

Legal Position of Business Competition Law in the Perspective of Legal Certainty in Indonesia: A Normative Study of Law No. 5 of 1999 Post-Omnibus Law

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Article Info

Received: 2024-09-10

Revised: 2024-12-21

Accepted: 2025-03-15

Keywords:

Omnibus Law, KPPU,
Legal System

Abstract

This study aims to analyze the legal position of business competition law within Indonesia's legal system following amendments introduced by the Omnibus Law, as well as its implications for legal certainty in competition case resolution. This research employs a normative legal method through legislative, conceptual, and case approaches. The findings indicate that Law No. 5 of 1999, after being amended by the Omnibus Law, places competition law within the administrative non-criminal legal framework, yet still leaves several legal uncertainties, particularly regarding the authority of the Business Competition Supervisory Commission (KPPU) in conducting investigations. These uncertainties result in inconsistencies in law enforcement and overlaps with other legal systems. This study recommends a comprehensive procedural framework for business competition law, reinforcing KPPU's position as an auxiliary state institution with full authority over administrative investigations, along with improvements in evidence mechanisms.

I. Introduction

Business competition law plays a strategic role in creating a fair, healthy, and competitive business environment.¹ In Indonesia, the philosophical foundation of competition law should be rooted in Pancasila values, particularly social justice, collective welfare, and the

¹ Lubis, A. F., & Sirait, N. N. (2009). Hukum Persaingan Usaha Antara Teks dan Konteks. In A. F. Lubis & N. N. Sirait (Eds.), *Gesellschaft fur Technische Zusammenarbeit (GTZ), Indonesia*. Komisi Pengawas Persaingan Usaha (KPPU).

spirit of mutual cooperation (gotong royong), which characterize the national legal system. Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition serves as the primary legal instrument aimed at preventing market dominance by certain business actors while ensuring the creation of a fair and competitive business climate.²

However, the implementation of competition law in Indonesia has often failed to optimally reflect these fundamental Pancasila values. This is evident in various cases handled by the Business Competition Supervisory Commission (KPPU), including cooking oil cartels, bid-rigging cartels, and monopolistic distribution of essential commodities, which have directly harmed both consumers and small and medium enterprises (SMEs).³ For example, in the cooking oil cartel case, KPPU identified collusion among large business players to set artificially high prices, causing significant economic losses for both consumers and small-scale traders.⁴

The main issue in the enforcement of competition law in Indonesia lies in the dominance of a legal-formalistic approach, which emphasizes rigid rule enforcement while neglecting local values inherent in Pancasila's philosophy.⁵ As a result, efforts to balance the interests of large business players with the protection of SMEs have been suboptimal, necessitating a critical evaluation of how far Indonesia's competition law aligns with Pancasila values. This study is essential due to the urgent need to harmonize legal aspects with local values to support inclusive and equitable economic development. Specifically, this research aims to analyze the extent to which Indonesia's competition law aligns with the paradigm of Pancasila values, identify obstacles in its implementation, and propose strategic recommendations for the reform of competition law.

² Sirait, N. N. (2003). *Asosiasi Pelaku Usaha dan Analisis Perilakunya Menurut Hukum Persaingan*. Universitas Sumatera Utara. <https://repository.usu.ac.id/handle/123456789/42605>

³ KPPU. (2017). Laporan Kinerja KPPU 2016.

⁴ Ayal, G. L., Naibaho, R., & Sibur, R. (2017). TINJAUAN YURIDIS TERHADAP KASUS KARTEL MINYAK GORENG DI INDONESIA (STUDI PUTUSAN KPPU NOMOR 24/KPPU-1/2009). *PATIK: Jurnal Hukum*, 7(3), 229–240. <http://repository.uhn.ac.id/handle/123456789/4496>

⁵ Amala, A. C., Laras, R. T. I., Saragih, R. A. D., Jennifer, & Fransisca, V. (2022). PANCASILA SEBAGAI PARADIGMA KEHIDUPAN BERBANGSA DAN BERNEGARA. *Nusantara: Jurnal Pendidikan, Seni, Sains, dan Sosial Humanioral*, 1(1), 1–15. <https://doi.org/10.11111/nusantara.xxxxxxx>. Lihat juga Priskila Ginting, Y., & Wartoyo, X. (2023). Fair Value of Pancasila in the Framework of Criminal Code Renewal. *Law Review*, 3(3), 343–359. <https://doi.org/10.19166/lr.v20i1.5974>; Silfiah, R. I., & Puspytasari, H. H. (2020). Pancasila sebagai Paradigma Politik Pembaruan Hukum Pidana Nasional. *Prosiding Seminar Hukum Aktual: Harmonisasi Hukum Pidana Dalam Perspektif Demokrasi Dan Hak Asasi Manusia*, 13(01), 95–114. <https://journal.uui.ac.id/psha/article/view/34999/16943>; Syahrin, A., Anggusti, M., & Alsa, A. A. (2023). Pembaharuan Hukum (Pidana) Berlandaskan Pancasila. *Merdeka Kreasi*.

