

Majority Rule Principle In Limited Liability Company As Monopoly Of Business Competition Antithesis Of Pancasila Economic Justice

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Abstract

Limited Liability Company (PT), as the dominant form of business entity in the Indonesian economic system, has a decision-making structure based on the majority rule principle. Although this principle is considered efficient in running the company, in practice, it can lead to the domination of the majority group over minority shareholders. When this principle is practiced absolutely without a minority protection mechanism, it can lead to monopolistic practices and ignore the principle of economic justice of Pancasila, which prioritizes the balance between individual interests and collective interests. This research aims to analyze the application of the majority rule principle in Limited Liability Companies in Indonesia. This research uses normative research. Legal Materials in Legal Material Collection Procedures in this Research, namely Normative Legal Research, are legal materials that are studied and analyzed, including primary, secondary, and tertiary legal materials conducted by library research. The technique for reviewing and collecting the three legal materials uses document studies. The data obtained was collected in the manner described earlier, arranged systematically, and then analyzed qualitatively. The results show that Indonesia adheres to the concept of a Welfare State based on Pancasila, which is reflected in the Preamble of the 1945 Constitution and Article 33 of the 1945 Constitution, which mandates the government to protect, prosper, and educate the nation's life, as well as participate in world order for social justice. However, the inclusion of elements of capitalism through the amendment of Article 33 paragraph (4), which emphasizes the "efficiency of justice," has led to misalignment with the initial goal of social justice for all people, which can be seen from the high poverty and unemployment rates. Therefore, the Economics Analysis of Law (EAL) approach becomes relevant to analyze and bridge justice and legal certainty, encouraging a return to the Pancasila economic system based on the principle of kinship in order to realize welfare and substantive justice for all Indonesian people.

Keywords: Majority Rule, Limited Liability Company, Monopoly, Business Competition, Economic Justice, Pancasila.

1. INTRODUCTION

The Economic System is a system that works in the economic field and is closely related to the ideology adopted by its people. Doyle defines the economic system as "a web of interactions between individuals, economic units, and institutions that determine how resources are best used to satisfy competing demands." The constitution of a country guarantees everything related to the life of the nation, including the economic system of the nation and the State of Indonesia. [The national economic system is the perspective and belief of a nation to regulate everything related to the livelihood of many people, especially related to the authority to manage, control, and distribute production factors by the public and private sectors.

Jimly Asshiddiqie said the Preamble of the 1945 Constitution (UUD 1945) contains a very rich content of values, including those related to the economy and economic development activities. UUD 1945 is essentially a constitution that frees the Indonesian nation from the shackles of political colonialism, cultural colonialism, and also economic colonialism. Therefore, the 1945 Constitution is nothing but a liberating constitution for the Indonesian nation (Asshiddiqie, 2020). By "the founding leaders," the notion of collective freedom as a nation was once dichotomized with the notion of individual freedom so that the Articles of Human Rights were refused to be explicitly included in the formulation of Article 28 of the 1945 Constitution. However, after the Second Preamble of the 1945 Constitution in 2000, all

international instruments on human rights have been adopted into the material of Article 28A to Article 28 J of the 1945 Constitution so that the notion of collective liberty can no longer be separated from the notion of individual freedom. Therefore, in political democracy and economic democracy, in essence, the individualism of every free Indonesian is recognized, resulting in the notion of national independence as a collective. There is no independence without freedom, and there will also be no freedom without independence. Both are two sides of the same coin.

Therefore, the Indonesian economic system is liberating and, at the same time, liberates the Indonesian people from the shackles of oppression and colonialism (liberating constitution). As a collective, the Indonesian nation is independent in managing its economic resources for the greatest prosperity of the people based on the principle of justice for all; this is the dream of a just and prosperous society based on Pancasila (Asshiddiqie, 2020).

Bung Karno stated that Pancasila is the (Philosophische Grondslag) of Free Indonesia. Pancasila is the fundament, philosophy, deepest thought, soul, and deepest desire for the building of an eternal and eternal Free Indonesia. The word Merdeka according to Bung Karno is political independence, politieke onafhankelijkheid (Rasyid & Sofian, 2023). The thought of the founding fathers confirms the Basic Objectives of Indonesia's Economic Development as stated in the 4th paragraph of the Preamble of the 1945 Constitution, Article 1 paragraph (3) of the 1945 Constitution, Article 33 paragraph (1) of the 1945 Constitution, namely to realize the welfare of the people based on Pancasila and the 1945 Constitution.

