase compared to the same period last year of only IDR 856 billion. Furthermore, statements from Vivo gas station service officers at several branches in Jakarta also indicated a surge in fuel-filling queues compared to before (Rahma et al., 2024). The shift in consumer preferences has adversely affected the performance of state-owned enterprises (SOEs), reducing their competitiveness and, in some cases, increasing the need for state capital injections to sustain operations or even risking corporate failure if left unresolved. This challenge is closely associated with the quality of corporate governance, as the board of directors is responsible for formulating business strategies, making strategic decisions, and directing corporate policies in response to evolving market conditions (Daffa & Herwiyanti, 2023). Within this context, the appointment of foreign nationals as directors is viewed as a potential strategy to enhance SOE management by introducing broader expertise, international experience, and managerial practices that can support organizational transformation and improve competitiveness.

To address the various SOE issues described in the previous paragraph, a policy was designed that is expected to address the need for professionalism and increased corporate competitiveness. The enactment of Law Number 16/2025 presents a regulatory reform for SOEs to address various corporate governance issues and enhance the professionalism of SOE management so they can compete effectively in an increasingly competitive business environment. One of the significant changes brought by Law Number 16/2025 is the removal of restrictions on Indonesian citizenship for director positions, thus allowing foreign nationals to occupy director positions in State-Owned Enterprises (Persero). The provisions in question are contained in Article 15A paragraph (3) of Law Number 16/2025, which states that the requirements as referred to in paragraph (1) letter a, namely the requirement for Indonesian citizenship, may be determined otherwise by the BP BUMN. The formulation of this article does not explicitly mention the phrase "Foreign Citizen" or "WNA", but substantively gives the BP BUMN the authority to determine other citizenship requirements which were previously absolute by only allowing Indonesian citizens to occupy these positions.

As before this regulatory reform, all director positions in State-Owned Enterprises, whether in the form of Persero or Perum, must be filled by Indonesian citizens as regulated in Article 15A paragraph (1) letter a of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises. These restrictions are fundamentally rooted in the paradigm of economic nationalism, a view that emphasizes the importance of managing strategic sectors by the nation itself to maintain state control and realize national economic sovereignty. This paradigm aligns with the constitutional mandate that positions the state as the party controlling important branches of production, thus strategic positions in state-owned entities are deemed to remain in the hands of citizens as a representation of that control (Disyon & Sibarani, 2023). This shift from absolute prohibition to conditional permission is not reflecting on the reality on the ground, corporate competitiveness remains a structural problem increasingly inherent in state-owned enterprises (SOEs). This is inherent in intense global competition, where a company's ability to innovate and adapt is a key determinant of business sustainability (Taufik et al., 2023).

In this regard, the quality of corporate governance, such as the composition and professionalism of the board of directors, has been shown to significantly influence the financial performance and professionalism of SOEs, which in turn impacts the SOE's ability to compete with competitors in the market (Hapsari & Puspitasari, 2025). Other research shows that the quality of the board of directors influences company performance, both in terms of financial aspects, the effectiveness of decision-making, and the company's ability to face competitive pressures (Jayadi et al., 2025). Directors with international backgrounds not only bring technical expertise but also facilitate the transfer of knowledge and modern corporate practices that are difficult to acquire organically within companies that currently operate within bureaucratic ecosystems (Yunus et al., 2025). The policy of appointing foreign nationals as directors of state-owned enterprises (BUMN) is not merely a reaction to external pressure, but rather a measured policy response to the real need for competent, adaptive, and results-oriented corporate leadership amidst a global competitive landscape that recognizes no nationality boundaries.

