



## Position of the State Own Enterprise to the Right of Monopoly in Legal Perspective on Trade Competition

Rory Jeff Akyuwen<sup>1</sup>, Marthen Arie<sup>2</sup>, Ahmadi Miru<sup>2</sup>, and Aminuddin Ilmar<sup>2</sup>

<sup>1</sup> Graduate Student PhD, Study Program : Science Of Law. Hasanuddin University, Makassar. Indonesia

<sup>2</sup> Faculty of Law. Hasanuddin University, Makassar. Indonesia

Received 10 March, 2014; Accepted 29 March, 2014 © The author(s) 2014. Published with open access at [www.questjournals.org](http://www.questjournals.org)

**ABSTRACT:-** The research are purposed 1) to know and describe the position of interest from the right of monopoly of The State Owned Enterprise in legal perspective on trade competition, and 2) to know and describe also to find out the essence of State Owned Enterprise existence in legal perspective on trade competition. The Researcher is located in. Type of this research is empirical normative, with descriptive character. The informants from this research are manager of State Owned Enterprises in Ambon, Officials on KPPU in Jakarta and the officials in Ministry of State Own Enterprises in Jakarta. Collected data is done through interview and documentation. Data analysis by qualitative analysis. The result of this research have shown that 1) The right of monopoly of the State own enterprise under the state is instructed from our economic system as the instrument of economic macro to keep the best interest of its people. 2) The essence of the existing of State own enterprise in legal perspective on trade competition is to increase the efficiency, while the government have obliged to conduct the macroeconomic functions and to increase the growth of economic stability to reach the goal in order to solve the weak of the market like in efficiency due to the monopoly practice by interfere the market in regulating or the law of anti monopoly.

**Keywords:-** The right of Monopoly, State Own Enterprise, The Trade Competition

### I. INTRODUCTION

The State own enterprises have given the big contribution to the national development. Earlier, the position and role of State enterprise have become debated in the founding fathers. The argumentation is especially due to the words of “state controlled” as mentioned on the article 33 point (2) RI Constitution 1945.

Economic democratization willing to have the economic empowerment for people and for to give the widest chance to the whole to join and control the production branches. The economic situation is not just happened and give to the marketing power, but necessary need the interfere from the state, whether direct or indirect. State interfere in economic trade as a consequent from one of the function of the state as a guarantor and in charge for the people welfare. Apart from that, the state interfere in economic trade is not mean to create the monopoly and narrowing the economic trade of people (Abrar Saleng, 2004) [1].

Prevention of monopoly and the economic empowerment of citizenship, in the essential is part of obliged that mentioned under article 33 of RI constitution 1945. But both of them is come from the same problem, which is means, it is impossible the economic empowerment of citizenship will success without the policy to fix the structure of monopolistic product. Due to unbalance of economic structure, potential to oppressive and afflict the people by other who have strong economic and political. It have been improvement to the liberalization Countries (*liberalism klasik*) (Bagir Manan, 1994) [2].

The government intervention in economic is no need to see as prohibition. The succeeded of State in East Asia even due to characterized by the strong intervention of the government, while in contradicted, many intervention is not guarantee either the succeeded of economic development (Faisal Basri, 2009) [3].

Moreover, the problem is and it is need to have the certain regulation like the product or in any field who controlled the dominate of people life. It is necessary to be confirmed due there is no regulation yet. Former President Soeharto have stated that meaning of dominated by the state means manage by the state (Faisal Basri, 2002) [4]. State own enterprise is not able to move in public service orientation and to fulfill the interest of people, but must be able to operate more efficient and effective by order to the management of good

enterprise. The influence of globalization that development along with (i) fast improvement of technology of information and transportation; (ii) The increase of open politic-economic in some countries that willing to growth in order to increase the welfare of citizenship, also (iii) the adopted principle of market mechanism (Setyano P, Santosa, 1994) [5].

