

PANCASILA'S ECONOMIC EXISTENCE IN BUSINESS DEVELOPMENT: THE EFFORTS TO REALIZE JUSTICE IN BUSINESS LAW

Asmah¹, Azizah², Retno Sari Dewi³, Ruetaitip Chansrakao⁴

¹Universitas Sawerigading Makassar, Indonesia, Email : unsaasmah@gmail.com

²Universitas Islam Ogan Komering Ilir Kayu Agung, Sumatra Selatan, Indonesia, Email : aazizah895@gmail.com

³Universitas Tulungagung, Indonesia, Email : sarie.soegito@gmail.com

⁴Valaya Alongkorn Rajabhat University, Thailand, Email : ruetaitip@vru.ac.th

Received: 2023-07-27; Reviewed: 2023-08-18; Accepted: 2023-08-19; Published: 2023-08-26

Abstract

The Pancasila economy as a characteristic of Indonesia's unique economy encounters problems when faced with increasingly massive business developments. Business law has a role so that the existence of the Pancasila economy is maintained in the era of business development. This study aims to analyze the existence of Pancasila in the midst of business development in an effort to realize justice in the realm of business law. This research is normative legal research with conceptual, statutory, and philosophical approaches. The results of the study confirm that the existence of the Pancasila economy is urgent to be maintained through various legal policies so that business development does not perpetuate capitalism which can create injustice in business competition. Business law in its development needs to refer to and pay special attention to the Pancasila economy so that existing business practices in Indonesia are in line with Pancasila values.

Keywords: *Labor Law; Post-Modern; Philosophy of Justice*

1. INTRODUCTION

Business competition is actually a common thing that occurs in a business or business. This is a consequence of business being synonymous with competition. Competition in the business context can be seen from two aspects, namely positive aspects and negative aspects. In the positive aspect, competition in business is oriented as an effort to increase competition between business people so that business people can improve their quality, capacity, and creativity to be able to compete while winning business competition with competitors.¹ On the negative aspect, business competition can have an impact on efforts to destroy each other made by each competitor so that the strong party increasingly monopolizes the business while the weak party is increasingly marginalized in the business world.²

¹ Wizna Gania Balqis, "Penanganan Perkara Pre-Notification Oleh Kppu Dalam Kerangka Hukum Persaingan Usaha Di Indonesia," *Jurnal Yustisiabel* 4, no. 2 (2020): 140, <https://doi.org/10.32529/yustisiabel.v4i2.644>.

² Helvan Subia Effend Eki Furqon, "Kedudukan Komisi Pengawas Persaingan Usaha Dalam Memutus Pelanggaran Persaingan Usaha Menurut Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat," *Hukum Dan Keadilan* 7, no. 5 (2020): 323-35.

Business competition seen from the positive and business aspects above, not infrequently negative aspects in business are relevant to occur in Indonesia. This is because the business sector in Indonesia is engaged by various communities with different business capacities and quantities. Business in Indonesia is also run by people whose base is businesses with small capital such as home industry which is then classified as MSMEs and businesses at the top level run by businessmen with high capital.³ From the diversity of business people in Indonesia, negative aspects related to business practices in Indonesia have the potential to occur, especially the inequality of capital, quantity, and capacity of business people in Indonesia.

The variety of business people in Indonesia makes business competition potentially unfair, especially for business people with relatively small capital and facilities. This emphasizes that business practices in the form of business competition must obtain certainty guarantees as well as legal arrangements so that business competition practices can be fair and facilitate various parties in the business world.⁴ Therefore, constitutionally, Article 33 paragraph (1) and paragraph (4) of the 1945 NRI Constitution actually provide constitutional “signposts” regarding business practices and the national economy. Article 33 paragraph (1) of the 1945 NRI Constitution emphasizes the spirit of joint enterprise and family values as the main essence of business practices and business competition in Indonesia.⁵ Article 33 paragraph (4) of the 1945 NRI Constitution emphasizes the importance of business practices and business competition in Indonesia to be carried out in accordance with the substance of economic democracy based on several principles such as: independence, environmental insight, sustainability, equitable efficiency, and proportionality between balance and progress in the national economy.

The constitutional provisions as stated in Article 33 paragraph (1) and paragraph (4) of the 1945 NRI Constitution actually become a constitutional “frame” to facilitate business competition in Indonesia. As a further regulation, in 1999 Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Business Competition Law) was promulgated. The law exists to provide a legal framework related to business competition practices that sometimes cause inequality and injustice in practice. In addition to being juridically based on Article 33 paragraph (1) and paragraph (4) of the 1945 NRI Constitution and the Business Competition Law, in a conceptual framework Indonesia actually has the concept of the Pancasila economic system which is also the philosophical basis related to business competition practices

³ Fitri Oktaviani Sihombing, Erita Wage Wati Sitohang, and Lesson Sihotang, “Analisis Yuridis Terhadap Praktek Perjanjian Tertutup Air Minum Dalam Kemasan (Studi Putusan Nomor 22/Kppu-1/2016),” *Jurnal Hukum PATIK* 9, no. 1 (2020): 51–59, <https://doi.org/10.51622/patik.v9i1.229>.

⁴ Ni Putu Yuley Restiti, Ni Luh Mahendrawati, and Ni Made Sukaryati Karma, “Pengaturan Predatory Pricing Transportasi Online Dalam Perspektif Hukum Persaingan Usaha,” *Jurnal Analogi Hukum* 3, no. 1 (2021): 129–34, <https://doi.org/10.22225/ah.3.1.2021.129-134>.