Before this policy was implemented in state-owned enterprises (BUMN), the practice of appointing foreign nationals as directors had already been implemented in the Indonesian private sector. The use of foreign nationals in strategic company positions is also regulated in Article 5 paragraph (1) letter a of Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers (hereinafter referred to as PP Number 34/2021), which permits foreign nationals to hold director and commissioner positions. This phenomenon has been proven to produce significant performance achievements based on empirical data from PT Indosat Ooredoo Tbk, which in the 2013–2015 period appointed five foreign national directors to strategic positions, including Chief New Business & Innovation Officer, Chief Financial Officer, Chief Technology Officer, Chief Marketing Officer, and Chief Strategy & Experience Officer (Indra, 2018). In the same period, Indosat Ooredoo's revenue recorded consistent growth from IDR 23.855 trillion in 2013 to IDR 24.085 trillion in 2014 and again soared to IDR 26.768 trillion in 2015. The increasing trend in PT Indosat Ooredoo's revenue after the appointment of foreign directors can prove a positive contribution to the company's financial performance (Zulkarnain

& Kusuma, 2019). A similar case also occurred at PT XL Axiata Tbk, which in the same period placed two expatriates on its board of directors. PT XL Axiata Tbk's revenue rose from IDR 21.350 trillion in 2013 to IDR 23.569 trillion in 2014, before undergoing adjustments in 2015. From a management science perspective, these results are consistent with research findings that conclude that national diversity on the board of directors has a positive and significant impact on company performance, as foreign directors bring new skills and experience that expand the company's strategic capacity while strengthening its international business network (Khidmat et al., 2020). This private sector precedent at least proves that the presence of foreign directors is not an unfamiliar or untested variable in the Indonesian corporate system, but rather can serve as a relevant empirical basis in assessing the urgency of implementing a similar policy in state-owned enterprises (BUMN).

One of the pressing concerns surrounding this policy is its potential to reduce the practice of appointing directors based on political interests, which has long been a root cause of problems in state-owned enterprise (SOE) governance. Thousands of SOE director and commissioner positions are filled through a consignment mechanism that sacrifices competency standards for the sake of post-election power-sharing (Syaifuddin & Putri, 2023). The policy of opening access for foreign nationals as SOE directors indirectly contributes to the depoliticization of the recruitment process, as foreign national candidates essentially lack affiliations with political parties or the patronage networks commonly found in SOE corporate organ appointment processes. This view aligns with the recommendations of the OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024, which explicitly state that skilled, independent, and diverse boards have been shown to improve decision-making, mitigate potential conflicts of interest, and prevent excessive political intervention in SOE governance processes (OECD, 2024). However, opening access for foreign nationals is not the only adequate solution to address the problem of politicization of SOE director recruitment as a whole. More comprehensive reforms through strengthening transparent selection mechanisms and standardizing competency criteria based on the needs of each state-owned enterprise remain fundamental to achieving good corporate governance. However, the policy of using foreign nationals as directors of state-owned enterprises (BUMN) still has the potential to break the chain of patronage, opening up space for strategic positions to be filled based on genuine professional competence.

3.2. The Effect of Appointing Foreign Directors on State Control over Strategic Sectors

In principle, Indonesian law has permitted the use of foreign nationals as workers in Indonesia as stated in Law Number 6 of 2023 concerning Job Creation (hereinafter referred to as Law Number 6/2023) in Article 42 paragraph (1) which states “Every Employer who employs Foreign Workers is required to have a plan for the use of Foreign Workers approved by the Central Government.” This provision is further clarified in Article 1 paragraph (1) of Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers (hereinafter referred to as PP Number 34/2021) which states “Foreign Workers, hereinafter abbreviated as TKA, are foreign nationals holding visas with the intention of working in the territory of Indonesia.” This regulation indicates that there is access for foreign nationals to become foreign workers in Indonesia as long as they meet the requirements stipulated in Indonesian laws and regulations. However, regulations in Indonesia have also regulated restrictions on the types of work and conditions that must be met to use foreign workers as stated in Article 4 paragraph (1) of PP Number 34/2021 which states “Foreign Workers (TKA) may only be employed by TKA Employers in employment relationships for certain positions and for a certain period of time, and must have competencies that are appropriate to the position to be occupied.” Several examples of restrictions on the types of work referred to in PP Number 34/2021 are explained in Article 11 paragraph (1) which prohibits the use of TKA in personnel positions and Article 9 which prohibits individuals from employing TKA.