In the beginning of new era, the government have conduct to fix the quality work of the state own enterprise trough the establishing of the Law number 9 year 1969 of the kind of State own enterprise. State own Enterprise separate based on it function and social economic role, like the corporate office, public company and limited liability company. In the development State Own enterprise in Indonesia have some change while fitted to the demanding of people, government policy, the economic development and world trade. The government regulation substitute the Law of Republik Indonesia Number 9 year 1969 of State Company, have explained that State own enterprise or State company is all the company in any kind of field with the whole funded is from Republic Indonesia property. Then this limitation have changed with the government regulation Number 12 year 1998 of the corporate company, while mentioned that state own enterprise is the company with whole or minimal of 51% modal issued is of the state property directly and until 2011 the owner of the biggest capital of state around 51% place in 140 of State own enterprise.

Provision of Republic Indonesia assemblies Number IV/MPR/1999 of Outlines of State Policy year 1999-2004 have ordered to restructuring of the state own enterprise especially if connected with the public interest. As a follow up from the provision of MPR-RI that have expected the efficient of state own enterprise regulation, also transparent and professional, so on the 27 May 2003, the government together with the legislative RI (DPR) have defined the RI Law Number 19 year 2003 of the State Own Enterprise. Until now, there are 144 of State own enterprises that work on 13 sectors, like the provision of water, waste of management and recycling. The Contribution of State own enterprises for the national economic and acceptance of state that quiet big like dividen for budgeting year on 2012 as much as Rp. 30,8 triliuns and tax acceptance for the budgeting in the same year, while the state of own enterprise deliver as much as 114, 8 triliun. To get the benefit of bank of Rakyat Indonesia, like have succeeded to noted the net profit as much as Rp 13,01 triliun in year 2012. In the field supply of goods with highly qualified, there are 6 of state own enterprise which is included in Forbes Global 2011. To begin the trade in year 2012, founded 11 of state own enterprised with the development of public service obligation with number of duty as much as Rp 353 triliun. While the support to the weak economic entrepreneurs, cooperation and society in year 2012 have approximately to Rp 6,2 triliun with the trained partners as much as 75.000. There is no optimal of state own enterprise work, due to the weak of policy coordination between the internal step of reconstruction of the company with the industrial market policy and not to separate the commercial function and public service, while it is not implemented well the principle of *good corporate governance* (GCG), the highest intervention of the government and politician in placement the management of the state own enterprise and the culture monopolistic of state own enterprises.

The fact is un doubt that State Own Enterprises have place in important position in economic sector, even in half of the sector have dominated and monopoly. The principle of legal consideration of Constitution Court in its decision like, art 33 point (2) RI Constitution 1945 have given the authority to the state to hold the production branches that important to the state and hold the public interest. On the production branch that have no type of product yet, the State have the right to be priority in the way that state have their own enterprise and hold the production branch also in the same time prohibited the individual or privat company to held the production of branch (Jimmly Asshiddiqie, 2010) [6].

Basicly, monopoly is prohibited due to the un healty competition. Under the MPR MPR Number IV/MPR/1999 have mentioned above, it seen to push to the policy of “the world company development in good competition to handle the increase of national economic as a capital for the national development with people welfare as the purpose”. While the law Number 25 year 2000 of the national development program mentioned that GBHN 1999-2004 have pointed that the economic establish based on the people economic system. If look into what mentioned above connected with State own enterprises monopoly, and analisys from the legal perspective in trade competition then will raised some of problems. The monopoly right have misused by state own enterprise so many of the monopoly practicing came out, like Pertamina as one of the State Own Enterprise that have been punished to be guilty by the Commission of Trade Competition Controller or KPPU under the case decision number 07/KPPU-/ 2004. In its decision, pertamina proved to broke the article 19 point (d) The Law Number 5 year 1999 in the way of direct pointed of *Goldman Sacks (Singapore) Pte as financial advisor and arranger* related to the sell of 2 (two) unit of *Tangker Very Large Crude Carrier*. The case decision Number 08/KPPU-I/2005 of the provided service of sugar imported that included the PT. Surveyor Indonesia (Persero) and PT Sucofindo, decision case of Number 10/KPPU-L/2005 Of quote of salt trader to the North Sumatera that involved PT Garam and decision case Number 11/KPPU-I/2005 of distribution of cement that involved PT Semen Gresik. Role of the economics like state own enterprise should be reflect to the conduct of economic democracy Indonesia as mentioned in article 27 and article 33 RI Constitution 1945 that as source of the economic democration Indonesia. Simple words, state own enterprise in many cases often to have Privilege monopoly. The impact is more to un efficient, while it is not involved in un healty competition of

