

Research Article

Pancasila Revitalization for the Enforcement of Non-Discriminatory Principle of Global Business Competition to Small Entrepreneurs

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ORCIDReggie Tentero: <https://orcid.org/0000-0003-2882-6480>**Abstract.**

Pancasila, in the 5th precept, is social justice for all Indonesians. This means that justice that is the ideal of the Indonesian nation is justice that is socially just. The revitalization of Pancasila is the key to restoring and growing social justice in business competition in the global era for small business actors. The implementation of Pancasila revitalization of small business actors in global business competition can be done by making waivers to the Ministerial Conference to follow up on the non-discriminatory principle of business competition against small business actors to get exemptions, so that the value of social justice contained in Pancasila can be realized, especially for small business actors. The existence of the non-discriminatory principle on the implementation of Pancasila revitalization of global business competition to small entrepreneurs is still recognized for its existence, considering that there is no follow-up to the disharmony of regulations in the WTO and business competition law in Indonesia, especially regarding the application of non-discriminatory principles to business competition specifically for small business actors. The method used in this study is normative juridical with a problem approach that has the purpose and purpose of reviewing applicable laws and regulations as well as literature with a theoretical concept, then connected with the problems that are the subject of discussion discussed in this research writing.

Keywords: Pancasila, non-discriminatory principles, global business competition, small/medium enterprises

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1. Introduction

In state life, Pancasila has become a basis for state philosophy, both juridically and politically. Based on this provision, revitalizing and re-actualizing the values of Pancasila as the basis for living with the Indonesian nation is a juridical and political implementation. Therefore, in order for Pancasila not to be negatively affected by globalization, the revitalization and actualization of Pancasila values must be the foundation of state life in Indonesia. The revitalization of Pancasila will make efforts to re-excavate the norms of the Pancasila philosophy to become the spirit and foundation for the formation of moral guidance and become the foundation for legal norms in Indonesia. Thus there is a

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close relationship between the process of fostering the nation's morale and the support of the resulting legal products so that the morality of Pancasila will be meaningful if it is supported by legal provisions based on the values of the Pancasila philosophy. Pancasila as the foundation of the Indonesian state philosophy is a basic fundament that cannot be separated at all from the spirit of the formation of a country.[1]

In realizing the revitalization of Pancasila, Pancasila needs to be taught in relation to the making or evaluation of public policies in addition to being discussed as the basis of the state. Pancasila can be revived as basic values that give orientation in making pro-public policies towards aspects of religion, humanity, nationalism, democracy, and justice as stated in Pancasila.

Departing from this concept, the Indonesian nation is then required not to be passive anymore towards the currents of globalization. The Indonesian nation must be active in every episode of social change by positioning globalization as a challenge of the times.

Indonesia on November 2, 1994, ratified the establishment of the World Trade Organization or what is called the World Trade Organization (WTO), marked by the issuance of Law Number 7 of 1994 concerning ratification of the Agreement Establishing The World Trade Organization (Approval for the Establishment of the World Trade Organization). The ratification of the WTO creates feuds and disagreements among economic and legal experts regarding whether or not Indonesia's economic and legal foundation is strong against the provisions contained in the WTO. In carrying out its multilateral trading system, the WTO has several basic principles or rules that animate the agreements contained in it. The principle is Non-discrimination and transparency. The principle of Non-discrimination consists of two principles, namely Most Favoured Nation (MFN) and National Treatment. In a nutshell, these two principles essentially require every WTO member state to give equal or non-discriminatory treatment.

Pancasila in the 5th precept is social justice for all Indonesians. This means that justice that is the ideal of the Indonesian nation is justice that is socially just. This is not in line with the existence of non-discriminatory principles in the WTO that do not distinguish small business actors, resounding even small business actors in a business competition so that it will greatly hinder the formation of social justice which is the goal of justice that the Indonesian nation aspires to.

Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, actually gives special treatment to small business actors who have positions that are excluded in the law, contained in Article 50 letter h. Thus, Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition does not apply non-discriminatory principles and gives special treatment to

small entrepreneurs in order to create social justice. The disharmony between the WTO and Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition is a problem that has not been resolved. If the Revitalization of Pancasila is optimized, the non-discriminatory basic provisions in the WTO that have been ratified by Indonesia will be the root of the problem and if the WTO provisions are prioritized then the ideals of realizing social justice will be hampered.