⁵ H. Karli Kalianda, “Problematika Pengaturan Persaingan Usaha Dalam Sistem Hukum Indonesia,” *Wasaka Hukum* 8, no. 1 (2020): 9, <https://ojs.stihsa-bjm.ac.id/index.php/wasaka/article/view/49>.

in Indonesia.⁶ A simple understanding of the Pancasila economic system in the context of business competition emphasizes that business competition in Indonesia must be applied in accordance with the five values of Pancasila so that business competition practices must not strengthen one party but discredit the other party. The Pancasila economic system in the context of business competition in Indonesia emphasizes the importance of mutual cooperation in business competition where business competition is carried out proportionally and avoids dishonest, inappropriate, and inappropriate actions (unfair) that can hurt aspects of business competition in Indonesia.⁷

This research focuses on analyzing efforts to replicate aspects of the Pancasila economic system as a legal framework for business competition in Indonesia. This study aims to answer two legal issues, namely the urgency of implementing the Pancasila economic system as a legal framework for business competition in Indonesia and the formulation of the application of the Pancasila economic system as a legal frame for business competition in Indonesia. Research on business competition law in Indonesia has actually been carried out by three previous researchers, namely: first, research conducted by Hakim (2021) with a focus on the description of the role of KPPU in resolving unfair business competition business disputes in the era of the COVID-19 pandemic.⁸ The advantage of this study is a comprehensive presentation of efforts to resolve and types of business disputes, unfair business competition in the era of the COVID-19 pandemic. The shortcomings of this study have not been specific to the case study of unfair business competition business disputes in the era of the COVID-19 pandemic so that they have not comprehensively described unfair business competition business disputes as a whole.

Second, research conducted by Tarmizi (2022) which discusses legal provisions in the Business Competition Law.⁹ The results of the study confirmed that the Business Competition Law has not optimally provided regulations regarding business competition in Indonesia, one of which is evidenced by the lack of formulation of the principle of extraterritoriality in business competition law in Indonesia. The advantage of this study is the use of legal concepts and principles (especially the principle of extraterritoriality) in analyzing the Business Competition Law. The drawback of this study is that there is no adequate conceptual analysis of critical studies of the Business Competition Law.

Third, research conducted by Novian and Arman (2023) which discusses price agreements for automatic motorcycle entrepreneurs in terms of business competition

⁶ Salsabilla Hassani and Suherman Suherman, "Analisis Keterlambatan Pemberitahuan Pengambilalihan Saham Ditinjau Dari Hukum Persaingan Usaha Tidak Sehat (Studi Kasus Putusan Nomor 17/KPPU-M/2020)," *Jurnal Selat* 10, no. 1 (2022): 60–80, <https://doi.org/10.31629/selat.v10i1.4948>.

⁷ Achmad Hariri, "Rekonstruksi Ideologi Pancasila Sebagai Sistem Ekonomi Dalam Perspektif Welfare State," *Jurnal Hukum Replik* 7, no. 1 (2020): 19, <https://doi.org/10.31000/jhr.v7i1.2447>.

⁸ Luqman Hakim, "Formulasi Dan Tantangan Penyelesaian Sengketa Bisnis Persaingan Usaha Tidak Sehat Di Masa Pandemi Covid-19," *Jurnal Lex Renaissance* 6, no. 4 (2021): 719–31, <https://doi.org/10.20885/jlr.vol6.iss4.art6>.

⁹ Tarmizi, "Analisis Hukum Persaingan Usaha Di Indonesia Dalam Undang-Undang Nomor 5 Tahun 1999," *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah* 8, no. 1 (2022): 158.

law.¹⁰ The results of the study confirmed that the price agreement on the matic motorcycle entrepreneur above has actually harmed consumers so that in the legal aspect of business competition the above agreement actually qualifies as an agreement prohibited in the Business Competition Law. The advantage of this research is the concrete case approach that makes juridical problems easily understood in the application of business competition law. The shortcomings of this study have not analyzed and compared studies on business competition law with the perspective of consumer protection related to price agreements for matic motorcycle entrepreneurs.

From the three previous studies above, this study which focuses on analyzing efforts to explore aspects of the Pancasila economic system as a legal framework for business competition in Indonesia is an original research because there has not been a comprehensive study and analysis conducted by the three previous researchers.

Research with a focus on analysis of efforts to replicate aspects of the Pancasila economic system as a framework for business competition law in Indonesia is a type of normative legal research. This is because this study uses a conceptual orientation in the form of the concept of the Pancasila economic system as an analytical knife for business competition law regulations in Indonesia. Orientation in the form of an analytical knife through existing concepts and laws and regulations is the main characteristic of normative legal research.¹¹ The primary legal material in this study uses the 1945 NRI Constitution, Constitutional Court Decision No. 85/PUU-XIV/2016 (2016 Business Competition Constitutional Court Decision), and Business Competition Law. Secondary legal materials include: journal articles, books, as well as various papers and research results that discuss business competition law both in the form of hardfiles and softfiles. Non-legal materials are language dictionaries and legal dictionaries. The approach used is the case, concept, and legislation approach.

2. ANALYSIS AND DISCUSSION

2.1. The Urgency of Implementing the Pancasila Economic System as a Frame for Business Competition Law in Indonesia

In 1999, along with the spirit of the 1998 reform, the government together with the DPR then formulated the Business Competition Law. Philosophically, the Business Competition Law was formed to manifest the value of Pancasila and economic democracy in the practice of business competition in Indonesia. The value of Pancasila and economic democracy that aims to improve the welfare of society are the main pillars of business competition practices in Indonesia.¹² This means that the practice of business competition

¹⁰ Desri Novian and La Ode Arman M, "Perspektif Hukum Persaingan Usaha Pada Sepeda Motor (Matic) Perjanjian Harga Di Antara Enterpreauners," *Jurnal Ilmiah Metadata* 5, no. 1 (2023): 138–50.

¹¹ Cynthia Hadita Eka N.A.M. Sihombing, *Penelitian Hukum*, 1st ed. (Malang: Setara Press, 2022).

¹² Rahmad Hidayat, "Keterlambatan Pemberitahuan Akuisisi Pada Perusahaan Yang Terafiliasi Ditinjau Dari Hukum Persaingan Usaha Di Indonesia (Studi Putusan Komisi Pengawas Persaingan Usaha (Kppu) No. 27/Kp-pu-M/2019)," *Dharmasisya* 1, no. 4 (2021): 2059.

in Indonesia must philosophically refer to and implement the value of Pancasila which substantively contains the orientation of implementing economic democracy.