Based on this premise, this study has three main objectives: First, analyze the legal position of competition law within the perspective of Pancasila as the nation's philosophical foundation; Second, identify gaps between the substance, structure, and legal culture of competition law and Pancasila values; and Third, propose a new framework to ensure that Indonesia's competition law reflects the principles of social justice, collective welfare, and mutual cooperation more effectively.

The legal system theory developed by Lawrence M. Friedman serves as the primary analytical framework in this research. According to Friedman, a legal system comprises three interrelated elements: legal substance, legal structure, and legal culture.⁶ This concept is used to assess how well Indonesia's competition law integrates with Pancasila values.

Several previous studies relevant to this research include C. Lee (2005) who argues that the effectiveness of competition law is highly influenced by institutional structure and prevailing legal culture. Lee also emphasizes the importance of cultural values in shaping compliance with competition regulations, highlighting that law enforcement should not solely rely on legal formalism.

Other studies reveal that competition law enforcement that disregards socio-cultural aspects often faces resistance at the implementation stage. Research shows that countries with effective competition law enforcement are those that successfully align formal regulations with local cultural values.⁷

Furthermore, the study by Gal & Cheng (2016) highlights the importance of a more holistic approach in competition law enforcement, including the integration of local values such as social justice and SME protection. This research confirms that such integration fosters

⁶ Ab. Halim, M. 'Afifi, & Amni, S. Z. (2023). Legal System in the Perspectives of H.L.A Hart and Lawrence M. Friedman. *Peradaban Journal of Law and Society*, 2(1). <https://doi.org/10.59001/pjls.v2i1.83>. Lihat juga Fauzia, A., Hamdani, F., & Octavia, D. (2021). THE REVITALIZATION OF THE INDONESIAN LEGAL SYSTEM IN THE ORDER OF REALIZING THE IDEAL STATE LAW. *Progressive Law Review*, 3(01). <https://doi.org/10.36448/plr.v3i01.46>; Horwitz, A., Friedman, L. M., Nelson, W. E., & Unger, R. M. (1977). The Legal System: A Social Science Perspective. *Contemporary Sociology*, 6(3). <https://doi.org/10.2307/2064787>; Menski, W. F. (2006). Comparative Law in a Global Context: The Legal Systems of Asia and Africa (2nd ed.). *Cambridge University Press*. <https://doi.org/10.1017/CBO9780511606687>

⁷ Baried, R. R. (2015). Penafsiran unsur melawan hukum dalam penegakan hukum persaingan usaha. <https://dspace.uui.ac.id/handle/123456789/9367>. Lihat juga Sumadi, P. S. (2017). PENEGAKAN HUKUM PERSAINGAN USAHA (Hukum Acara Persaingan Usaha ?). Zifatama Jawara; Suraji, A., Simbolon, A., Prameswara, A. F., Ridwan, A., Effendi, B., Setiawan, C., Melanie, D., Wiradiputra, D., Kuntjoro-Jakti, D., Fahamsyah, E., Nasution, F., Welirang, F., Saragih, G. S., Zoelva, H., Agustanto, H., Ruky, I. M. S., Wibowo, K., Toha, K., Ginting, L. S., ... Hidayat, Y. (2021). DUA DEKADE PENEGAKAN HUKUM PERSAINGAN: Perdebatan dan Isu yang Belum Terselesaikan (K. Wibowo & C. Setiawan, Eds.; 1st ed.). Komisi Pengawas Persaingan Usaha (KPPU) Republik Indonesia, Jakarta.

a more equitable competitive environment, thereby enhancing legitimacy and compliance with competition regulations.

From these studies, it can be concluded that integrating local cultural values, particularly within the Pancasila-based Indonesian legal system, is crucial in improving the effectiveness of competition law enforcement. This study aims to complement previous research by specifically exploring how Pancasila values can be implemented in the substance, structure, and legal culture of Indonesia's competition law.⁸ (Nasution, 2014; Sesse, 2013).

Thus, this research not only holds academic significance but also provides practical contributions to the development of more effective and equitable competition law policies.

2. Research Method

This study employs a juridical-normative approach using conceptual, historical, normative, and comparative analysis methods.⁹ Conceptual analysis is utilized to explore the relevance of Pancasila's philosophical values—particularly social justice, collective welfare, and mutual cooperation (gotong royong)—in the substance of Indonesia's competition law. This study examines primary legal documents, including Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and its implementing regulations, such as KPPU Regulation No. 1 of 2022 on the Compliance Program for Business Competition.

A historical and legal hermeneutic approach is employed to interpret the evolution of competition law concepts and principles within the framework of Pancasila, through a literature review of academic sources, historical legal documents, and the perspectives of Indonesia's founding figures.¹⁰ Furthermore, a comparative method is applied to evaluate Indonesia's competition law enforcement in comparison with other countries with effective competition law systems, specifically Australia, Singapore, and Italy. This

⁸ Nasution, M. (2014). Budaya Hukum Indonesia. In Analisa. <http://repository.uinsu.ac.id/id/eprint/714>. Lihat juga Sesse, Muh. S. (2013). Budaya Hukum dan Implikasinya Terhadap Pembangunan Hukum Nasional. *Jurnal Hukum Diktum*, 11(2), 171–179. <https://doi.org/https://doi.org/10.35905/diktum.v11i2.166>.