Business entities that are not included as legal entities are Civil Partnerships, Limited Liability Companies (PT), Cooperatives, and Foundations (Rasyid & Sofian, 2023). The meaning of the company refers to the way the capital is determined in this legal entity. Therefore, a limited liability company consists of its elements: (1) a company, (2) capital in the form of shares, and (3) the responsibility of shareholders is limited. The meaning of limited is by the ownership of the number of shares. The concept and meaning of limited refers to the responsibility of shareholders. A Limited Liability Company (PT) is a legal subject with the status of a legal entity (Febriansyah, 2016).

A Limited Liability Company (PT) is established with (1) the principle of agreement and (2) joint venture authorized capital, which is all divided into shares that must meet the requirements of the Law (Pramono, 2007). A Limited Liability Company is a legal entity, meaning that it can bind itself and perform legal acts like a person and can have wealth or debt (Soemitro, 1993). As a legal entity, a Limited Liability Company has assets that are separate from the assets of the Board of Directors (as administrators), the Board of Commissioners (as supervisors), and the shareholders (as owners). In conducting its activities, the Limited Liability Company is responsible for the Limited Liability Company as a legal entity represented by its Board of Directors.

In a Limited Liability Company, shareholders have an important role in the continuity of the Limited Liability Company in the long term because shareholders are parties who have the right to direct and hold accountable the Board of Directors and/or the Board of Commissioners for the activities of the Limited Liability Company, through the Annual General Meeting of Shareholders (GMS) and Extraordinary GMS (EGMS).

Based on Article 52 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), shares entitle their owners to attend and vote in the GMS, receive dividend payments and the remaining assets from liquidation, and exercise other rights by the UUPT. The voting rights of shareholders are determined based on the principle of one share, one vote by Article 52 paragraph (1) letter a of the UUPT; namely, shares entitle their owners to attend and vote in the GMS. The principle of one share, one vote is a weakness of the UUPT because this principle becomes the majority rule used as a mechanism in making decisions at the General Meeting of Shareholders (GMS).

Monopolistic practices that often occur cause minority business actors to experience bankruptcy, which has an impact on national economic development that should be able to realize prosperity for the people of Indonesia and not only for a handful of business actors. Apart from all that, in addition to the need to improve coordination with other related institutions, KPPU itself is actually expected to take the initiative to cover up the weaknesses, considering that it has the authority as a self-regulatory body (Yusmic et al., 2023).

Pancasila, as the ideological foundation of the Indonesian nation and State, which is the basis of the Pancasila economic system, can provide values of justice as legal reform in the country of Indonesia (Elza Syarif, 2021). The value of justice contained in the value of Pancasila can be the basic foundation for the formation of laws that are humane, just, and civilized and social justice for all Indonesian people (Nurnaningsih & Solihin, 2020).

Reasoning about the Pancasila Economic System began before Indonesia's independence and continues to develop until today. The founding fathers and advocates of SEP have provided interpretations and characteristics of the system. Pancasila Economy is a philosophical view in the field of economic life as a direct implication of the acceptance of Pancasila in this country. If Pancasila is typical of Indonesia, then Pancasila Economy is a typical Indonesian economy (Majid et al., 1986).

Based on the background of the problem, this research is expected to provide improvements and corrections to the weaknesses of the application of the Majority Rule Principle in Limited Liability Companies. The application of the Majority principle results in the occurrence of monopolistic practices of business competition that are not by the Pancasila Economic system, which results in the retreat of the economic development of the Indonesian State with social justice for all Indonesian people.

Researchers convey that the novelty (State of the Art) in this research is that the Majority Rule Principle in Limited Liability Companies is a form of Monopoly of Business Competition, which is the Antithesis of Pancasila Economic Justice. Researchers analyzing the resolution of business competition that reflects justice, certainty, and legal benefits for business actors must start by limiting the application of the Majority Rule Principle.