In addition, there are positions regulated in laws and regulations which require the use of Indonesian citizens. Some examples include, namely State Civil Apparatus (ASN) which is regulated in Article 1 number 3 and 4 of Law Number 20 of 2023 concerning State Civil Apparatus (hereinafter referred to as Law Number 20/2023), TNI Soldiers and Polri Members which are each regulated in Article 28 paragraph (1) letter a of Law Number 34 of 2004 concerning the Indonesian National Armed Forces and Article 21 paragraph (1) letter a of Law Number 5 of 2026 concerning the Republic of Indonesia National Police, as well as the positions of Directors, Commissioners, and Supervisory Board of BUMN which are regulated in Article 15A paragraph (1) letter a of Law Number 16/2025 for directors of Persero and Article 43C paragraph (1) letter a of Law Number 16/2025 for directors of Perum, Article 27A paragraph (1) letter a of Law Number 16/2025 for commissioners, and Article 56A paragraph (1) letter a of Law Number 16/2025 for the Supervisory Board. Furthermore, a fundamental requirement for the use of foreign workers in Indonesia is the presence of an employer who employs the foreign workers, as stipulated in Article 1 number 2 in conjunction with Article 3 of Government Regulation Number 34/2021. This provision indicates that foreign nationals cannot work directly in Indonesia without a party acting as an employer (Hanifah, 2021). The existence of such an employer is crucial because this party is responsible for fulfilling various requirements for the use of foreign workers, including the obligation to have a Foreign Worker Utilization Plan as stipulated in Article 6 of Government Regulation Number 34/2021. Although Law Number 6/2023 and Government Regulation Number 34/2021 do not prohibit foreign nationals from serving as company organs, this fact cannot be interpreted as automatically permitting foreign nationals to hold strategic positions in state-owned enterprises.

Under corporate law, there is no prohibition on foreign nationals holding directorships in PTs. Law Number 40/2007 does not essentially require Indonesian citizenship to be a requirement for the appointment of directors. The requirements stipulated in Article 93 paragraph (1) of Law Number 40/2007 focus more on the suitability and track record of prospective directors without distinguishing the nationality of prospective directors. The practice of using foreign nationals as directors is also common in various private companies in Indonesia. This is supported by existing regulations regarding the use of foreign workers (Indra, 2018; Zulkarnain & Kusuma, 2019). Thus, if viewed only from the perspective of corporate and employment law, the presence of foreign nationals in director positions is basically not a deviation. However, unlike limited liability companies in general, filling director positions in state-owned limited liability companies is subject to Law Number 16/2025 as lex specialis which makes Indonesian citizenship one of the appointment requirements as stipulated in Article 15A paragraph (1) letter a of Law Number 16/2025. This difference in regulations indicates that the position of director of state-owned limited liability companies has different characteristics compared to directors in general limited liability companies. However, through Article 15A paragraph (3) of Law Number 16/2025, the legislators opened up the possibility of exceptions to the citizenship requirement. This policy change then raises questions regarding its suitability with the principle of state control, considering that Persero BUMN is a state instrument that manages strategic sectors in the national economy.