⁹ Bogdan, R., & Biklen, S. K. (2017). *Qualitative Research for Education: An Introduction to Theories and Methods* (6th ed.). Pearson. Lihat juga Langbroek, P., van den Bos, K., Thomas, M. S., Milo, M., & van Rossum, W. (2017). Methodology of legal research: Challenges and opportunities. In *Utrecht Law Review* (Vol. 13, Issue 3, pp. 1–8). Igitur, Utrecht Publishing and Archiving Services. <https://doi.org/10.18352/ulr.411>; Yin, R. K. (2018). *Case Study Research and Applications: Design and Methods* (6th ed.). Thousand Oaks, CA: Sage.

¹⁰ Amala, A. C., Laras, R. T. I., Saragih, R. A. D., Jennifer, & Fransisca, V. (2022). PANCASILA SEBAGAI PARADIGMA KEHIDUPAN BERBANGSA DAN BERNEGARA. *Nusantara: Jurnal Pendidikan, Seni, Sains, dan Sosial Humanioral*, 1(1), 1–15. <https://doi.org/10.11111/nusantara.xxxxxxx>

method aims to identify best practices that can be adopted to strengthen Indonesia's competition policy.¹¹

Finally, a normative-descriptive approach is used to assess the extent to which current competition law policies align with Pancasila values. This evaluation is conducted using Lawrence M. Friedman's legal system theory, which examines legal substance, legal structure, and legal culture to identify gaps between existing regulations and their practical implementation.¹² The findings are expected to produce strategic and applicable recommendations for national economic development based on social justice principles

3. Results and Discussion

3.1. The Legal Position of Business Competition Law Post-Omnibus Law from a Pancasila Perspective

The study of Indonesia's business competition law indicates that Law No. 5 of 1999 has served as the primary legal instrument in preventing monopolistic practices and unfair business competition. However, several studies highlight that the substance of this law prioritizes legal certainty and economic efficiency over the protection of Small and Medium Enterprises (SMEs). The Omnibus Law, which amended several provisions in Law No. 5/1999, aims to enhance regulatory flexibility, but it still fails to fully reflect the principle of social justice, which is fundamental in Pancasila.¹³

Empirical studies have found that the current regulatory structure remains inadequate in protecting SMEs. Business competition policies tend to favor large corporations, which have stronger legal and financial capacities compared to SMEs. Gal & Cheng (2016) further emphasize that competition law regulations in several developing countries frequently fail to support fair economic redistribution.¹⁴

¹¹ Sunaryo. (2018). Kritik Pendekatan Komparatif atas Pendekatan Institusionalisme. *Respons*, 23(01), 11–38. <https://doi.org/10.25170/respons.v23i01.464>

¹² Rodriguez, A. E. (2007). Does legal tradition affect competition policy performance? *International Trade Journal*, 21(4). <https://doi.org/10.1080/08853900701597868>

¹³ Amin, R. I. (2020). OMNIBUS LAW ANTARA DESIDERATA DAN REALITA. *Jurnal Hukum Samudra Keadilan*, 15(2). <https://doi.org/10.33059/jhsk.v15i2.2729>. Lihat juga Putra, A. (2020). PENERAPAN OMNIBUS LAW DALAM UPAYA REFORMASI REGULASI. *Jurnal Legislasi Indonesia*, 17(1), 1. <https://doi.org/10.54629/jli.v17i1.602>; Tobing, M. H., Sirait, N. N., & Siregar, M. (2024). Contiguity of Law Violations in the Context of Business Competition and Corruption in Bid Rigging Cases. *Journal of Ecohumanism*, 3(8), 476–483. <https://doi.org/10.62754/joe.v3i8.4748>.

¹⁴ Gal, M. S., & Cheng, T. (2016). Aggregate Concentration: An Empirical Study of Competition Law Solutions. *Journal of Antitrust Enforcement*, 1–44. <http://ssrn.com/abstract=2837413>

In the context of Pancasila-based economic law, research by Silfiah & Puspytasari (2020), asserts that Indonesia's economic law should reflect distributive justice and mutual cooperation rather than solely promoting free-market competition. Unfortunately, existing competition regulations in Indonesia predominantly emphasize legal formalism without incorporating the principle of economic collectivism inherent in Pancasila.