The function of Law in Economic Development and Social Economic Law in Indonesia should ideally refer to the fundamental basis that Indonesia is a State of Law by Article 1 paragraph (3) of the 1945 Constitution, which states, "The State of Indonesia is a State of Law" Indonesia as a state of Law has the concept of Welfare State or Welfare State Economic System as stated in the 1945 Constitution, namely that the State must be able to be used as a foundation in terms of improving public welfare and development in a country in order to create a just, prosperous and prosperous society, by realizing a democratic system where every citizen has the same opportunity to be able to access economic resources, education, technology and so on. The ideal legal goal, by the philosophy of Pancasila as the basic norm of the nation and the State of Indonesia, is that the Law must be fair, certain, and useful so that the Law as the Commander can play an important role in advancing development in Indonesia.

2. METHOD

This research uses normative research. Normative Law, according to the opinion of Soerjono Soekanto and Sri Mamuji, is legal research conducted by examining library materials or secondary data only (Soekanto & Mamuji, nd). Meanwhile, the opinion of Normative Legal Research, according to Mukti Fajar ND and Yulianto Ahmad, is based on the object of study so that the understanding is legal research that places the Law as a system of norms. The normative system in question is about the principles, norms, rules of legislation, court decisions, agreements, and doctrines (teachings) (Dewata, 2010). The normative legal research method is a scientific research procedure to find the truth based on the logic of legal science from the normative side. The steady scientific logic in normative legal research is built on scientific disciplines and ways of working in normative legal science.

The specification of this research is descriptive analysis, namely describing the findings of the research object related to legislation. This research uses secondary data, which includes primary legal materials such as laws and regulations such as the 1945 Constitution and laws and regulations related to the problems in this dissertation, namely Law No. 40 of 2007 concerning Limited Liability Companies, Law 5 of 1999 concerning Monopolies and Unfair Business Competition, the Civil Code and other laws and regulations as the hierarchy of legislation and tertiary legal materials.

Legal Materials in Legal Material Collection Procedures in this Research, namely Normative Legal Research, are legal materials that are studied and analyzed, including primary, secondary, and tertiary legal materials conducted by library research. The technique for reviewing and collecting the three legal materials uses document studies. The data obtained is collected in the manner described previously and

arranged systematically to then analyze its contents qualitatively, which in the end is written what should be done, namely primary data analysis strengthened by juridical analysis, namely the review and description of data so as to produce conclusions.

3. RESULT AND DISCUSSION

Indonesia, as a welfare state, has a unique economic foundation, namely the Pancasila Economic System. This system places the values of Pancasila as the main foothold in the formulation and implementation of economic policy, especially the fifth principle of "Social Justice for All Indonesian People." According to Mubyarto, one of the important figures in the development of the idea of Pancasila Economy, this system was born as a result of the sublimation of the aspirations of the Indonesian people that have been formulated in the Preamble and Body of the 1945 Constitution (Mubyarto, 2004). Pancasila and the 1945 Constitution are not the result of chance but the culmination of the intellectual and cultural development of the Indonesian people. Even so, Mubyarto emphasized that this achievement does not necessarily signify that the nation's task has been completed (Mubyarto, 2004). On the contrary, the process of formulating and implementing the Pancasila Economy is a long and continuous journey that cannot be completed in just one or two generations. It is part of the nation's historical process that continues to seek, filter, and solidify the content and meaning of Pancasila in real life, including in economic life (Mubyarto, 2004).

Based on the framework of the Pancasila Economic System, Pancasila is not only the normative basis but also the philosophical basis of the economic system in Indonesia. Therefore, the relationship between economics and Pancasila must be approached with an understanding of philosophy and the humanities. Economics is studied and developed to meet the needs of human life, not merely for efficiency or profit. The philosophy of economics based on Pancasila is fundamentally linked to the philosophy of man. Humans are seen as individual and social beings. Vertically, the individual has a relationship with God, and horizontally, he lives in togetherness with fellow human beings. This relationship gives birth to an awareness of equality, togetherness, and universal human values that do not discriminate one human being from another. This condition is the central point of Pancasila, which emphasizes Humanity, which ultimately becomes the moral and ethical basis for designing and implementing economic policies.

The Pancasila Economic System is an integral part of Pancasila Democracy that places humans at the center of every economic policy. The main objective of this system is to ensure that every citizen has productive and independent work and obtains a fair income for a decent and dignified life. To achieve this, a national economic policy foundation is needed that encourages economic growth but also ensures equitable distribution (growth through equity). Bung Hatta himself emphasized that economic growth must be directed at increasing the prosperity of the people fairly and equitably, in line with the views of Joseph Stiglitz, who stated that sustainable economic growth must be inclusive, i.e., bring benefits to the majority of people in the community (Swasono & Madjid, 1986).