Previous research, among others: first, research conducted by Timbul Hamonangan Simanjuntak (2021) found that revolution 4.0 as a liberalist economic instrument is the antithesis of Indonesia's economic democracy, a populist independent economy. Economic globalization sweeping the world is a presence that must be accepted, but not to be taken for granted. Globalization is a "sine the quanon" something that must be done because of a reality.[2] second, research conducted by Siti Awaliyati Deliabilda (2021) shows that this inclusive economy is in line with the values of Pancasila. The three pillars in the Inclusive Economic Development Index are already in the satisfactory category but it takes time and effort to reach the very satisfactory category. Opportunities for Era Society 5.0, namely accelerating the reduction of inequality and improving the quality of people's lives. The challenges of Era Society 5.0, namely infrastructure that is not evenly distributed, the number of unemployed, and demographic bonuses. Pancasila values that can be applied are implementing a good financial management system; there is no extortion and exploitation of labor and standardization of wages; the collaboration of all stakeholders; prioritize the lives of many people; and prioritizing the acceleration of infrastructure development, expanding access to education, equitable access to health, opening up equal opportunities to access education and employment regardless of gender, and empowering women who have not worked.[3]

Based on the above explanations, this research will discuss issues related to "Pancasila Revitalization of Enforcement Non-Discriminatory Principle of Global Business Competition to Small Entrepreneurs". The problems that will be discussed in this study are:

1. How is the implementation of Pancasila revitalization of small business actors in global business competition?
2. How is the existence of a non-discriminatory principle towards the implementation of Pancasila revitalization of global business competition to small entrepreneurs?

2. Method

The method used in this research is normative juridical or legal research that only examines library materials it is also called literature law research or legal research that only examines library materials so it is also called literature law research. The normative juridical research type is a problem approach that has the purpose and purpose of reviewing applicable laws and regulations as well as literature with a theoretical concept, then connected with the problems that are the subject of discussion discussed in this research writing.[4]

3. Results and Discussion

3.1. Revitalization Of Pancasila To Realize Social Justice For Small Business Actors In Global Business Competition

Pancasila as a unifier of the nation has a logical consequence, namely that when national unity and unity are created under the auspices of Pancasila, the Indonesian nation can give up personal interests by advancing the public interest in order to answer the global crisis. In addition, Pancasila is not something rigid and sacred but is flexible and open to new things. Thus without losing its essential value, Pancasila becomes actual, relevant, and functional as the pillars supporting the spirit of Bhinneka Tunggal Ika.

As a consideration, it can be stated, that Pancasila as in the preamble to the 1945 constitution needs to be affirmed its position and role in state life, what needs to be stated is that the provisions of the MPR Number II/MPR/1998 state that the basis of the state referred to in this provision contain the meaning of national ideology as the ideals and goals of the state. Thus, apart from being the basis of the state, Pancasila contains meaning as a national ideology and as a national ideology, Pancasila is the ideal and goal of the state.[5]

The content of the Precepts of Pancasila if interpreted as a whole will also support the empowerment of National Identity. The first precept that means the Indonesian nation is religious and godly will further strengthen the morals of the community and an ethical life. In addition, the second and third precepts as a form of national unity and humanity that are just and have a civilized behavior system will also automatically encourage the realization of an identity society. The fourth precept is an identity of the democratic Indonesian nation and the fifth precept reflects that the essence of justice aspired to by the Indonesian people is actually social justice.