The constitutional analysis of the policy of appointing foreign nationals as directors of state-owned enterprises must be based on a substantive understanding of Article 33 paragraph (2) of the 1945 Constitution, which states that production branches that are important to the state and that affect the livelihood of many people are controlled by the state. This provision cannot be interpreted narrowly as merely a matter of asset ownership or state capital participation, but rather encompasses the entire spectrum of state authority in directing, managing, and supervising sectors that are vital to the lives of the people and the national economy. The Constitutional Court in Decision Number 001-021-022/PUU-I/2003 has provided an authoritative interpretation that state control contains five functions including policy, regulation, management, administration, and supervision, where direct management through state-owned enterprises is the highest and most important level of control. This interpretation emphasizes that the state is not merely a passive shareholder in state-owned enterprises, but rather an entity that must be actively involved in the management and administration of the company as a concrete manifestation of its control function. From the perspective of economic nationalism, which underpins Article 33 of the 1945 Constitution, state control over strategic sectors is not only interpreted as the authority to manage and supervise business activities, but also as a form of implementation of the economic sovereignty inherent in the state (Ansari, 2017). Therefore, the question that must be answered is not whether foreign nationals may serve as directors, as stipulated in Law Number 16/2025, but rather whether the available mechanisms are sufficient to ensure that the state's control function remains substantive in the presence of directors who do not have citizenship ties to the country in question.

Although the presence of foreign directors conceptually creates a conflict with the principle of state control, this does not mean that this conflict cannot be managed through available legal mechanisms (Keenan & Worlidge, 2026). These legal mechanisms must be able to ensure that the principle of state control is maintained, considering that the essence of state control lies not solely in the nationality of the directors, but rather in the state's effectiveness in carrying out its control function through the recruitment, appointment, and supervision of directors. Within the framework of Law Number Under Law Number 16/2025, the state, through the State-Owned Enterprises Agency, as the holder of delegated authority, retains full authority over the nomination and appointment of directors of state-owned enterprises (Persero), including those who are foreign nationals. The appointment of directors is carried out through a General

Meeting of Shareholders (GMS) mechanism, which is fully controlled by the state as the majority shareholder. Therefore, control over who holds directorships essentially never transfers from the state to foreign parties. One significant aspect, often overlooked in the public debate regarding this policy, is the lawmakers' decision to limit foreign nationals' access to directorships and not commissionerships.

This restriction is not without deep constitutional significance, as commissioners are the Persero's organ that carries out oversight of directors. Commissioners must ensure that the policies and decisions taken by directors remain in line with the interests of the company and the state as a shareholder (Kholifah & Baso, 2022). By maintaining the Indonesian citizen requirement for commissioner positions, the state structurally ensures that oversight of foreign directors remains in the hands of Indonesian citizens, who are constitutionally bound to the national interest. This policy represents an institutional arrangement that reflects a balance between openness to global talent and maintaining substantive state control. This regulation is relevant to the OECD principles on SOE governance, which emphasize the importance of an independent supervisory board oriented toward the interests of the company and the public as a counterweight to the executive authority of the board of directors (OECD, 2024). Therefore, the separation between boards of directors, which can be filled by foreign nationals, and boards of commissioners, which must be filled by Indonesian citizens, is a mechanism of state control consciously established by lawmakers, as an effort to maintain substantive state control without closing itself off to the need for global talent (Ansari, 2017).

The appointment of foreign nationals as directors of state-owned enterprises (Persero) does not inherently conflict with the principle of state control, as such control is exercised not only through majority state ownership but also through the government's authority to appoint directors and supervise SOEs via the State-Owned Enterprises Supervisory Agency (BP BUMN) and the General Meeting of Shareholders (GMS). Although Law Number 16 of 2025 permits the appointment of foreign directors, this policy presents legal and security risks, particularly for SOEs operating in strategic sectors. As company directors, they have access to sensitive information, including financial conditions, investment plans, business strategies, and operational data (Sari, 2025). In strategic enterprises such as PT Pindad (Persero) and PT Dirgantara Indonesia (Persero), this information extends to defense technology and production capacity, making it closely related to national security. Therefore, appointments must be supported by a rigorous selection and background check process to safeguard state interests and ensure compliance with the principle of state control. The legal basis for assessing prospective SOE directors is provided under Article 23 of the Minister of State-Owned Enterprises Regulation Number PER-3/MBU/03/2023 concerning the Organs and Human Resources of State-Owned Enterprises.