Relevant to the order of national economic practice, the existence of a legal and structured business entity is an important instrument to realize these economic ideals. Law Number 11 of 2020 on Job Creation emphasizes that a Limited Liability Company is a form of legal entity that can be established by two or more people based on an agreement, with an authorized capital that is entirely divided into shares. This company can also be formed by individuals who run micro and small businesses as regulated in laws and regulations. As stated (Nadapdap, 2020), the presence of a Limited Liability Company in economic activities is a necessity because almost all forms of modern business practices, whether run by traders, investors, contractors, bankers, or agents, have been integrated with this form of business entity.

The Limited Liability Company business model is not only popular among large businesses but is also widely used in micro, small, and medium-scale businesses. A Limited Liability Company is considered a safe and efficient option because it provides legal protection to the personal assets of its founders. From the principle of limited liability, business owners do not have to worry about losing their wealth in the event of a loss in business. This makes the Limited Liability Company a very desirable form of business entity in today's economic world (Purba, 2016).

Law No. 40/2007 on Limited Liability Companies does not explicitly provide a definition of shares. However, the provisions of the law state that the authorized capital of the company consists of the entire nominal value of shares, so shares are an important element in the capital structure of a company. Based on the Big Indonesian Dictionary (KBBI, 2005), shares are defined as a part, share, or right that a person has in a company because he has given his share of capital so that he is considered to own and supervise the company.

According to (Harjono, 2008), shares are classified as movable objects that give ownership rights not only to the company but also to other shareholders. These rights and obligations arise directly from the ownership of the shares. In the Limited Liability Company legal system in Indonesia, shareholders have a position as owners of the company but are not personally liable for agreements entered into on behalf of the company. Shareholders also do not bear the company's losses beyond the number of shares they own. This means that the responsibility of shareholders is limited, as stipulated in Article 3 paragraph (1) of Law Number 40 Year 2007, which is only the value of the shares taken or owned.

Each share owned by a person confers indivisible or indivisible rights. If more than one person owns a share, the owners must appoint one person as a joint representative to exercise the rights of the share. One of the important rights of shareholders is voting rights, which are governed by the principle of "one share, one vote." This principle is affirmed in Law No. 40 of 2007, which states that shares entitle their owners to attend and vote at the General Meeting of Shareholders (GMS). This provision shows that the Law recognizes the principle of one share, one vote, as well as recognizing the existence of various types of shares in a limited liability company, each of which can have different rights and characteristics.

The principle of one share, one vote is often considered the strongest form of protection for shareholders because the voting rights are directly attached to each shareholder and provide authority in the decision-making process at the General Meeting of Shareholders (GMS). This voting right is a functional instrument that helps shareholders control the direction of company policy and oversee the performance of the board of directors so that it still refers to the interests of all shareholders. In an ideal view, this power aims as a safety mechanism against potential irregularities in the management of the company (Surya, 2009). However, there are criticisms of the notion that the one-share, one-vote principle is the perfect decision-making mechanism. In practice, a majority voting system risks the domination of majority shareholders over minority shareholders. Even in certain structures, priority shareholders can have the power to appoint directors and commissioners, which further increases the potential for abuse of power within the corporation. This can undermine the principles of justice and the ethics of deliberation that characterize Indonesia's system of economic democracy.

From the perspective of Pancasila, especially the fourth principle, decision-making should be based on deliberation for consensus, not just based on the majority of votes. When the majority principle is used absolutely without considering the interests of minority shareholders, the values of social justice and togetherness that are the foundation of the Pancasila economic system are potentially ignored. Tensions between majority and minority shareholders often arise due to the practice of using the majority vote in the GMS, which overrides the protection of the rights of minority shareholders. Meanwhile, the very strategic position of the board of directors as the management and legal representative of the company, and often has the support of the majority shareholders, strengthens the urgency for fairer and equal legal protection for minority parties in the company (Kadir, 2024).