The theory of social justice was put forward by John Rawls. The view of 'justice as equality' makes Rawls different from that of John Stuart Mill. The principles of justice according to Rawls, are not from evaluating the expediency of action for the multitude (like Mill), but from rational choices under conditions that are fair to the basic structure of society.[6]

John Rawls stated that it will be recalled that the general conception of justice as fairness requires that all primary social goods be distributed equally unless an unequal distribution would be to everyone's advantage. It is understood that the concept of justice according to John Rawls distribution must be carried out equally but unequal distribution is allowed if all parties are lucky from the previous conditions.[7]

The end result is that social justice will be obtained by meeting the principles of fair distribution, and the state is responsible for playing that distributive role. The revitalization of Pancasila is increasingly important if we remember that we are persistently applying the principles of "good governance", three actors, namely the government (state), private sector (private sector), and society (civil society) must synergize constructively to realize better government. Among other things, it is manifested in the form of optimal public services.' In relation to the threat or influence of globalization, it must be faced with a strong mental attitude and character as the identity of the Indonesian nation. The revitalization of Pancasila values must have been carried out on the basis of a discrepancy between the ideals of Pancasila and the current conditions of life reality. Free competition in the global era will certainly burden and will kill small business actors, so social justice as justice as stated in Pancasila and aspired by the Indonesian nation must be implemented in free competition in this era of globalization. Article 33 of the 1945 Constitution, which is the basis for normative reference for formulating national economic policies, explains that the purpose of economic development is based on a people's democracy with social justice for all Indonesians through welfare approaches and market mechanisms.[8]

The revitalization of Pancasila is the key to restoring and growing social justice in business competition in the global era for small business actors, but the problem is the implementation of the revitalization of Pancasila itself. Actually, Law number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition is a form and implementation of social justice in the values contained in Pancasila. In addition to regulating the provisions of prohibited agreements, competition law also recognizes exemptions to emphasize that a rule of law is declared not to apply to certain types of actors or certain behaviors/activities.

Therefore, it is necessary to have a reference that is used for the exclusion of whether an activity, industry/entity or business actors are excluded from the regulation of competition law. The granting of exemptions in competition law is generally based on several considerations, including:

1. The existence of instructions or orders from the 1945 Constitution;
2. The existence of instructions or orders from the Law or other laws and regulations;
and
3. Instructions or arrangements based on the regulations of an administrative body.[9]

Article 50 letter h of the law provides exceptions and special treatment for small business actors, in other words, this law provides different or special treatment (discriminatory treatment in order to protect) to support social justice in competition law in Indonesia. The problem that has occurred until now is how long the law will take effect considering that Indonesia has ratified the WTO and in the WTO rules it is very thick with the principle of non-discrimination which is certainly contrary to Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition that does not apply the principle of non-discrimination, as evidenced by the existence of defecation on exceptions in the law. In dealing with these problems, if the revitalization of Pancasila is prioritized, it will certainly override the provisions in the WTO and will result in no harmonization of rules between the rules contained in the WTO and the rules of Indonesian competition law.

Newly independent states usually become members of GATT through this provision. One of the most important consequences is that these new states will assume the rights and obligations of GATT from the country that was once its sponsor as long as the newly independent state does not reject those rights and obligations. The WTO agreement actually allows a country to request exemption from the application of MFN (most favored nation) obligations which is a form of the principle of non-discrimination. When a country requests an exemption from MFN obligations, the request will be reviewed every five years. Exemption from the application of these MFN obligations should only be made for a period of 10 years.[10]

The period when Indonesia ratified the WTO with the time for the release of MFN obligations has certainly exceeded the time and the logical consequence is that there is no longer any special treatment for a business competition given to SOEs, small business actors and other establishments contained in Articles 50 and 51 of Law number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition.

The logical consequence is actually not absolute if the attempted waiver (exemption) of WTO rules to the Ministerial Conference is successful, but if these efforts are not successful then Indonesia as a member of the WTO must comply with the provisions of the MFN in the WTO.

Pancasila's revitalization of competition law will be successful if there is a decision from the WTO Ministerial Conference stating that it extends the period of MFN exemption, and changes or stops the exemption. The following is a review of the waiver provisions contained in Article IX of the WTO:

1. *In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three-fourths (4) of the Members unless otherwise provided for in this paragraph.*
2. *A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time period, any decision to grant a waiver shall be taken by three-fourths (4) of the Members.*
3. *A request for a waiver concerning the Multilateral Trade Agreements in Annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services, or the Council for TRIPS, respectively, for consideration during a time-period which shall not exceed 90 days. At the end of the time period, the relevant Council shall submit a report to the Ministerial Conference.*
4. *A decision by the Ministerial Conference granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.*

5. *Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.*”

Based on the analysis above, the implementation of Pancasila Revitalization of business competition will be realized if regulations in the WTO can be excluded through waiver efforts that Indonesia has successfully submitted to the Ministerial Conference so that Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition can be maintained and the creation of harmonization between the provisions in the WTO and the Law. Social justice, which is the goal of Indonesian competition law, will also be realized even though it is still in the stage of competition law regulation, not yet to the stage of social justice in practice.