Most literature indicates that Law No. 5 of 1999 does not explicitly incorporate the principle of social justice. The current regulations mainly focus on prohibiting monopolistic practices and unfair competition in a generalized manner, without any specific provisions protecting SMEs or ensuring equitable economic benefit distribution. Several studies highlight that Indonesia's competition law enforcement still relies on retributive administrative sanctions.¹⁵ In contrast, countries such as Singapore and Italy emphasize mediation and compromise-based dispute resolution mechanisms, which actively involve business actors in finding equitable solutions.¹⁶

Based on literature analysis, several policy recommendations are proposed to enhance the integration of Pancasila values into business competition law: First, Amendment of Law No. 5 of 1999 to include specific protections for SMEs, ensuring that the law better reflects social justice principles. Second, enhancing alternative dispute resolution (ADR) mechanisms, such as mediation and consensus-based dispute resolution, to replace the dominant retributive approach.¹⁷ Third, strengthening KPPU's role in enforcing adaptive regulations, particularly in addressing economic disparities between large and small business actors.

Indonesia's business competition law requires significant reforms to better align with the fundamental principles of Pancasila. The existing regulations remain overly focused on legal certainty and economic efficiency, without considering the balance between individual and collective interests, as mandated by Pancasila.¹⁸

¹⁵ Gerkin, P., Walsh, J., Kuilema, J., & Borton, I. (2017). Implementing restorative justice under the retributive paradigm: A pilot program case study. *SAGE Open*, 7(1). <https://doi.org/10.1177/2158244017691562>

¹⁶ Lee, C. (2005). Legal traditions and competition policy. *Quarterly Review of Economics and Finance*, 45(2-3 SPEC. ISS.). <https://doi.org/10.1016/j.qref.2005.01.002>. Lihat juga Lee, Y. (2022). Mala Prohibita, the Wrongfulness Constraint, and the Problem of Overcriminalization. *Law and Philosophy*, 41(2), 375–396. <https://doi.org/10.1007/s10982-022-09443-z>.

¹⁷ Beaton-Wells, C. (2017). Criminal sanctions for cartel conduct: The leniency conundrum. *Journal of Competition Law and Economics*, 13(1). <https://doi.org/10.1093/joclec/nhx004>

¹⁸ Peraturan Komisi Pengawas Persaingan Usaha Republik Indonesia No. 1 Tahun 2022 tentang Program Kepatuhan Persaingan Usaha, Berita Negara Republik Indonesia Tahun 2022 Nomor 313 (2022). <https://peraturan.bpk.go.id/Details/216772/peraturan-kppu-no-1-tahun-2022>

To address these challenges, the following reforms are recommended: First, substantive legal amendments to proactively protect SMEs and local businesses as part of the social justice framework. Second, integration of dispute resolution mechanisms based on mutual cooperation (*gotong royong*) and mediation, ensuring that legal enforcement aligns with local cultural values. Third, strengthening KPPU's role, not only as a regulatory enforcement body but also as an institution that supports economic growth based on Pancasila's economic principles. By implementing these reforms, Indonesia's business competition law will not only serve as an instrument for creating a competitive market but will also function as a legal framework that promotes collective welfare within the Pancasila-based economic system.¹⁹

3.2. Implications of the Omnibus Law Amendments on Legal Certainty

The analysis of the legal structure indicates that the Business Competition Supervisory Commission (KPPU), as the primary institution responsible for enforcing competition law in Indonesia, plays a crucial role in overseeing monopolistic practices and unfair business competition.²⁰ However, the effectiveness of this legal structure still faces several challenges, particularly concerning transparency and accountability. From a Pancasila-based perspective, the principles of social justice and democracy are not yet fully reflected in KPPU's mechanisms for resolving competition disputes, which are often perceived as insufficiently inclusive.²¹

A review of law enforcement mechanisms further demonstrates that the existing legal structure does not fully support the principle of mutual cooperation (*gotong royong*), as mandated by Pancasila. The enforcement process remains retributive, primarily focusing on sanctions rather than collaborative efforts to resolve disputes.²² This highlights the need for structural legal reforms that promote a more participatory approach, allowing business actors to be actively involved in finding fair and sustainable solutions.

¹⁹ Rahardjo, D. (2004). *Ekonomi Pancasila dalam Tinjauan Filsafat Ilmu*. 1996. Lihat juga Tjakrawerdaja, S., Damandiri, S. Y., & Baru, O. (2006). *Revitalisasi sistem ekonomi pancasila*. *In World* (pp. 1–16).

²⁰ Heriani, F. N. (2022, April 8). KPPU Keluarkan Program Kepatuhan Persaingan Usaha. *Hukumonline.com*. <https://www.hukumonline.com/berita/a/kppu-keluarkan-program-kep>. Lihat juga KPPU. (2017). *Laporan Kinerja KPPU 2016*; Oktaviano, D. B., & Dewi, F. S. (2018, August 6). Kurnia Toha: KPPU akan Lebih Persuasif. *ekonomi.bisnis.com*. <https://ekonomi.bisnis.com/read/20180806/12/824661/kurnia-toha-kp...>

²¹ KPPU. (2017). *Laporan Kinerja KPPU 2016*.