Economic democracy itself is a term or conception that is often used as a unity with the term political democracy.¹³ If political democracy is based on the equality of everyone, then economic democracy reinforces the effort of equal access in every economic effort and action. This means that every Indonesian has the right to equal access to economic efforts in business competition practices in Indonesia. From a sociological aspect, the passing of the Business Competition Law is intended so that economic democracy can orient the realization of a reasonable market economic system.¹⁴ In a market economy, competition is inevitable. Competition or competition is a distinctive characteristic of the free market in which every business inevitably requires and negates competition. However, competition in a market economy must not be allowed to move and operate according to the “iron law” of the free market. In the free market is known the expression, “whoever controls capital and access, then he controls everything”.

The view that the free market has negative implications and that the free market is not fully applicable in Indonesia makes the formulation of the Business Competition Law intended for a reasonable market economic system. In 1999 when the Competition Law was passed, it was undeniable that the free market economy was increasingly emerging and guaranteed the global trend. To reject all free market conceptions and practices is naïve because it is an attitude of rejection of economic development and reality.¹⁵ The opposite is also true is that accepting all free market conceptions and practices is also an inappropriate action because implementing the overall conception and practice of the free market in Indonesia also means “suicide” because it nullifies the value of economic democracy and the value of Pancasila as Indonesia’s national economic identity.

The middle way used by the Business Competition Law is to orient towards the goal of realizing a reasonable market economy system. The word “reasonable” here substantively occupies an important aspect because it is the purpose and orientation of the Business Competition Law in facing the times. The word natural in the Indonesian Dictionary actually means should, should, and should be.¹⁶ In legal dictionaries, the word fair is attached to the term fair or fairness.¹⁷ The term fair or fairness is a term that emphasizes the meaning of moral propriety.¹⁸ Everything is called fair or fairness

¹³ Muhammad Ma’ruf, “Mengarahkan Demokrasi Pancasila (Relasi Demokrasi, Ekonomi Dan Politik),” *Jurnal Ilmiah CIVIS* VIII, no. 2 (2019): 87–101.

¹⁴ R A Hapsari, I Satria, and Y Hesti, “Perspektif Hukum Dalam Kebijakan Relaksasi Pengenaan Hukum Persaingan Usaha Dan Pengawasan Kemitraan Umkm,” *Jurnal Pengabdian UMKM* 1, no. 11 (2022): 115–20, <https://jpu.ubl.ac.id/index.php/jpu/article/view/22%0Ahttps://jpu.ubl.ac.id/index.php/jpu/article/download/22/22>.

¹⁵ Hanif Nur Widhiyanti, “The Urgency of Harmonizing Competition Laws in Moving Towards the ASEAN Free Trade Area,” *Fiat Justitia* 14, no. 1 (2020): 48.

¹⁶ Pusat Bahasa Departemen Pendidikan Nasional, *Kamus Bahasa Indonesia* (Jakarta: Departemen Pendidikan Nasional, 2008).

¹⁷ Viswandro, *Kamus Istilah Hukum: Sumber Rujukan Peristilahan Hukum*, ed. Alex, Cetakan ke (Yogyakarta: Penerbit Medpress Digital, 2014).

¹⁸ Sajia Sultana Begum, “Aristotelian and Rawlsian Concept of Distributive Justice,” *Jeitr* 6, no. 6 (2019): 849–54, www.jetir.org849.

if it is morally appropriate and accountable. This understanding of fairness or fairness is relevant to John Rawls' idea of justice as fairness which emphasizes that justice is a propriety that must be accepted and obtained by every individual both morally and legally.¹⁹

The view of fair as fair or fairness above can be constructively understood that a reasonable market economic system is an economic system that ensures fairness in a legal and moral perspective.²⁰ This fair market economic system emphasizes the importance of the role of the state to regulate, guarantee, facilitate, as well as set limits and signs for the implementation of the economic system in Indonesia. It can be understood that sociologically the birth of the Business Competition Law is to create fair, responsible business competition, and ensure the benefit of the Indonesian people. The purpose of the formulation of the Business Competition Law is also described in an expressive verbis manner in consideration of letter c that the Business Competition Law is oriented to facilitate four aspects, namely: the inevitability of each individual in business competition, efforts to prevent economic concentration on certain parties, the implementation of the economic value of Pancasila, and the development of business competition through ratification of international agreements.

From the philosophical and sociological aspects above, it can be concluded that the orientation of the Business Competition Law is on four aspects, namely: first, the Business Competition Law seeks to facilitate business competition practices which are common and inevitable in business reality in Indonesia. This is strengthened by the era of free trade (free trade) which one of the consequences is the existence of massive competition and business competition in the community.²¹ Therefore, the Business Competition Law seeks to provide legal guarantees and protection for every party who has the potential to conduct business competition to be guaranteed and given legal protection through the substance of the Business Competition Law.

Second, the Business Competition Law has efforts to realize decent and proper business competition. Business competition as a necessary part of business processes must be carried out fairly by referring to legal provisions and customs in business competition practices. Efforts to realize decent and appropriate business competition emphasize the importance of the role of the state through laws and regulations that become a frame in business competition practices.²² Third, the Business Competition Law seeks to implement the conception of economic democracy, especially the Pancasila

¹⁹ Nazia Saleem, "Rawls' Theory Of Justice," *IJCRT* 9, no. 1 (2021): 1625–30.

²⁰ Rezmia Febrina, "Persaingan Usaha Pada Era Digital Menurut Persepektif Hukum Persaingan Usaha," *Jurnal Karya Ilmiah Multidisiplin (JURKIM)* 2, no. 1 (2022): 121–27, <https://doi.org/10.31849/jurkim.v2i1.9309>.

²¹ Tri Widya Kurniasari Kurniasari and Arif Rahman, "Perlindungan Hukum Bagi Pelaku Usaha Umkm Terhadap Penyalahgunaan Posisi Dominan Platform Digital : Marketplace Melalui Penetapan Harga Dan Penguasaan Pasar," *Reusam: Jurnal Ilmu Hukum* 10, no. 2 (2023): 131, <https://doi.org/10.29103/reusam.v10i2.9577>.