practicism. Different situation with the state own enterprise in Singapore where is the state company freely go to have fully competition with privat company and foreign company whether Malaysia with Petronas or China that have succeeded without monopoly and lost it identity as state own enterprise. Different situation with China in manage the State own enterprise that able to contribute to the government and society is one of the interesting sample to mentioned. The manager of State Own Enterprises in China, State-owned Asset Supervision and Administration of China (SASAC), that just established in year of 2003, did the reformation on the management of state own enterprise trough the establishment of holding in some of industries. The comparative of asset, revenue and profit of State Own Enterprise Indonesia and State Own enterprise of China in year 2002 (112,47:861,26) miliar dollar, in year 2007 become (164,76 : 2.048,84) miliar dollar (Tanri Abeng, 1999 :5) [7].

In General, the legal principles of trade competition first is must be efficient in economic. In one of efficient economic will birth the innovation, productivity and creativity since the competitive market only can survive in efficient. Second fairness or appropriatness. All the trader might run for profit and become bigger but in healthy way not to cut other trader and un healthy competition. Third, democracy economy. In order to reach the same chanc between the competitor with equal acces. Equal access is based on democracy economy (Sutrisno Iwantono, 2003) [8].

Article 51 Law Number 5 year 1999 of monopoly practice prohibition and u healthy competition trade, except monopoly by State own enterprise. Howevar, it is still left some problem and need to be study and discuss so the monopoly given will arrange clearly. Based on those explanation above, so the issues of this research is the given of monopoly right for the state own enterprise can caused the obstacle in the economic competition specially that have connected with the field of trades that hold the public interest and brach production that important for the state.

### **Problem Formulation**

Based on the background mentioned above, so in more concrete, the question of it research as follows :

1. Why is the position of the right of monopoly of the State Own Enterprise is important in the context of trade competition?
2. How is the essential of the existing of state own enterprise in the legal perspective of trade competition?

### **Purposed of Research**

1. To know and describe the important position of the right of monopoly of state own emterprise in legal perspective of trade competition
2. To know and describe also find out the essential of existing state own enterprise in legal perspective of trade competition

### **Benefit of Research**

This research is expected to give some benefit:

1. Scincetific. The result of this research is expected to enriched the legal knowledged in legal trade competition related to the given of the right of monopoly by the State to the State Own Enterprise
2. In Practism. The result is expected for any suggestions for the government and the management of state own enterprises in order to create the climate of the healty and fair trade also the mechanism for state own enterprise in order to conduct the activity without impact the un healthy trade competition.

## **II. RESEARCH METHOD**

This is a descriptive study. Who become informants in this study is manager of State Owned Enterprised in Ambon, Officials on KPPU in Jakarta and the officials in Ministry of State Own enterprises in Jakarta. The data was collected through observations, interviews and documentation. Data were analyzed qualitatively.

## **III. RESULT AND DISCUSSION**

### **A. The Position of The Right of Monopoly of The State Own Enterprise in Legal Trade Competition**

#### **1. Purpose and Function of State**

All the state have their own goal that mentioned in its constitution. The goal of Republik Indonesia as mentioned in the preamble of RI 1945 Constitution as mentioned like the following:

To establish a government of Indonesia that protected all the citizen and whole people in Indonesia and to promote the public welfare, educated people and participate in keeping the peace of the world based on the peaceful and social justice..."

Moss stated that main obligation of the state is to create the monopoly of power and guarantee the conduct of legal in the whole of its State. This is a long together with opinion from Weber that more oppressed the state as a monopoly in using the legality power in certain area. Even Rockman have offered about 3 concept of obligation and role of the State, like: (M. Karim Rusli, 1990) [9].

1. A policy making system that authoritative that called decision making state;
2. Give the collective goods and distribution or often called production state;
3. Keeping, created and facilitator the interest of people or often called as intermediary state.