²² Rombot, R. J. T., Anis, H., & Sepang, R. (2020). Peranan Komisi Pengawas Persaingan Usaha (KPPU) dalam Menyelesaikan Sengketa Usaha Perdagangan Menurut Undang-Undang No. 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat. *Lex Privatum*, 8(4), 125–135. <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/30975/29732>

Additionally, the current legal structure presents significant limitations in reflecting Pancasila values, particularly concerning social justice. For instance, access to justice for SMEs is often hampered by complex legal procedures and high litigation costs. There is an urgent need to simplify legal procedures and enhance KPPU's institutional capacity to ensure that all business actors, regardless of their scale, receive fair treatment.²³

A normative legal analysis further reveals that coordination between relevant institutions, such as KPPU, courts, and government agencies, requires substantial improvement to enhance the implementation of competition law in alignment with Pancasila values. The lack of synergy between institutions often results in inconsistencies in law enforcement, ultimately disadvantaging SMEs and the broader community. Therefore, strengthening an institutional coordination framework based on the principles of mutual cooperation (gotong royong) and collective welfare is imperative.²⁴

3.3. Formulation of Procedural Law for Business Competition Based on Pancasila Values

Legal culture plays a crucial role in realizing social justice and mutual cooperation (gotong royong) within Indonesia's business competition law. A legal culture that reflects Pancasila values, such as respect for the law and a spirit of collectivism, can enhance business actors' compliance with existing regulations. This study finds that the level of legal awareness among the public, particularly among small and medium enterprises (SMEs), remains low, which hinders the establishment of a fair and just business environment.²⁵

Indonesia's legal culture tends to be individualistic, which contradicts the spirit of mutual cooperation (gotong royong) as emphasized in Pancasila.²⁶ Business actors often prioritize personal interests over collective welfare, leading to persistent unfair business practices. Therefore, legal education programs that instill Pancasila values, such as social justice and

²³ Tim Penyusun. (2023). Lima Tahun Membumikan Persaingan dan Kemitraan: Laporan Lima Tahun 2018 - 2023. www.kppu.go.id

²⁴ Suraji, A., Simbolon, A., Prameswara, A. F., Ridwan, A., Effendi, B., Setiawan, C., Melanie, D., Wiradiputra, D., Kuntjoro-Jakti, D., Fahamsyah, E., Nasution, F., Welirang, F., Saragih, G. S., Zoelva, H., Agustanto, H., Ruky, I. M. S., Wibowo, K., Toha, K., Ginting, L. S., ... Hidayat, Y. (2021). DUA DEKADE PENEGAKAN HUKUM PERSAINGAN: Perdebatan dan Isu yang Belum Terselesaikan (K. Wibowo & C. Setiawan, Eds.; 1st ed.). Komisi Pengawas Persaingan Usaha (KPPU) Republik Indonesia, Jakarta.

²⁵ Sumadi, P. S. (2017). PENEGAKAN HUKUM PERSAINGAN USAHA (Hukum Acara Persaingan Usaha ?). Zifatama Jawa.

²⁶ Nurwardani, P., Saksama, H. Y., Kuswanjono, A., Munir, M., Mustansyir, R., Nurdin, E. S., Mulyono, E., Prawatyani, S. J., Anwar, A. A., Evawany, Priyautama, F., & Festanto, A. (2016). PENDIDIKAN PANCASILA: untuk Perguruan Tinggi (1st ed.). Direktorat Jenderal Pembelajaran dan Kemahasiswaan, Kemenristekdikti. Lihat juga Tjakrawerdaja, S., Damandiri, S. Y., & Baru, O. (2006). Revitalisasi sistem ekonomi pancasila. *In World* (pp. 1–16).

mutual cooperation, are essential for building a more inclusive legal culture that is oriented toward public welfare.

A review of the legal compliance program regulated under KPPU Regulation No. 1 of 2022 indicates that this initiative has the potential to strengthen a legal culture aligned with Pancasila values. However, its implementation faces several challenges, including low active participation from business actors and insufficient supervision from regulatory authorities. This study recommends enhancing the legal compliance program by incorporating incentives that encourage business actors to collaborate in fostering fair business competition.

A strong legal culture can function as a social mechanism to internalize Pancasila values in business practices.²⁷ For instance, in several countries, legal training programs involving local communities have successfully increased legal awareness and encouraged public participation in monitoring business competition. A similar approach can be adapted in Indonesia by incorporating local elements such as deliberation (*musyawarah*) and consensus (*mufakat*) to reinforce the spirit of mutual cooperation within the legal culture.

3.4. Case Study on the Implementation of Business Competition Law by KPPU

This study examines the implementation of business competition law in Indonesia through case studies of several decisions issued by the Business Competition Supervisory Commission (KPPU).²⁸ One of the cases analyzed is the airline ticket cartel case, which involved several major airline companies. KPPU's decision revealed that this violation had a significant impact on consumers, particularly in the form of unjustified price increases.²⁹ However, law enforcement in this case has not fully reflected the principle of social justice, as the sanctions imposed were deemed insufficient to create a deterrent effect.