²² Lunita Jawani, "Prinsip Rule of Reason Terhadap Praktik Dugaan Kartel Menurut Pasal 11 Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat," *Jurnal Humaya: Jurnal Hukum, Humaniora, Masyarakat, Dan Budaya* 1, no. 2 (2021): 99–106, <https://doi.org/10.33830/humaya.v1i2.2215.2021>.

economy. The effort of the Business Competition Law to implement the conception of economic democracy, especially the Pancasila economy, is a visionary step and effort in the Business Competition Law so that business competition practices in Indonesia can take place in a conducive, fair manner, while facilitating parties who are economic and business actors with small capital to get access and convenience equivalent to investors and business men with relatively large capital.²³ The spirit of the Business Competition Law to optimize the conception of economic democracy, especially the Pancasila economy, is one of the steps to realize state goals, especially in an effort to realize general welfare in business competition practices in Indonesia.

Fourth, the Business Competition Law is oriented to realize a fair market economic system. This means that the Business Competition Law facilitates the development of a market economy and the development of a massive free market as part of the development of globalization in the business world and business competition. However, a market economy and the development of free markets must not be “wild” and fully subject to free market laws and regulations. The Business Competition Law actually seeks to frame and limit the practice of market economy and free market development to be pursued fairly and empower every community. This confirms that one of the orientations of the Business Competition Law is to prevent business competition in the market economic system from being exploitative which means that it only benefits certain parties who are capital and financial strong parties.²⁴

From the four orientations and objectives of the formulation of the Business Competition Law, it can be concluded that the Business Competition Law emphasizes efforts to facilitate the development and practice of free markets as part of the development of international business to be regulated, formulated, and enforced to empower the Indonesian people and produce business competition that is feasible, fair, and empowers all parties involved in business competition. The presence of the Business Competition Law is also intended to provide legal certainty guarantees from the potential for free market practices that have implications for the realization of unfair business competition in Indonesia. Factually speaking, the potential for the realization of unhealthy business competition in Indonesia is caused by three factors, namely: first, after the 1998 reform, at which time the Indonesian economy was slumped with the monetary crisis, there were several “unscrupulous” entrepreneurs who took advantage of the momentum to get the maximum profit. The maximum profit is carried out in improper ways and even seems to violate the law such as monopolizing or issuing agreements that have an impact on unfair business competition.²⁵

²³ Ahmad Munir Muhamad Arif Fahmi, M. Afif Hasbullah, “Pengaturan Hukum Persaingan Usaha Atas Jasa Keuangan Digital Di Indonesia,” *Mimbar Yustitia* 6, no. 1 (2022): 20–32.

²⁴ Habibi Habibi, “Reformulation Of Business Competition Law Enforcement Based On A Hybrid Model,” *Prophetic Law Review* 3, no. 2 (2021): 135, <https://doi.org/10.20885/plr.vol3.iss2.art2>.

²⁵ Juniar Hartikasari Rusmini, “Kedudukan Komisi Pengawas Persaingan Usaha Dalam Sistem Kenegaraan Di Indonesia,” *Tripantang* 7, no. 2 (2021): 169.

The efforts of “unscrupulous” entrepreneurs to get the maximum profit in a way that violates propriety and this law are to be anticipated and enforced by the Business Competition Law. Second, the potential for the realization of unhealthy business competition in Indonesia can occur because as part of business development and global business competition, foreign investment and companies in Indonesia are increasingly mushrooming.²⁶ The existence of inputs in the form of investment and the establishment of foreign companies in Indonesia with the main motive in the form of high profits has the potential to cause unhealthy business competition practices in Indonesia. This is understandable because foreign companies in Indonesia are mainly oriented about profit.²⁷ Foreign companies and foreign investments certainly do not have the orientation and moral demands to help empower small entrepreneurs to participate in the business competition process in Indonesia. Because the main purpose of foreign investment and companies in Indonesia is the main goal of profit, the Business Competition Law with the economic value of Pancasila in the form of economic democracy is expected to be a “fence” for the potential for unhealthy business competition caused by the large number of foreign investments and companies in Indonesia.

Third, the potential for the realization of unhealthy business competition in Indonesia can occur due to various factors such as power relations and the closeness of an entrepreneur with certain parties who have access to the government. External factors that can have implications for business competition practices into unhealthy business competition such as power relations and the closeness of an entrepreneur to certain parties who have access to the government must be a separate concern because these external factors can play a role in causing unhealthy business competition practices in Indonesia.²⁸ Of the three reasons for the potential realization of unhealthy business competition in Indonesia above, it further emphasizes the importance of the Pancasila economic system which is spirit-facilitated in the Business Competition Law to organize, regulate, and direct business competition in Indonesia into fair, civilized, and properly carried out business competition. One of the ideas of the Pancasila economic system was initiated by Emil Salim who emphasized the importance of proportionalization of the response to the development of a massive market economic system.

In Emil Salim’s view, the Pancasila economic system must be able to respond to the development of the market economic system which on the one hand cannot be denied development but on the other hand the market economic system must be carried out to be in harmony with the spirit of kinship and mutual assistance as the main orientation of

²⁶ Desi Apriani and Syafrinaldi Syafrinaldi, “Konflik Norma Antara Perlindungan Usaha Kecil Menurut Hukum Persaingan Usaha Indonesia Dengan Perlindungan Konsumen,” *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 14–33, <https://doi.org/10.14710/jphi.v4i1.14-33>.

²⁷ Fahrurrozi Muhammad, “Investment In Digital Age: The Future Role Of Notary In Company Establishment,” *Indonesian Law Journal* 15, no. 1 (2022): 964–68.