However, this regulation only stipulates three main indicators as the basis for assessing prospective directors: competency standards, professional qualifications, and character or integrity (traits). These three indicators are designed as a screening mechanism to ensure that individuals appointed as BUMN directors meet measurable and accountable eligibility standards, while also serving as an instrument to differentiate the merit-based selection process from the interest-based appointment practices that have been a structural problem. In their application to prospective foreign directors, these three indicators can still be used as a reference in the selection process. The candidate's competence and professionalism can be assessed through their career track record and experience, while integrity and character aspects can be tested through a comprehensive background check mechanism. However, the three existing indicators have significant limitations when applied to the context of foreign directors who will manage Persero BUMN in strategic sectors because they essentially focus more on the professional and managerial aspects of the prospective directors. These provisions do not specifically consider aspects related to national interests, potential conflicts of interest with foreign parties, or the risk of misuse of information of strategic value to the state. This normative gap makes the vetting mechanism necessary as a form of background check aimed at identifying and mitigating various risks that may arise from the appointment of foreign directors, particularly in positions that have access to strategic company information and assets (UK Security Vetting, 2025). Therefore, the vetting mechanism can function as a control instrument that allows the state to identify and mitigate various risks that may arise from the appointment of foreign directors, particularly in state-owned enterprises (BUMN) operating in strategic sectors.

Vetting is essentially a thorough background check conducted on individuals before they can assume certain positions that have access to information or strategic interests of the state (UK Security Vetting, 2025). The primary objective of this process is to ensure that the individual in question does not pose a risk that could compromise national security, integrity, or interests. Unlike typical selection processes that focus solely on professional competence and qualifications, vetting also includes an assessment of track records, affiliations, financial standing, and potential conflicts of interest that could impact the performance of an individual's duties (XHOXHAJ v. ALBANIA, 2021). This practice has been implemented in various countries. In the United States, for example, the Federal Personnel Vetting Core Doctrine stipulates that individuals seeking access to sensitive information or positions must meet certain standards of reliability, integrity, and loyalty (U.S. Office of Personnel Management and Office of the Director of National Intelligence, 2021). Meanwhile, South Africa has also implemented a National Vetting Strategy that encompasses state institutions and state-owned entities as part of its efforts to safeguard national security and interests (Lucas, 2018). Furthermore, the UK also implements a vetting mechanism for civil servant appointments, under the auspices of UK Security Vetting (UKSV) (Keenan & Worlidge, 2026). Within this system, the level of vetting conducted is tailored to an individual's level of access to strategic state information and assets.

The more sensitive the information a position has access to, the more in-depth the vetting process must be (Keenan & Worlidge, 2026). In practice, the vetting process can involve various stages, ranging from identity verification and review of track records and financial standing, to tracing relationships or affiliations that could potentially give rise to conflicts of interest. In certain highly sensitive positions, this process can even be carried out continuously for as long as the individual remains in office (Anand, 2026). Thus, vetting is not intended to restrict the involvement of certain individuals based on their nationality, but rather to ensure that those granted access to strategic information and authority have undergone an adequate assessment process to protect the nation's interests. However, the vetting mechanism, as is commonly practiced in several countries, has not been specifically regulated for the appointment of foreign national directors in state-owned enterprises (BUMN) in Indonesia. BUMN Ministerial Regulation Number PER-3/MBU/03/2023 does regulate the director selection process based on competency, professional qualifications, and character indicators. However, these indicators are primarily designed to evaluate the competence and suitability of prospective directors in managing the company, without specifically addressing potential conflicts of interest, affiliations with foreign entities, or risks to national interests. This limitation is particularly significant for SOEs operating in strategic sectors that are closely linked to national security.