Another case analyzed is the monopoly in the industrial gas distribution sector.³⁰ In this case, KPPU successfully demonstrated the abuse of dominant market position by a

²⁷ Amala, A. C., Laras, R. T. I., Saragih, R. A. D., Jennifer, & Fransisca, V. (2022). PANCASILA SEBAGAI PARADIGMA KEHIDUPAN BERBANGSA DAN BERNEGARA. *Nusantara: Jurnal Pendidikan, Seni, Sains, dan Sosial Humanioral*, 1(1), 1–15. <https://doi.org/10.11111/nusantara.xxxxxxx>

²⁸ Tim Penyusun. (2023). Lima Tahun Membumikan Persaingan dan Kemitraan: Laporan Lima Tahun 2018 - 2023. www.kppu.go.id

²⁹ Sembiring, E. P., Sirait, N. N., Siregar, M., & Sukarja, D. (2022). Analisis Yuridis Terhadap Perjanjian Penetapan Harga Tiket Pada Sektor Jasa Angkutan Udara Niaga Berjadwal Penumpang Kelas Ekonomi Dalam Negeri. *Locus Journal of Academic Literature Review*. <https://doi.org/10.56128/ljoalr.v1i1.51>

³⁰ Cameron, P. D. (2023). Competition In energy markets: Law and regulation in the European Union. *In Competition In Energy Markets: Law And Regulation In The European Union*. <https://doi.org/10.1093/ejil/chn048>

particular business entity.³¹ However, the implementation of competition law in this case faced challenges in inter-agency coordination, particularly between regional governments and relevant ministries.³² The existing legal structure remains suboptimal in supporting the principles of mutual cooperation (gotong royong) and the balance between individual and societal interests, as mandated by Pancasila.

An analysis of the cases handled by KPPU also reveals a gap in the protection of small and medium enterprises (SMEs). In several cases, SMEs have frequently become victims of unfair business practices, yet their access to justice remains limited.³³ Complex legal procedures and high litigation costs are major barriers, contradicting Pancasila's principles of social justice and collective welfare, which should serve as the foundation for business competition law enforcement.

This study also finds that compliance with competition law among business actors remains low, particularly in sectors with weak regulatory oversight. Case studies show that the compliance program regulated under KPPU Regulation No. 1 of 2022 has not been fully effective in encouraging businesses to adhere to the law. Weak oversight and the lack of incentives are key factors that hinder the success of this program. Therefore, a more proactive approach is needed to cultivate a legal culture that aligns with Pancasila values. In the context of competition law enforcement, this study identifies the need for policy reforms to enhance the effectiveness of law enforcement mechanisms. Case studies indicate that the dominant retributive approach needs to be complemented with more inclusive mechanisms, such as mediation and deliberation (musyawarah). Mediation and deliberation mechanisms, including leniency programs, have been effectively implemented in other jurisdictions.³⁴ This approach not only reflects the spirit of mutual cooperation (gotong royong) in Pancasila but also increases business actors' trust in the legal system. Thus, business competition law can function not only as an instrument for regulating market competition but also as a tool for achieving social justice and collective welfare.

³¹ Tim Penyusun. (2023). Lima Tahun Membumikan Persaingan dan Kemitraan: Laporan Lima Tahun 2018 - 2023. www.kppu.go.id

³² Pawestri, W. D. (2017). KEADILAN SOSIAL DALAM PERLINDUNGAN KEPENTINGAN NASIONAL PADA PENANAMAN MODAL ASING BIDANG SUMBER DAYA ALAM. *Yuridika*, 30(1), 84. <https://doi.org/10.20473/ydk.v30i1.4683>.

³³ KPPU. (2017). Laporan Kinerja KPPU 2016. Lihat juga Tim Penyusun. (2023). Lima Tahun Membumikan Persaingan dan Kemitraan: Laporan Lima Tahun 2018 - 2023. www.kppu.go.id.

³⁴ Beaton-Wells, C. (2017). Criminal sanctions for cartel conduct: The leniency conundrum. *Journal of Competition Law and Economics*, 13(1). <https://doi.org/10.1093/joclec/nhx004>

3.5. Comparison of Business Competition Law Implementation in Indonesia and Other Countries

A comparative analysis of business competition law enforcement in Indonesia, Australia, Singapore, and Italy highlights several fundamental differences in regulatory approaches and implementation. These countries were selected because they have successfully developed effective and inclusive competition law systems, integrating strong local cultural aspects into their enforcement mechanisms.³⁵

In Australia, competition law enforcement is carried out by the Australian Competition and Consumer Commission (ACCC), which emphasizes transparency, public participation, and incentives for voluntary legal compliance. Australia adopts a cooperative approach through a compliance program, offering penalty reductions for companies that voluntarily report antitrust violations (leniency policy). This approach has proven effective in fostering a high level of legal compliance among business actors, while minimizing conflicts during law enforcement processes.³⁶