²⁸ Vicky Darmawan Prahmana and Ditha Wiradiputra, “Predatory Pricing Dalam E-Commerce Menurut Perspektif Hukum Persaingan Usaha,” *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 3 (2022): 9844–53, <https://doi.org/10.58258/jisip.v6i3.3277>.

the Pancasila economic system.²⁹ Therefore, in Emil Salim's view, the Pancasila economic system must reconstruct the market economic system to be carried out by prioritizing the spirit of kinship and mutual assistance as stated in Pancasila. Mubyarto further believes that the idea of the Pancasila economic system is actually a reactualization of Moh's view of economic democracy. Hatta who emphasized the need for empowerment and equal access to every component of society in business competition in Indonesia.³⁰ Mubyarto, like Emil Salim, also emphasized that the Pancasila economic system must rely on the spirit of kinship and joint effort as its basic values.³¹ The spirit of kinship in the Pancasila economic system confirms that in the practice of business competition in Indonesia, every entrepreneur is seen as a brother who is equally trying to make a profit from the business process.

As brothers, of course, business people must not cheat and justify all means to get excess profits. Joint effort as the basic value of the Pancasila economic system also emphasizes equality of position, access, and guarantees of legal protection from the state to every entrepreneur in the process of business competition. The State shall not discriminate against profit-oriented treatment of one party to another in a business competition process. Referring to the conception of the Pancasila economic system above, it can be concluded that the urgency of implementing the Pancasila economic system to be used as a frame for business competition in Indonesia is intended that the Pancasila economic system can be a frame as well as a legal basis related to decent, appropriate, and fair business competition. The implementation of the Pancasila economic system in business competition practices in Indonesia is also important to anticipate the impact of an exploitative market economy system and potentially cause unhealthy business competition. Therefore, the spirit of the Pancasila economic system must be the basis and future orientation in business competition practices so that business competition in Indonesia can be a means to prosper the Indonesian people in the process of business competition.

2.2. Formulation of the Application of the Pancasila Economic System as a Legal Framework for Business Competition in Indonesia

One of the practices of applying the economic substance of Pancasila in business competition practices in Indonesia is carried out through court decisions, in this case, through Constitutional Court Decisions. The Constitutional Court as the final interpreter of the constitution actually has the authority to provide constitutional interpretation of a statutory provision.³² In this Constitutional Court Decision, the Constitutional Court

²⁹ Deviana Yuanitasari and Susilowati Suparto, "Peran Negara Dalam Sistem Ekonomi Kerakyatan Berdasarkan Pancasila Untuk Mewujudkan Kesejahteraan Sosial Telah," *Acta Diurnal* 4, no. 1 (2020): 36–51.

³⁰ Ahmad Fuad and Dima Hafizul Ilmi, "Konsep Ekonomi Pancasila Dan Relevansinya Terhadap Nilai-Nilai Ekonomi Islam Studi Atas Pemikiran Prof. Dr. Mubyarto," *Jurnal Syariah* 9, no. 1 (2021): 41.

³¹ Tarli Nugroho Dumairy, *Ekonomi Pancasila : Warisan Pemikiran Mubyarto*, 1st ed. (Yogyakarta: Gadjah Mada University Press, 2016).

³² Melissa Crouch, "The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia," *Constitutional Review* 7, no. 1 (2021): 1–25, <https://doi.org/10.31078/consrev711>.

provides an interpretation of the Business Competition Law. The Constitutional Court decision is in Constitutional Court Decision No. 85/PUU-XIV/2016 (2016 Business Competition Constitutional Court Decision). The 2016 Competition Court decision was originally a judicial review process submitted by PT Bandung Raya Indah Lestari.

The petitioner in one of his descriptions stated that there was a constitutional loss suffered due to the application of Articles 22 to 24 of the Business Competition Law regarding the phrase “other party” which was considered to cause legal vagueness. The phrase “other party” is considered to cause legal vagueness because in business competition the prohibition to establish relations with the parties must be formulated clearly and unequivocally. This is because the lack of clarity in the formulation of “other parties” in business competition actually has the potential to cause injustice which has implications for the realization of unhealthy business competition.³³

Ratio decidendi in the 2016 Business Competition Constitutional Court Decision generally presents three legal arguments, namely: first, the Constitutional Court in its ratio decidendi emphasizes the conception of economic democracy and Pancasila democracy as the basis and basis for the implementation of business competition in Indonesia. The Constitutional Court argued that one of the basic principles of implementing the conception of economic democracy and Pancasila democracy is to provide equal opportunities to parties in conducting business competition.³⁴ The Constitutional Court also emphasized that fair and decent business competition is business competition that is able to provide equal access to the parties proportionally. From the ratio decidendi MK, it can be concluded that the main orientation of business competition in Indonesia is based on the conception of economic democracy and Pancasila democracy. This implies that any business competition process that is not in accordance with the conception of economic democracy and Pancasila democracy, the business competition process has actually violated the constitution.³⁵

³³ Wihelmus Jemarut, “Pendekatan Rule Of Reason Dan Per Se Illegal Dalam Perkara Persaingan Usaha,” *Widya Yuridika* 3, no. 2 (2020): 377, <https://doi.org/10.31328/wy.v3i2.1688>.

³⁴ Asti Rachma Amalya, “Prinsip Ekstrateritorial Dalam Penegakan Hukum Persaingan Usaha,” *Jurnal Ilmiah Mandala Education* 6, no. 1 (2020): 171–85, <https://doi.org/10.58258/jime.v6i1.1125>. many countries embracing a free market where trade and investment are carried out across national borders. As a consequence the boundaries between countries have disappeared, trade and investment restrictions have also declined and the potential for unfair business competition has increased. For this reason, each country seeks to provide protection for its citizens in its territorial territory and bring about conflicts between jurisdictions. The regulations governing the prohibition of monopolistic practices and unfair business competition do not explicitly regulate the application of extraterritorial principles in Indonesia, but KPPU has handled several cases involving foreign business actors and imposed sanctions on business actors who are not domiciled in Indonesia and against acts committed outside of Indonesia. One of the KPPU’s decisions stated the Temasek Holdings business group and its subsidiaries had been proven guilty of violating the provisions of Article 27 of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition and that the KPPU had imposed sanctions. This paper will discuss the application of extraterritorial principles in the context of business competition in Indonesia and see considerations in the relevant KPPU decisions. It will also examine legal obstacles and challenges in the execution of executions because of regulations that have not explicitly governed the application of extraterritorial principles.”