Adam Smith of the conceptor on the economic system of pure capitalist have mentioned, that in the scope of state activity, *c.q* the government is very limited, like to conduct the general activity that not conduct by the private company and only cover 3 kind of field, like yaitu:

1. To conduct the justice;
2. To conduct the defence and security; and
3. To conduct the General work

Forward, the fuction of the state according to Ballard from the sociologic view can be consider into 4 types : (Tanri Abeng. 1999) [7]

1. Social conservation, social value that very important for the security social and politic, like to increase the intern of regulation by solve the conflict of the State.
2. Social control, is to reconcile, fitted and coordinate the groups conflict attitude, competitive, like the defence to the eksternal aggression, conduct the social justice, etc
3. Function of social ameliration, from the lost group. Included the effort to eliminate the poverty and keeping the disability.
4. Functions of social improvement like the wider in field of life from the groups.

Consider the opinion above, in fact the duty and role of the state is not only limited to the guarantee of conduct of the regulation based on the power, but also role as one of the economic trader by playing the role as “production state”. This is can be seen clearly to the explanation of State function from (1970) that provided to the 4 (Four) function, like:

1. As a conductor or guarantor of the welfare or the state as provider;
2. As a controller or *as regulator*;
3. as entrepreneur; and
4. As the state as umpire.

The same statement from Sachs (Samuelson, Paul A. and William D. Nordhaus, 1997) [10] that the function of State have covered into 3 categories, like entrepreneurship function, regulator function. More, Charles E. (Miriam Budiarto, 1992) [11] also mentioned the function of the state in five categories, like justice functions, public welfare functions and freedom functions. The whole function of state have mentioned above conduct by the government with based on the poewer to the state. Without the power of state, the conduct of state function also to fulfill the goal of state will have the obstacle, even more un reachable.

### **The Meaning Of State Power Under Article 33 Point (2) Ri Constitution 1945**

The right of state power, basicly is the logic consequent from the goal of the state that need to establish. The goal of the state that based for the achievement reference of the willingness of the state but also important is the used of power (Aminuddin Ilmar. 2004) [12]. One of the RI purpose as mentioned on the preamble of RI Constitution 1945 is to promote the welfare of the people and to educate the nations. Based on it, so regulated basic and economic system of Indonesia on the article 33 of RI Constitution 1945. Morevar, in the definition of the article, the conducted is most debatable eventhough the explanations of the constitution itself consider to be clear. Although some people think that those article is hardly to understand and need to more interpreted, whether the big idea contain inside or there is no the legal policy yet (Aminuddin Ilmar. 2004) [12]. From the policy agreed, in article 33 RI Constituion 1945 have mentioned the basic on economic democracy that product is under control of the head and the ownership is the member of society and not for the welfare by the individual only. Although it have the clear system of economic Indonesia, is the economic system based on Pancasila and mentioned under RI Constitution in order to created the democracy economy but in the implementation is still raised the different opinion between the scholar whether in economic or in politic. In general, the seemed to doubt whether the economic system that come out lately as regulated, will limited someof economic problem that often come up lately. [like “free trade area”) that have come into last step of the implementation of no obstacle and no discrimination principle (Aminuddin Ilmar. 2004) [12]. But need to clarify that Indonesia is hold into basic state philosophy consistently, Pancasila and RI Constitution 1945, so it should be the economic system must refere to the basic and constitutional based of Pancasila and Constitution

RI 1945. The economic system of Pancasila based on ideology of Pancasila and further more arranged under the RI Constitution 1945, is a crystallisation of the long thought from the history of Indonesian nation, where is the economic system of Pancasila as mentioned by Mubyanto is clearly different with the economic system that we have known, whether economic capitalistic or economic socialistic both from the philosophy and the implementation. The different will be seen clearly on the philosophy that use as mentioned by Mubyarto, while the economic system capitalistic or socialistic is as ethic view or morality not really mentioned. In the contrary, in economic system of Pancasila so the morality value is put in the highest place. From those explanation can be concluded that economic system is to concern on morality value and ethic. Family principle is denied the liberal concept on economic and economic living. Apart from that, the family principle also deny the state power, absolutely and arbitrary in the ownership of good production.