3.2. The Existence Of A Non-Discriminatory Principle On The Implementation Of Pancasila Revitalization Of Global Business Competition To Small Entrepreneurs

The WTO Secretariat is based in Geneva, Switzerland. The WTO Secretariat has about 450 staff and is chaired by a Director General (Director General) and 4 assistants to the Director General. The principles underlying the regulation of trade relations for all WTO member states are known as the Principle of Most Favoured Nations Treatment (MFN), which is a principle that emphasizes equal treatment for all WTO member states, as well as the principle of National Treatment (NT), which is the principle of national treatment that must not be different from other member states. The principle of non-discrimination in GATT is contained in the principle of most favoured nation or MFN (Article 1 of GATT). MFN emphasized that concessions granted to one trading partner country should also apply to all other countries. One country should not be treated better or worse than another. Thus, all countries should also enjoy equal opportunities in the liberalization of international trade and bear the same responsibility as well.

In addition to the MFN, in the principle of non-discrimination also known as the principle of national treatment or NT (Article III GATT), this principle requires a country to treat goods, services, or capital that have entered its domestic market in the same way that the country treats such products when they are made, owned, or supervised by its citizens. The existence of the Principle of Most Favoured Nation and National Treatment, especially with regard to international trade, basically aims to eliminate discrimination among all members in every trade transaction.

Free trade is a challenge today that must be faced with a moderate, but smart path through the improvement of the rules of the international economic law game, with the

aim of creating an equitable international economic order by taking into account the balance and equality of relations between developed and developing countries.[11] The existence of the era of globalization will result in free trade becoming unstoppable. Therefore, Pancasila values are the foundation as well as a filter of free trade flows that are not in accordance with the purpose of Pancasila values, one of which is the value of social justice.

The existence of small business actors will also be determined depending on the value of Pancasila to the era of globalization, so the revitalization of Pancasila is the key so that the value of Pancasila can be revived. Business actors, both small and large business actors, are not only focused on trade in goods but also related to services, GATS provides an opportunity for member countries to revise and design statutory provisions that affect trade in services to be in line with the principles of GATS and GATT. The main principles of GATS include the principle of non-discrimination consisting of the most favoured nation principle and national treatment, the principle of liberalization of market access, and the principle of transparency. Meanwhile, WTO principles that affect trade in services include the principles of MFN, national treatment, and government procurement. One country must not give preferential treatment to another country or commit acts of discrimination against it. This principle is seen in Article 4 of agreements related to intellectual property rights (TRIPs) and is also stated in Article 2 of the Agreement on Services (GATS).[12]

Small business according to M. Kwartono Adi is a people's economic activity that has a net worth of at most Rp200.000.000 excluding land and buildings for business premises or that has annual sales proceeds of at most Rp1.000.000.000 and belongs to Indonesian citizens. According to the provisions of Article 1 number 1 of Law Number 9 of 1995 concerning Small Business, what is meant by small business is Small Business is a small-scale economic activity of the people and meets the criteria for net worth or annual sales proceeds and ownership as stipulated in this Law. Regarding the criteria for small business regulated in Article 5 paragraph (1), when viewed from the definition of small business above, it can be said that small business actors are business actors who carry out business activities as described above. Small business actors also have the right to legal protection.

Ratifying the WTO by Indonesia provides a consequence that Indonesia must comply with all provisions in the WTO including the principle that animates the rules in the WTO, namely the non-discriminatory principle. The WTO is a self-enforced contract, non-compliance with the contract will be punished through the decision of the WTO Prosecuting Body, aggrieved WTO members can request and force enforcement of

prohibited acts. The existence of a non-discriminatory principle causes a disharmony in Indonesian competition law because Law Number 5 of 1999 is not based on a non-discriminatory principle. The non-amendment of this law resulted in Indonesia's competition law indirectly not recognizing the existence of non-discriminatory principles in the field of competition law.