³⁵ Tri Utomo Wiganarto, Asenar Asenar, and Elisatris Gultom, “Legal Aspects of Business Competition in the Procurement of Covid-19 Vaccine by Bio Farma Ltd.,” *Kanun Jurnal Ilmu Hukum* 23, no. 2 (2021): 193–209, <https://doi.org/10.24815/kanun.v23i2.20416>.

Second, the Constitutional Court also emphasized that the form of protection and guarantee of legal certainty for business competition actors is the existence of business competition law enforcement agencies such as KPPU, PN, to the Supreme Court.³⁶ The orientation of the authority of each institution is in order to ensure the implementation of fair, fair, and propriety-based business competition. Third, the Constitutional Court in its ratio decidendi extensively emphasized the expansion of the meaning of other parties in the Business Competition Law. The meaning of other parties is interpreted broadly so that it includes other business actors and other parties that can have an impact on unhealthy business competition. The expansion of the meaning of other parties in the perspective of the Pancasila economic system is actually the right construction because one of the main orientations of the Pancasila economic system is an effort to ensure fair business competition and open space and access to business competition proportionally.³⁷

The existence of legal vagueness regarding the meaning of other parties if interpreted narrowly has the potential to cause legal loopholes in the form of the potential use of other business actors to conduct unfair business competition, making the Constitutional Court through its rulings can be said to have acted progressively in accordance with the perspective of the Pancasila economic system and the idea of economic democracy.³⁸

From the three substances of the 2016 Business Competition Constitutional Court Decision above, it can be seen that the conception of the Pancasila economic system and economic democracy are the main concepts behind the Constitutional Court issuing the 2016 Business Competition Constitutional Court Decision above. The Constitutional Court's effort to explore the substance of the conception of the Pancasila economic system and economic democracy in the case of business competition is a constitutional *ijtihad* which actually confirms that the conception of the Pancasila economic system and economic democracy is the main frame of business competition practices in Indonesia. From the 2016 Business Competition Constitutional Court Decision above, this has implications for any party (both fellow business actors and other parties) that can cause the potential for unfair business competition, it is prohibited in accordance with the provisions of Article 22 to Article 24 of the Business Competition Law. The construction

³⁶ Yuanno Rezky, Elisatris Gultom, and Igor Volodymyrovych Kudriavtsev, "Unfair Business Competition Practices In Tenders For Government Procurement," *Syiah Kuala Law Journal* 6, no. 16 (2022): 185–99.

³⁷ Rizal Al Hamid, "Paradigm of Pancasila Economic as The Identity of Indonesia Nation," *Edukatif: Jurnal Ilmu Pendidikan* 4, no. 1 (2022): 1170–81, <https://doi.org/10.31004/edukatif.v4i1.2073>. principles and philosophy of the nation, as well as a basic principal representation for an independent country. Therefore, the revitalization of Pancasila should be the main objective of a series of government discourses, so that the values contained in it are able to permeate every society of this country. The Founding Fathers believed that Pancasila was not only able to unite the citizen, but also to alleviate them from the shackles of social inequality, poverty, hunger, and rampant corrupt practices. In this paper, we describe a series of discourses about the economy that is unique to this country, namely the Pancasila Economy. It is believed to be able to free the shackles of these downturns, even without harming other parties, as happened in the economic concept of capitalist, socialist, and liberal. The findings of this paper are that in fact, Pancasila Economy is part of the heterodox economic approach, which contains the concept of a socialist and capitalist economy. Even so, Pancasila Economics does not mean adopting the two economic concepts, but rather a hybrid form and has been modified in line with the values contained in the principles of Pancasila." "author": [{"-dropping-particle": "Al", "family": "Hamid", "given": "Rizal", "non-dropping-particle": ""}

³⁸ Susi Yanuarsa, "Undang-Undang Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Sebagai Faktor Integrasi Di Bidang Kegiatan Usaha," *Solusi* 16, no. 3 (2018): 364–73, <https://doi.org/10.36546/solusi.v16i3.145>.

of the 2016 Business Competition Constitutional Court Decision is important because it seeks to strengthen the substance and essence of the Pancasila economic system from attempts to abuse practices that seek to cause unilateral benefits in business competition practices.

From the 2016 Business Competition Constitutional Court Decision above, it can be affirmed that the Pancasila economic system is substantively not only manifested in the Business Competition Law, but also becomes a reference for court institutions (in this case the Constitutional Court) to adjudicate judicial review cases related to business competition. The position of the Pancasila economic system and the economic democracy system has become stronger with the ratio decidendi of the Constitutional Court which emphasizes that the main essence of business competition in Indonesia is in the form of implementing economic democracy based on joint efforts and family spirit as formulated in the constitution. Future formulation efforts related to the idea and conception of the Pancasila economic system can be carried out in the realm of business competition, namely by making the Pancasila economic system as a director and guide for business competition practices. This also confirms that any attempt at business competition that is not in accordance with the substance of the Pancasila economic system has the potential to lead business competition into unhealthy business competition.

Formulations related to the substance of the Pancasila economic system can also be applied by KPPU in supervising business competition practices. KPPU can make the substance of the Pancasila economic system as the basis and guiding value to monitor business competition in Indonesia. Future formulation efforts related to the Pancasila economic system, namely the Pancasila economic system, can be used as a basic reference as an effort to organize and revise the Business Competition Law in the future. Based on the results of the analysis above, the future formulation of the Pancasila economic system in business competition practices, namely that the substance in the Pancasila economic system should be used as a basis for KPPU, PN, and MA in supervising and handling cases related to business competition practices. In addition, future formulations are also expected so that the substance of the Pancasila economic system can be used as a guide in efforts to revise and improve business competition regulations in Indonesia.