Basic principle of economic value is contain the harmonize principle which is the establishment of harmony, balance and equality. The thought of development and economic practism in Indonesia must be based on the practice that sometime not along together with the comitmen and refer on the basic of our economic system. The definition of the characterization of economic basic system in Indonesia based on Pancasila and RI Constitution is keeping to conduct and develop by Mubyarto with his explanation that the future of economic system Indonesia menguraikan pandangannya mengenai hari depan sistem perekonomian Indonesia by stated, in one side we don't have no doubt anymore to believe in economic system that based on Pancasila, while in other side, is suitable with the fact and abit worrying. Due to the characterized that we demanding is not often seen in Pancasila even more vague. The same statement from Mohammad Hatta (Mohammad Hatta, 1967) [13] which was a conceptor from article 33 RI constitution 1945, by mentioned that after more than 20 year of Independence, we seemed to have more often chaos in economic. Our obligation are to build the economic of Indonesia with pure goal that along well with Pancasila. Political thought from was seemed refer to democrat socialism by seeing the system or economic era as a type of organization from the economic living that have characterized on organization type from the historical economic background. However, the opinion of Mohammad Hatta rised some critic even many people thought that need to revise from it point of view, due it is not suitable anymore with the recent situation. The reason is the progress of economic in one nation is not only regulated in the society environment but also by the education level and culture and law, organization and belief but also the morality power of its nation. In the contrary the progress of existing economic also involved the social character in the society. Related to those view, Aminuddin Ilmar stated is not necessessary to have a revision of thought by change the whole of Mohammad Hatta point of view. The thing that need to conduct is to re interpreted what he thought by concerning the spirit that involved in it. As juridical formal, the thought of Hatta have sublimitation into the constitution and our basic law. It need to discuss the implementation of his thought that meet to the spirit and our philosophy of State, Pancasila. On the preamble of RI Constitution 1945 specially in paragraph four, clear mentioned that one of state goal is to keep the public welfare and to educated nation based on Pancasila. The achievement of goal must along well with the principle and philosophy that describe in the economic democracy concept and to create the national economic system. Principle and philosophy of the State clearly mentioned under Pancasila and RI Constitution 1945, also the maintain of the concept of economic democracy that reject the system of "*free fight liberalism*", Definition of economic democracy as mentioned under TAP MPR No. IV/MPR/1978, by number of people included the former President Soeharto (1990) himself that the definition was not concrete and clear. So asked the help from organization of Economic bachelor Indonesia (ISEI) to defined the clear definition. This organization itself trough its defined as requested from President, have delivered some definition of economic democracy to the government. Although get the criticism either. Under the definition of organization (ISEI) have mentioned that one of the authority by the state in the branches production that important for the State and to hold for the public interest. ISEI mentioned that the control of state can be conduct trough the law, policy, regulation, direct ownership and control by the government. Further more, mentioned that branch of production that not control for the public interest allowed to control by individual and conduct to motivate in order to get profit as challenge for movement, make effort and taking risk. Profit have function as source of capital invested and prohibited to used for economic dominated by individu or group that can cause the lost for people. Definition of ISEI above according to Aminuddin Ilmar is too force remind that many dis agreement of the conrol of the state, which is can be interpreted that state directly conduct the branch of production or just to make the regulation. It is necssesaary to be clear in order to get the distinguish between the control by the state in order to participate directly on manage the branch of production or just to empower and monitoring trough the legislation. Apart from that, the definition of ISEI is not clearly determined the criteria of dominated from the state, so it is difficult to make it as basic criteria in privatization of State own enterprise in Indonesia.

Due to those reason, need to make it clear definition about the domination of State, so need to study in historical view of that definition of article 33 point (2) RI Constitution as the normative basic stand. So can be saying that the definition of state domination under article 33 point(2) RI Constitution 1945, according to Mohammad Hatta that state is not must to directly participate in managing or conduct the branch of production