In Singapore, competition law is enforced by the Competition and Consumer Commission of Singapore (CCCS) (Setiawan et al., 2024). The institution actively promotes voluntary compliance through extensive public awareness campaigns and preventive legal education programs. CCCS also implements a collaborative approach to dispute resolution through alternative mechanisms such as mediation, aiming to provide solutions that are not solely based on administrative sanctions but also reflect local social values such as harmony and community participation.³⁷

³⁵ Beaton-Wells, C. (2017). Criminal sanctions for cartel conduct: The leniency conundrum. *Journal of Competition Law and Economics*, 13(1). <https://doi.org/10.1093/joclec/nhx004>. Lihat juga Cameron, P. D. (2023). Competition In energy markets: Law and regulation in the European Union. In *Competition In Energy Markets: Law And Regulation In The European Union*. <https://doi.org/10.1093/ejil/chn048>; Lee, C. (2005). Legal traditions and competition policy. *Quarterly Review of Economics and Finance*, 45(2-3 SPEC. ISS.). <https://doi.org/10.1016/j.qref.2005.01.002>; Rodriguez, A. E. (2007). Does legal tradition affect competition policy performance? *International Trade Journal*, 21(4). <https://doi.org/10.1080/08853900701597868>.

³⁶ Kotlán, P., Ondruš, M., Kozlová, A., Kotlán, I., Petr, P., & Kalabis, R. (2023). Criminal Compliance Program as a Tool for Criminal Liability Exculpation of Legal Persons in the Czech Republic. *Laws*, 12(2). <https://doi.org/10.3390/laws12020020>. Lihat juga Stacchezzini, R., Rossignoli, F., & Corbella, S. (2020). Corporate governance in practice: the role of practitioners' understanding in implementing compliance programs. *Accounting, Auditing and Accountability Journal*, 33(4). <https://doi.org/10.1108/AAAJ-08-2016-2685>; Sunaryo, S., & Hariyanto, D. (2023). Review of Competition Compliance Programmes: A Comparative Study of Indonesian Competition Law in KPPU Regulation Number 1 of 2022 with the United States and Australia [Skripsi, Universitas Gadjah Mada]. <http://etd.repository.ugm.ac.id/>; Vázquez, V. R., & Cadavid, N. T. (2023). Compliance programmes versus criminal law principles. An impossible mission. *Eunomia. Revista En Cultura de La Legalidad*, 24. <https://doi.org/10.20318/eunomia.2023.7676>.

³⁷ Putri, R. R., Chandrawulan, A.-A., & Amalia, P. (2018). Peringkat Arus Investasi Indonesia Dalam Kerangka Asean-China Free Trade Agreement (Perbandingan Dengan Singapura, Malaysia, Thailand, Dan Vietnam) Ditinjau Dari Prinsip Fair and Equitable Treatment. *Jurnal Hukum & Pembangunan*, 48(2), 275.

In Italy, the Autorità Garante della Concorrenza e del Mercato (AGCM) is responsible for competition law enforcement. The Italian regulatory framework prioritizes dialogue and stakeholder collaboration to encourage voluntary compliance. Italy has implemented special incentives for companies that proactively establish internal compliance programs, such as fine reductions or mitigation of administrative sanctions for competition law violations.³⁸ This model has successfully created a strong legal culture and increased active participation among business actors in supporting competition law policies.

Meanwhile, in Indonesia, although the Business Competition Supervisory Commission (KPPU) has introduced a compliance program through KPPU Regulation No. 1 of 2022, its implementation has not yet yielded optimal results due to low legal awareness and weak inter-institutional coordination.³⁹ The existing compliance system tends to emphasize formal-administrative aspects rather than reflecting local values such as mutual cooperation (gotong royong) and social justice, which are fundamental in the Pancasila paradigm.

Based on the comparative analysis, several best practices from Australia, Singapore, and Italy could be adopted and adapted in Indonesia to enhance business competition law enforcement: First, strengthening incentives in the compliance program to improve legal awareness and increase active participation among business actors, as successfully implemented by ACCC in Australia and AGCM in Italy. Second, adopting alternative dispute resolution (ADR) mechanisms, such as mediation and deliberation (musyawarah), which have been effectively applied in Singapore and align with Indonesia's cultural principles of mutual cooperation (gotong royong). Third, enhancing inter-institutional coordination by ensuring collaborative governance between KPPU, the judiciary, and government agencies, which reflects the value of communal solidarity within Indonesia's legal framework and enhances the effectiveness of fair competition law enforcement.

<https://doi.org/10.21143/jhp.vol48.no2.1664>. Lihat juga Ratnaningtyas, C., Sarjiyani, Aritonang, P. P., Valentina, R. A. V., & Maulisa, N. (2017). *Analisis Yuridis Perbandingan Ketentuan Notifikasi dan Batasan Nilai (threshold) dalam Rezim Kontrol Merger di Indonesia, Amerika Serikat, Uni Eropa, dan Singapura*. Universitas Indonesia. <https://lib.ui.ac.id/detail?id=20445508&lokasi=lokal>.