3. CONCLUSION

The urgency of implementing the Pancasila economic system to be used as a frame for business competition in Indonesia is intended that the Pancasila economic system can be a frame as well as a legal basis related to decent, appropriate, and fair business competition. The implementation of the Pancasila economic system in business competition practices in Indonesia is also important to anticipate the impact of an exploitative market economic system and the potential to cause unhealthy business

competition. Therefore, the spirit of the Pancasila economic system must be the basis and future orientation in business competition practices so that business competition in Indonesia can be a means to prosper the Indonesian people in the process of business competition.

The future formulation of the Pancasila economic system in business competition practices is that the substance in the Pancasila economic system should be used as a basis for KPPU, PN, and MA in supervising and handling cases related to business competition practices. In addition, future formulations are also expected so that the substance of the Pancasila economic system can be used as a guide in efforts to revise and improve business competition regulations in Indonesia.

REFERENCES

- Amalya, Asti Rachma. "Prinsip Ekstrateritorial Dalam Penegakan Hukum Persaingan Usaha." *Jurnal Ilmiah Mandala Education* 6, no. 1 (2020): 171–85. <https://doi.org/10.58258/jime.v6i1.1125>.
- Apriani, Desi, and Syafrinaldi Syafrinaldi. "Konflik Norma Antara Perlindungan Usaha Kecil Menurut Hukum Persaingan Usaha Indonesia Dengan Perlindungan Konsumen." *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 14–33. <https://doi.org/10.14710/jphi.v4i1.14-33>.
- Balqis, Wizna Gania. "Penanganan Perkara Pre-Notification Oleh Kppu Dalam Kerangka Hukum Persaingan Usaha Di Indonesia." *Jurnal Yustisiabel* 4, no. 2 (2020): 140. <https://doi.org/10.32529/yustisiabel.v4i2.644>.
- Begum, Sajia Sultana. "Aristotelian and Rawlsian Concept of Distributive Justice." *Jeitr* 6, no. 6 (2019): 849–54. www.jetir.org/849.
- Crouch, Melissa. "The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia." *Constitutional Review* 7, no. 1 (2021): 1–25. <https://doi.org/10.31078/consrev711>.
- Dumairy, Tarli Nugroho. *Ekonomi Pancasila : Warisan Pemikiran Mubyarto*. 1st ed. Yogyakarta: Gadjah Mada University Press, 2016.
- Eka N.A.M. Sihombing, Cynthia Hadita. *Penelitian Hukum*. 1st ed. Malang: Setara Press, 2022.
- Eki Furqon, Helvan Subia Effend. "Kedudukan Komisi Pengawas Persaingan Usaha Dalam Memutus Pelanggaran Persaingan Usaha Menurut Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat." *Hukum Dan Keadilan* 7, no. 5 (2020): 323–35.
- Febrina, Rezmia. "Persaingan Usaha Pada Era Digital Menurut Persepektif Hukum Persaingan Usaha." *Jurnal Karya Ilmiah Multidisiplin (JURKIM)* 2, no. 1 (2022): 121–27. <https://doi.org/10.31849/jurkim.v2i1.9309>.
- Fuad, Ahmad, and Dima Hafizul Ilmi. "Konsep Ekonomi Pancasila Dan Relevansinya Terhadap Nilai-Nilai Ekonomi Islam Studi Atas Pemikiran Prof. Dr. Mubyarto." *Jurnal Syariah* 9, no. 1 (2021): 41.

- Habibi, Habibi. "Reformulation Of Business Competition Law Enforcement Based On A Hybrid Model." *Prophetic Law Review* 3, no. 2 (2021): 135. <https://doi.org/10.20885/plr.vol3.iss2.art2>.
- Hakim, Luqman. "Formulasi Dan Tantangan Penyelesaian Sengketa Bisnis Persaingan Usaha Tidak Sehat Di Masa Pandemi Covid-19." *Jurnal Lex Renaissance* 6, no. 4 (2021): 719–31. <https://doi.org/10.20885/jlr.vol6.iss4.art6>.
- Hamid, Rizal Al. "Paradigm of Pancasila Economic as The Identity of Indonesia Nation." *Edukatif: Jurnal Ilmu Pendidikan* 4, no. 1 (2022): 1170–81. <https://doi.org/10.31004/edukatif.v4i1.2073>.
- Hapsari, R A, I Satria, and Y Hesti. "Perspektif Hukum Dalam Kebijakan Relaksasi Pengenaan Hukum Persaingan Usaha Dan Pengawasan Kemitraan Umkm." *Jurnal Pengabdian UMKM* 1, no. 11 (2022): 115–20. <https://jpu.ubl.ac.id/index.php/jpu/article/view/22%0Ahttps://jpu.ubl.ac.id/index.php/jpu/article/download/22/22>.
- Hariri, Achmad. "Rekonstruksi Ideologi Pancasila Sebagai Sistem Ekonomi Dalam Perspektif Welfare State." *Jurnal Hukum Replik* 7, no. 1 (2020): 19. <https://doi.org/10.31000/jhr.v7i1.2447>.
- Hassani, Salsabilla, and Suherman Suherman. "Analisis Keterlambatan Pemberitahuan Pengambilalihan Saham Ditinjau Dari Hukum Persaingan Usaha Tidak Sehat (Studi Kasus Putusan Nomor 17/KPPU-M/2020)." *Jurnal Selat* 10, no. 1 (2022): 60–80. <https://doi.org/10.31629/selat.v10i1.4948>.
- Hidayat, Rahmad. "Keterlambatan Pemberitahuan Akuisisi Pada Perusahaan Yang Terafiliasi Ditinjau Dari Hukum Persaingan Usaha Di Indonesia (Studi Putusan Komisi Pengawas Persaingan Usaha (Kppu) No. 27/Kppu-M/2019)." *Dharmasiswa* 1, no. 4 (2021): 2059.
- Iriansyah, Iriansyah, Rezmia Febrina, and Irfansyah Irfansyah. "Business Competition in Digital Era Based on Perspective of Competition Law." *Melayunesia Law* 5, no. 1 (2021): 59. <https://doi.org/10.30652/ml.v5i1.7797>.
- Jawani, Lunita. "Prinsip Rule of Reason Terhadap Praktik Dugaan Kartel Menurut Pasal 11 Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat." *Jurnal Humaya: Jurnal Hukum, Humaniora, Masyarakat, Dan Budaya* 1, no. 2 (2021): 99–106. <https://doi.org/10.33830/humaya.v1i2.2215.2021>.
- Jemarut, Wihelmus. "Pendekatan Rule Of Reason Dan Per Se Illegal Dalam Perkara Persaingan Usaha." *Widya Yuridika* 3, no. 2 (2020): 377. <https://doi.org/10.31328/wy.v3i2.1688>.
- Kalianda, H. Karli. "Problematika Pengaturan Persaingan Usaha Dalam Sistem Hukum Indonesia." *Wasaka Hukum* 8, no. 1 (2020): 9. <https://ojs.stihsa-bjm.ac.id/index.php/wasaka/article/view/49>.
- Kurniasari, Tri Widya Kurniasari, and Arif Rahman. "Perlindungan Hukum Bagi Pelaku Usaha Umkm Terhadap Penyalahgunaan Posisi Dominan Platform Digital : Marketplace Melalui Penetapan Harga Dan Penguasaan Pasar." *Reusam: Jurnal Ilmu Hukum* 10, no. 2 (2023): 131. <https://doi.org/10.29103/reusam.v10i2.9577>.