but can be delivered to the cooperation or private. The obligation of state is only to make the regulation and controlling in order to continuity of economic production for the best interest of the people. Apart from that, is also necessary the possibility of state dominated is only in regulation making and controlling the branch production that important for the state due to the best interest of the people. Morevar, need to concern and conduct is private sector must work under the controlling of the state, also in the maintain of kind of trade that meet the criteria to guarantee the welfare for its people and also for the state interest itself (Aminuddin Ilmar. 2004) [12]. According to Sri Edi Swasono that have describe the word of dominated not always mean to own. The government can be dominated trough the regulation and policy and authority of economic without owner. Dominated by the state have given a direct point that market mechanism which become important and become a main goal for the secure of the best of interest of the state and the best of interest of the people. From many opinion and argument mentioned above about the meaning of domination by the state, so can be concluded that the state domination not must participate by the state directly in order to manage the branch production in order to have the state enterprise but can be trough the regulation making or economic policy for the best interest for the state and people. It is diffent with the definition of ownership that from the word of owner or to owner that means to have or the right to have for a thing. In this case, state can be categorized as the owner who have the right of the important production branches for state and hold the best interest of people. In this definition, the state have right to do anything regarding it willingness without concerning the best interest of its people. It is along with point of view from Mubyarto that have mentioned that the domination of State to the production of branch and natural enrichment is not for the powerity but because the domination can be seen as guarantee for people interest in order to reach the welfare for the people. In order the connecity with the monopoly right that own by the State own enterprise, so base on the meaning of must be dominated by the state as mentioned above, so it is not against with article 33 point (2) UUD 1945, as long as for the best interest of the state and people. So the monopoly right for State own enterprises must based on howfar he state is still taking a role to keep the interest of the people. The problem is , there is no a clear criteria about the production of branch that thought is important for the state and hold the best interest of the people, so the domination of state trough the state own enterprises is not clear either.

## **B. The Essensial of Existing State Own Enterprises in Perspective of Legal Trade Competition**

### **1. Role Of State in Economic Situation Peran Negara Dalam Perekonomian**

The Succeeded of national economic development in East Asia before crisis in 1997-1998 often associated with the strong role of paly from the government. It is not like in West Countries that put in priority on the market mechanism and posited the government on minimal role in economic development; in East Asia Countries the governnet and kerap diasosiasikan dengan kuatnya peranan Privat sector interacted in one of the institute that have possibility to raised the economic development in efficient and have acompetitive effort (Faisal Basri, 2009) [3]. Before the economic crisis , was not small of liberal economic or neo classic that thought that the succeeded of East Asia can no be fully explain by the concept of theory that they have believed. Even among them have underestimated by stated that the results of its research that indivated the high era in East Asia mostly end due to its worker that cheap worker, natural resources and cheap capital loan that un able to expect continuesly (Faisal Basri, 2009) [3]. Capitalism or liberalism have proved the ability in welfaring the people. But when seeing it from the only glasses of phisiscal development, communism also have ability to conduct even thoug not as good as the capitalism. The phenomenom of the succeeded of East asia also have proved that the west capitalism is not the only one system that guarantee the success. The problem is more if the indicator of succeeded is not only in material aspect but also the empowerment of human being integrity.

In the context of mixed economic, , Friedmann described 4 (four) functions of state, like :

- a. Provider. The capacity of provider conduct to fulfill the minimum standart that need in society in order to less the impact of free market that can be damage the society.
- b. Regulator. The state must guarantee the ordelines like in investation in order the industry can growth and develop, the regulation and limitation to export and import in order to provide the enough devisa to held the trade.
- c. Entrepreneur. State as entrepreneur conduct trough state own enterprise because of the field of trade must be protected the best interest of people.
- d. Controller. The controller function related to the legal product to keep the order and social justice also as the law enforcer (Friedmann, 1990) [14].

Function of administration (*bestuursdaad*) by the state conduct by the government with its authority to issue and abolish the facility of permit (*vergunning*), licentie (*licentie*), and concessive (*concessie*). Fungsi of regulation by the Satate (*regelendaad*) conduct with the authority of legislative together with the executive (government) . Function of management (*beheersdaad*) conduct trough mechanism of share holding and/or trough the direct involvement in management of State Own Enterprise as the instrument of the State instate to

use it domination of the natural resources that shall use for the best interest of the people. Function of Controlling by the State (*toezichthoudensdaad*) conduct to control and handle in order the implementation of the empowerment of the important branch production and/or to dominated the best interest of people. (Jimmly Asshiddiqie, 2010) [6]. From economic view, it seemed that the entrepreneur to look for the superiority of monopolistic that can be understand if connected with the purpose of establishment of the enterprise to get huge profit. The government have the big role in order to create the trade market competitive when it willing to limited the attitude of monopolistic that will impact to the risk of lost for people whether as a consumer or as an entrepreneur. The government should have an effort to fix the market failure, for example, to prevent the monopoly for raised the efficient. The government shall also promote the equality through the tax program and retribute of income for the certain groups. The government shall use the instrument of tax, finance and monetary regulation to achieve the stability and the economic macro growth, to less the inflation and jobless also increase the economic growth for the whole. To know more the third of role of play, will be discuss under the following statement:

**a. Efficient**

One of main deviation from the perfect competition is un perfect competition or the element monopoly. The impact caused from the monopoly holder is the ability of huge company to interfere the economic prices for the whole. The monopoly holder is seemed to create price too high, farer to the production of cost that will cause the decrease of expenditure of the consumer in the standart limitation pattern of price that is too high with the low output. The government in some states to handle the monopoly holder take direct intervention to maintain the cost and profit for the monopoly entrepreneur.. The government conduct to handle the monopoly through the policy making. According to Mc. Eachern, there are 3 (three) types of government policy to change or to handle the attitude of the company like social regulation, economic regulation and the anti trust of activity. Social regulation is the government policy to increase the health and secure. Economic regulation is connected to handle the cost, output, the new company comer and the service quality in industry that potentially to raise the monopoly or monopoly industry. (Mc Eachern, and William A, 2000) [15].

**b. Economy Macro Growth and Stability**

Apart to increase the efficient, the government have obligation to conduct the economic macro function and to increase the growth and economic stability for the whole. The main purpose that focusing on economic Macro policy for the long term is the growth of economic and the fast level of productivity. The growth of economic means the level of growth in level *output* is for the whole country, while in productivity level is the ratio between the output and input to use for the result. The government role in handling the weak of market like in efficient due to the monopoly practice actually can be conduct through the intervention on manage the market with the policy making like regulation or law on anti monopoly. Regarding to the role of government in order to making the policy through its regulation, according to Mc. Eachern, have two opinion about why is the government shall regulated the market. The first point of view that regulation is for the best interest of people. Economic regulation has designed for increased the welfare of people by handling the cost and output, which is for the market will be very efficient if only serve by one or little company. The second point of view on economic regulation is the economic regulation is not for the best interest of producer. According to those point of view, the writer emphasized that the group of producer that well organized, whether expected the profit from economic regulation and this group that able to involved the government officer to implemented the restriction of entry new company into the industries and prevent the competition between the existing company. Individual producer have a possibility to get a benefit or lost in a bigger number than an individual consumer; producer is actually more organized and more focus compare with consumer, so the producer is used to be faint to protect the interest of consumer.

The special theory of interest is valid if the legality of regulation is for the interest of the consumer. Within the time, the government that have made regulation able to move to the producer interest, regulation that refer to request the government to be in side of the producer interest. This theory known as the theory of regulation. George Stigler, a winner of noble, theory of regulation described as general policy that cultivated by the producer and have designed also conduct by their interest. The role of the State can be divided into 3 part like planner, actor/player, and regulator. As a planner of the central of government shall give the scope for the local government to regulate itself. The sectoral planner must given more scope to the technic of department and the government officer in this region. The government must decrease their role along with the strengthening role of private sector as *regulatory framework*. It is means that the role of government as regulator will be more important in order to increase the role of private sector that emphasize basic to create the social justice and welfare. According to those explanation above, the intensity of government intervention might be categorized based on the steps. As a developing state, Indonesia might choose to the slow way or the way that have been past by the developed country. In the earlier. The capacity of market mechanism is still restriction. The role of government is to strengthening the part of mechanism enforce of the market or used to

called as market friendly approach. Usually without the government autonomy, is even the intervention of the government had happened, in the certain field that market mechanism more guarantee for the success. With autonomy and the good capacity of the government will give better guarantee to choose the right policy instrument with sanction and targeting for the parties that are unable to fulfil.