The waiver effort is a step that Indonesia can take to get an exemption from the application of the non-discriminatory principle of competition law specifically for small business actors, but until now this concrete step is still not realized, and until now the author has not found any papers or information that Indonesia is making waiver efforts related to the problem of reducing the application of the non-discriminatory principle of business competition law specifically for small business actors. Thus, the rules in the WTO and Indonesian competition law contradict each other so that the existence of non-discriminatory principles in competition law is still valid.

4. Conclusion

The implementation of Pancasila revitalization of small business actors in global business competition can be carried out by making waivers to the Ministerial Conference to follow up on the non-discriminatory principle of business competition against small business actors in order to get exemptions, so that the value of social justice contained in Pancasila can be realized, especially for small business actors.

The existence of the non-discriminatory principle on the implementation of Pancasila revitalization of global business competition to small entrepreneurs is still recognized for its existence considering that there is no follow-up to the disharmony of regulations in the WTO and business competition law in Indonesia, especially regarding the application of non-discriminatory principles to special business competition for small business actors.

Conflict of Interest

The author states that there is no conflict of interest related to the writing or publication of this article I created.

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References

- [1] Taufiq A. Refleksi Atas Revitalisasi Nilai Pancasila Sebagai Ideologi Dalam Mengeleminasi Kejahatan Korupsi. *UNIVERSUM J Keislam dan Kebud.* 2015;9(1). <https://doi.org/10.30762/universum.v9i1.73>.
- [2] Simanjuntak TH, Mukhlis I, Pratama A. Demokrasi Ekonomi Pancasila, Ekonomi Berdikari dalam Menghadapi Arus Globalisasi-Revolusi Industri 4.0. In: *Prosiding Seminar Nasional Ekonomi Pembangunan*. 2021. p. 91–108.
- [3] Deliabilda SA, Marlisa V, Anditya FS, Ariana T, Dasman S. Penerapan Nilai-nilai Ekonomi Pancasila dalam Percepatan Ekonomi Inklusif di Era Society 5.0. *Pros EMAS Ekon Manaj Akunt Kewirausahaan*. 2021;1(1):1–20.
- [4] Mahmud Marzuki P. *Penelitian hukum*. Jakarta: Kencana Prenada Media; 2005. p. 55.
- [5] Soemantri S. *Hukum Tata Negara Indonesia Pemikiran dan Pandangan*. Bandung: Remaja Rosdakarya; 2014.
- [6] Leback K. *Six Theories of Justice (Teori-Teori Keadilan: Analisis Kritis Terhadap Pemikiran JS Mill. John Rawls, Robert Nozick, Reinhold Neibuhr, Jose Porfirio Miranda)*, diterjemahkan oleh Yudi Santoso. Bandung: Nusamedia; 1986.
- [7] Rawls J. *A theory of justice*. Cambridge (MA): Harvard Univ. Press; <https://doi.org/10.4159/9780674042605>.
- [8] Nahak A. Tinjauan Yuridis Terhadap Perjanjian Dan Kegiatan Yang Dilarang Atas Perusahaan Diluar Yuridiksi Teritorial Hukum Indonesia (Studi Kasus Putusan Nomor 07/Kppu-L/2007). *J Ilmu Huk.* 2017;6(2):131–42.
- [9] Hakim DA. Pengecualian Perjanjian Hak Kekayaan Intelektual Dalam Hukum Persaingan Usaha. *Fiat Justisia J Ilmu Huk.* 2015;9(4).
- [10] Surinda Y. Pengetahuan Hukum, Tips & Info Bermanfaat [Internet]. 2016 [cited 2022 Aug 31]. Available from: <https://yuokysurinda.wordpress.com/2016/02/10/prinsip-most-favoured-nation-dan-national-treatment-di-indonesia/>

- [11] Erawaty AF. Globalisasi Ekonomi dan Perdagangan Bebas: Suatu Pengantar, dalam buku Aspek Hukum dari Perdagangan Bebas. Bandung: Citra Aditya Bakti; 2003.
- [12] Adolf H. Hukum perdagangan internasional. PT RajaGrafindo Persada; 2006.