- Ma'ruf, Muhammad. "Mengarahkan Demokrasi Pancasila (Relasi Demokrasi, Ekonomi Dan Politik)." *Jurnal Ilmiah CIVIS* VIII, no. 2 (2019): 87–101.
- Muhamad Arif Fahmi, M. Afif Hasbullah, Ahmad Munir. "Pengaturan Hukum Persaingan Usaha Atas Jasa Keuangan Digital Di Indonesia." *Mimbar Yustitia* 6, no. 1 (2022): 20–32.
- Muhammad, Fahrurrozi. "Investment In Digital Age: The Future Role Of Notary In Company Establishment." *Indonesian Law Journal* 15, no. 1 (2022): 964–68.
- Novian, Desri, and La Ode Arman M. "Perspektif Hukum Persaingan Usaha Pada Sepeda Motor (Matic) Perjanjian Harga Di Antara Enterpreauners." *Jurnal Ilmiah Metadata* 5, no. 1 (2023): 138–50.
- Prahmana, Vicky Darmawan, and Ditha Wiradiputra. "Predatory Pricing Dalam E-Commerce Menurut Perspektif Hukum Persaingan Usaha." *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 3 (2022): 9844–53. <https://doi.org/10.58258/jisip.v6i3.3277>.
- Pusat Bahasa Departemen Pendidikan Nasional. *Kamus Bahasa Indonesia*. Jakarta: Departemen Pendidikan Nasional, 2008.
- Restiti, Ni Putu Yuley, Ni Luh Mahendrawati, and Ni Made Sukaryati Karma. "Pengaturan Predatory Pricing Transportasi Online Dalam Perspektif Hukum Persaingan Usaha." *Jurnal Analogi Hukum* 3, no. 1 (2021): 129–34. <https://doi.org/10.22225/ah.3.1.2021.129-134>.
- Rezky, Yuanno, Elisatris Gultom, and Igor Volodymyrovych Kudriavtsev. "Unfair Business Competition Practices In Tenders For Governmen Procurement." *Syiah Kuala Law Journal* 6, no. 16 (2022): 185–99.
- Rusmini, Juniar Hartikasari. "Kedudukan Komisi Pengawas Persaingan Usaha Dalam Sistim Kenegaraan Di Indonesia." *Tripantang* 7, no. 2 (2021): 169.
- Saleem, Nazia. "Rawls' Theory Of Justice." *IJCRT* 9, no. 1 (2021): 1625–30.
- Sihombing, Fitri Oktaviani, Erita Wage Wati Sitohang, and Lesson Sihotang. "Analisis Yuridis Terhadap Praktek Perjanjian Tertutup Air Minum Dalam Kemasan (Studi Putusan Nomor 22/Kppu-I/2016)." *Jurnal Hukum PATIK* 9, no. 1 (2020): 51–59. <https://doi.org/10.51622/patik.v9i1.229>.
- Tarmizi. "Analisis Hukum Persaingan Usaha Di Indonesia Dalam Undang-Undang Nomor 5 Tahun 1999." *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah* 8, no. 1 (2022): 158.
- Viswandoro. *Kamus Istilah Hukum: Sumber Rujukan Peristilahan Hukum*. Edited by Alex. Cetakan ke. Yogyakarta: Penerbit Medpress Digital, 2014.
- Widhiyanti, Hanif Nur. "The Urgency of Harmonizing Competition Laws in Moving Towards the ASEAN Free Trade Area." *Fiat Justisia* 14, no. 1 (2020): 48.
- Wiganarto, Tri Utomo, Asenar Asenar, and Elisatris Gultom. "Legal Aspects of Business Competition in the Procurement of Covid-19 Vaccine by Bio Farma Ltd." *Kanun Jurnal Ilmu Hukum* 23, no. 2 (2021): 193–209. <https://doi.org/10.24815/kanun.v23i2.20416>.
- Yanuarsi, Susi. "Undang-Undang Larangan Praktik Monopoli Dan Persaingan Usaha

Tidak Sehat Sebagai Faktor Integrasi Di Bidang Kegiatan Usaha.” *Solusi* 16, no. 3 (2018): 364–73. <https://doi.org/10.36546/solusi.v16i3.145>.

Yuanitasari, Deviana, and Susilowati Suparto. “Peran Negara Dalam Sistem Ekonomi Kerakyatan Berdasarkan Pancasila Untuk Mewujudkan Kesejahteraan Sosial Telah.” *Acta Diurnal* 4, no. 1 (2020): 36–51.