³⁸ Ratnaningtyas, C., Sarjiyani, Aritonang, P. P., Valentina, R. A. V., & Maulisa, N. (2017). *Analisis Yuridis Perbandingan Ketentuan Notifikasi dan Batasan Nilai (threshold) dalam Rezim Kontrol Merger di Indonesia, Amerika Serikat, Uni Eropa, dan Singapura*. Universitas Indonesia. <https://lib.ui.ac.id/detail?id=20445508&lokasi=lokal>.

³⁹ KPPU. (2017). Laporan Kinerja KPPU 2016. Lihat juga Tim Penyusun. (2023). Lima Tahun Membumikan Persaingan dan Kemitraan: Laporan Lima Tahun 2018 - 2023. www.kppu.go.id.

By adopting and adapting these best practices, Indonesia has the potential to develop a business competition law system that is not only effective from a formal legal standpoint but also substantively reflects the Pancasila paradigm, particularly in promoting social justice, collective welfare, and mutual cooperation in economic activities.⁴⁰

3.6. Policy Recommendations for Aligning Business Competition Law with the Pancasila Paradigm

Aligning business competition law with the Pancasila paradigm requires substantive legal revisions that prioritize the protection of Small and Medium Enterprises (SMEs). Existing regulations, such as Law No. 5 of 1999, should be supplemented with explicit provisions governing the equitable distribution of economic benefits. The objective is to reflect the principles of social justice and collective welfare, which are central to Pancasila values. These revisions should also consider strengthening the principle of mutual cooperation (gotong royong) in dispute resolution mechanisms.

In terms of legal structure, enhancing the institutional capacity of the Business Competition Supervisory Commission (KPPU) is essential to ensure a more inclusive and transparent enforcement process. This paper recommends simplifying legal procedures and reducing the cost of access to justice for small businesses. Additionally, coordination among relevant institutions must be strengthened to establish synergy in implementing competition law. This approach is expected to embody democratic values and social justice, as mandated by Pancasila.

Legal culture also plays a crucial role in aligning business competition law with the Pancasila paradigm. This paper recommends enhancing legal education programs that instill Pancasila values, such as social justice and mutual cooperation, among business actors. These programs can be implemented through training and public outreach initiatives involving local communities. Furthermore, incentives for businesses that comply with regulations should be expanded to encourage voluntary legal compliance. This approach is expected to foster a more inclusive legal culture that prioritizes social welfare.

The study also highlights the importance of developing more participatory dispute resolution mechanisms, such as mediation and deliberation (musyawarah), to replace the currently dominant retributive approach. These mechanisms not only embody the spirit

⁴⁰ Amala, A. C., Laras, R. T. I., Saragih, R. A. D., Jennifer, & Fransisca, V. (2022). PANCASILA SEBAGAI PARADIGMA KEHIDUPAN BERBANGSA DAN BERNEGARA. *Nusantara: Jurnal Pendidikan, Seni, Sains, dan Sosial Humanioral*, 1(1), 1–15. <https://doi.org/10.11111/nusantara.xxxxxxx>

of mutual cooperation in Pancasila but also increase business actors' trust in the legal system. By involving all relevant stakeholders in dispute resolution processes, fair and sustainable solutions can be achieved, ultimately supporting equitable economic development.

As a strategic step, this paper recommends integrating local values into business competition compliance programs, such as deliberation (*musyawarah*) and consensus (*mufakat*). This approach can enhance regulatory acceptance among businesses and the public. Additionally, adopting best practices from other countries, such as penalty reductions for businesses that demonstrate genuine efforts to comply with the law, can be implemented while adapting to Indonesia's local context. These measures aim to establish a business competition law system that is not only effective but also aligned with Pancasila values.

4. Conclusion

This study concludes that the substance, structure, and legal culture of business competition law in Indonesia have not yet fully reflected the philosophical values of Pancasila, particularly in terms of social justice, collective welfare, and mutual cooperation. Although Law No. 5 of 1999 and its amendments through the Omnibus Law have sought to enhance legal certainty through an administrative approach, the regulation remains suboptimal in protecting Small and Medium Enterprises (SMEs) as a realization of social justice. The existing legal structure, particularly regarding KPPU's authority, still faces challenges in transparency, institutional coordination, and enforcement effectiveness. Additionally, the lack of internalization of Pancasila values within Indonesia's legal culture continues to hinder the realization of fair and just business competition.

Based on these findings, several strategic policy recommendations are proposed: First, substantive legal revisions that explicitly integrate SME protection as a manifestation of social justice. Second, institutional strengthening of KPPU through simplified legal procedures, enhanced inter-agency coordination, and the implementation of dispute resolution mechanisms based on deliberation (*musyawarah*) and consensus (*mufakat*). Third, the development of legal culture through Pancasila-based legal education programs targeted at business actors and the public, supported by positive incentives for regulatory compliance. By implementing these recommendations, Indonesia's business

competition law will not only serve as an instrument for fostering a healthy and competitive market environment but will also play an active role in achieving social welfare in accordance with the Pancasila paradigm.

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