Many signed that we are in Indonesia even forget ourselves, like in some case of handling the problem like poverty living, the protection for small enterprises and public service. The elements in this system must be re-analysis, the strengthening of institute must be put in priority, the re-structured of regulation must be done seriously and also the politic reformation for the enforcement of democracy. If we failed to take all the necessary development results, it will be concentrated only in a few people like what has happened recently. As a result we are not able to realize equitable prosperity (Faisal Basri, 2002) [4].

#### **IV. CONCLUSION**

According to the result and discussion that have mentioned above, then the researcher concluded as:

1. The right of monopoly of State Own Enterprise in the state is a refer to the thought of basic system in our economic system as a macro economic to keep the interest of the people
2. The essential of the existing of state own enterprise in legal perspective of law trade competition is to increase the efficient, the government have obligation to conduct the function of economic macro and to increase the economic growth and stability for the whole to achieve the goal in order to handling the weakness of the market like in efficient due to monopoly practism that can be conduct through the intervention on making policy or regulation on anti monopoly.

#### **V. SUGGESTION**

1. It is need to give the monopoly to the State Own Enterprise based on how far the state is still to take role to keep it interest and the people interest in the future.
2. It is need to revised the regulation of monopoly for state own enterprise to keep it interest and people interest like regulation or law on anti monopoly in the future.

#### **REFERENCES**

- [1]. Abrar Saleng. 2004. Hukum Pertambangan. UII Press. Jogjakarta
- [2]. Bagir Manan. 2005. Aspek Hukum dalam Ekonomi Global. PT Ghalia Indonesia. Bogor.
- [3]. Faisal Basri. 2009. Lanskap Ekonomi Indonesia. Kencana. Jakarta.
- [4]. Faisal Basri. 2002. Perekonomian Indonesia Tantangan dan Harapan bagi Kebangkitan Indonesia. Erlangga. Jakarta
- [5]. Santosa. Setyano P. 1994. Strategi Menghadapi Perubahan Lingkungan Bisnis (*Telkom Case*). Pidato Ilmiah. unpublished. Sekolah Tinggi Manajemen Prasetya Mulia. Jakarta.
- [6]. Jimmly Asshiddiqie. 2005. 2008.2010. Konstitusi dan Konstitusionalisme Indonesia. Menuju Negara Hukum yang Demokratis. Konstitusi Ekonomi. Konstitusi Pers. PT Kompas Media Nusantara. Jakarta.
- [7]. Tanri Abeng. 1999. Revitalisasi Ekonomi Indonesia dan Reformasi BUMN. Jakarta.
- [8]. Sutrisno Iwantono. 2003. "Filosofi yang Melatar-belakangi Dikeluarkannya UU Nomor 5 Tahun 1999". dalam Emmy Yuhassarie dan Tri Harmowo, ed., *Proceeding 2002: Undang-undang No. 5/1999 dan KPPU*, cet. 1. Jakarta: Pusat Pengkajian Hukum bekerjasama dengan Pusdiklat Mahkamah Agung RI, dan Konsultan Hukum EY Ruru dan Rekan.
- [9]. Karim, Rusli. 1999. Negara dan Peminggiran Islam Politik, Kajian Mengenai Implikasi Kebijakan Pembangunan, Yogyakarta: Tiara Wacana, 1999.
- [10]. Samuelson, Paul A. and William D. Nordhaus, 1997, *Microeconomics*, Fourteenth Edition, McGraw-hill Inc. Edisi Indonesia, *Mikroekonomi*, alih bahasa : Haris Munandar, dkk, Erlangga, Jakarta.
- [11]. Miriam Budiarjo. 1992. Aneka Pemikiran Tentang Kuasa dan Wibawa. Sinar Harapan. Jakarta.
- [12]. Aminuddin Ilmar. 2004. Privatisasi BUMN di Indonesia. Hasanuddin University Press. Makasar.
- [13]. Muhammad Hatta. 1967. Ekonomi Terpimpin. Djambatan. Jakarta.
- [14]. Friedman. W. 1990. *The State and Philosophy of Law (Teori dan Filsafat Hukum)*. Alih Bahasa Muhammad Arifin. CV. Rajawali. Jakarta.
- [15]. Mc Eachern. And William A. 2000. *A Contemporary Introduction*. Singapore: Thomson Learning Asia.