The greater access directors have to strategic information and assets, the greater the need for a selection mechanism capable of identifying these risks from the nomination stage. This aligns with President Prabowo Subianto's statement that the use of foreign nationals as directors must undergo a rigorous selection process (Presidential Secretariat, 2025). From an institutional perspective, Indonesia already has institutions capable of supporting the implementation of these functions. The State Intelligence Agency (*Badan Intelijen Negara*/BIN) has the authority to conduct investigations and security functions to maintain national security, including providing considerations regarding foreigners residing or operating in Indonesia. Therefore, the vetting mechanism for prospective foreign directors in state-owned enterprises (BUMN) can be implemented through coordination between the State-Owned Enterprises Agency (BP BUMN), the authority responsible for the appointment process, and BIN, the agency with the capacity to conduct background checks from a national security perspective. However, to ensure this mechanism can be implemented consistently and independently of the policies of each authorized party, regulations are needed that explicitly place vetting as part of the process for nominating foreign directors in state-owned enterprises (Azanella & Hardiyanto, 2020; Keenan & Worlidge, 2026). With clear regulations, the process of appointing foreign directors will not only be oriented towards fulfilling the company's professional needs but will also take into account aspects of security and national interests.

4. Conclusion

The policy of appointing foreign nationals as directors of state-owned enterprises (BUMN) was essentially born in response to various problems inherent in BUMN governance, thus giving rise to the need for organizational transformation that is more adaptive to global business dynamics. In increasingly competitive conditions, the quality of directors is a determining factor in a BUMN's ability to make strategic decisions, improve efficiency, and maintain business sustainability. Therefore, opening opportunities for foreign nationals to hold board positions cannot be understood simply as a relaxation of citizenship requirements, but rather as a policy instrument aimed at expanding access to human resources with the competencies, experience, and global perspectives relevant to the development needs of BUMNs. While the presence of foreign national directors is not the sole solution to the various problems facing BUMNs, this policy demonstrates a shift in the state's approach from a management model that emphasizes citizenship aspects to one that is more oriented toward professionalism, meritocracy, and increased corporate competitiveness. The appointment of foreign nationals as directors of state-owned enterprises aims to strengthen corporate governance and global competitiveness while preserving their strategic role in national development. Under Article 33 of the 1945 Constitution, state control is determined not by the nationality of directors but by the state's effective authority to regulate, manage, and supervise strategic sectors. Therefore, the policy's compliance with the principle of state control depends on the continued maintenance of state control mechanisms, from the nomination and appointment processes to the oversight of directors. However, there remains a gap in regulations regarding background checks that specifically consider national security and interests. Therefore, this study recommends that vetting mechanisms be explicitly integrated into the process of nominating foreign directors, particularly in state-owned enterprises operating in strategic sectors. This way, the need for professionalism and global talent can go hand in hand with the protection of national interests and the maintenance of substantive state control.

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SINTA 3 Decree No.
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Regulation:

1945 Constitution of the Republic of Indonesia

Law Number 19 of 2003 concerning State-Owned Enterprises

Law Number 40 of 2007 concerning Limited Liability Companies

Law Number 30 of 2014 concerning Government Administration

Law Number 17 of 2011 concerning State Intelligence

Law Number 6 of 2023 concerning the Stipulation of the Job Creation Perppu into Law

Law Number 20 of 2023 concerning State Civil Apparatus

Law Number 34 of 2004 concerning the Indonesian National Armed Forces

Law Number 2 of 2002 concerning the Indonesian National Police

Law Number 5 of 2026 concerning the National Police of the Republic of Indonesia

Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises

Constitutional Court Decision Number 001-021-022/PUU-I/2003 concerning the Judicial Review of Law Number 20 of 2002 concerning Electricity against the 1945 Constitution of the Republic of Indonesia

Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers

Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number PER-3/MBU/03/2023 concerning Organs and Human Resources of State-Owned Enterprises

Regulation of the Minister of State-Owned Enterprises Number PER-7/MBU/09/2022 concerning Amendments to the Regulation of the Minister of State-Owned Enterprises Number PER-11/MBU/07/2021 concerning Requirements, Procedures for Appointment, and Dismissal of Members of the Board of Directors of State-Owned Enterprises.