Researchers argue that the dominance of majority shareholders through voting mechanisms is one of the causes of injustice experienced by minority shareholders, which in turn can lead to monopolistic practices and unfair business competition. If the involvement of majority shareholders in the management of the company is excessive without supervision, it has the potential to cause losses, both for other shareholders and stakeholders (Wilamarta, 2002). Majority shareholders are considered to have intervened in the company if they have met several certain criteria, such as:

1. The majority of shareholders are directly or indirectly involved in the management of the company together with directors and commissioners, which results in losses to the company.

2. Majority shareholders who do not act in good faith, directly or indirectly acting on behalf of the company, commit illegal acts that result in losses to the company and third parties either by including their personal wealth or personal company in the company or utilizing the company's facilities.

In an effort to advance and develop the business activities of a company, a harmonious relationship between majority shareholders and minority shareholders is required. This harmonization is important so that potential conflicts between shareholders can be minimized, especially in making strategic corporate decisions. Disputes that occur between these two groups of shareholders, if not managed properly, can disrupt the stability and sustainability of the company's business. For this reason, legal protection for minority shareholders is a very important aspect, considering that they are also part of the capital owners of the company.

Law No. 40/2007 on Limited Liability Companies has granted a number of special rights to minority shareholders. These rights not only aim to protect their interests but also to prevent abuse of power by majority shareholders who have greater voting control in the General Meeting of Shareholders (GMS). Minority shareholders, along with majority shareholders, directors, commissioners, employees, and creditors, belong to the group of stakeholders that play a role in corporate life. Therefore, their position as parties who contribute capital to the company should be accompanied by fair and proportional legal protection (Harjono, 2008).

According to the provisions of the fair business competition regulation, if conflicts within the company or domination by majority shareholders lead to indications of monopoly or unfair competition practices, then the settlement can refer to the provisions stipulated in Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. This Law is present as a form of protection for a healthy and fair national economic order. Its existence guarantees legal certainty while encouraging the acceleration of equitable economic development, as mandated in the 1945 Constitution.

Law Number 5 Year 1999 not only prohibits monopolistic practices but also aims to create a competitive, open, and honest business climate. The modern economic principle to be realized through this regulation is to provide a fair opportunity for every business actor to compete fairly. Thus, efforts to seek maximum profits by business actors must still be carried out by upholding the ethics of fair business competition and not harming other parties (Kamal, 2010).

The objectives of antitrust Law in the perspective of Law Number 5 Year 1999 are formulated in the provisions of Article 3 of Law Number 5 Year 1999, which states as follows:

- a. Safeguarding the public interest and increasing the efficiency of the national economy as one of the efforts to improve the welfare of the people
- b. Realizing a conducive business climate through the regulation of fair business competition to ensure equal business opportunities for large business actors, medium business actors, and small business actors.
- c. preventing monopolistic practices and or unfair business competition caused by business actors and
- d. creation of effectiveness and efficiency in business activities

Other objectives of competition law related to protected objects are as follows (Rizkiyana, 2011):

- a. Protect business actors, especially non-dominant business actors.
- b. Protecting consumers from the high-cost economy where consumers are prevented from incurring high costs that do not match the quality of products received.
- c. Protect the country from the efficiency of economic activities that could reduce national welfare.
- d. Protecting the competitive process itself means protecting the fair market mechanism system based on the natural Law of supply and demand from being disrupted by the actions of business actors or government policies.

The Majority Rule principle realized through the One Share One Vote mechanism in Limited Liability Companies is indeed legally accommodated by Law No. 40/2007 on Limited Liability Companies (UUPT). However, in Indonesia, which adheres to an economic system based on Pancasila, especially the fourth principle of deliberation and consensus and the fifth principle of social justice, the application of this principle needs to be reconsidered. Decision-making mechanisms through voting are legally valid,

but when used in situations where there is no agreement, this method can obscure the family spirit that is the basis of the national economy as stipulated in Article 33 of the 1945 Constitution.

The researcher is of the view that the One Share One Vote principle, although giving legitimacy to the majority shareholder to determine the direction of company policy, can lead to inequality. This potentially contradicts the principles of justice and equity in the Pancasila economic system because the group of large capital owners has dominant power in determining strategic decisions without considering the aspirations or interests of minority shareholders. Therefore, it is necessary to evaluate the limits of the application of this principle in the structure and mechanism of decision-making in Limited Liability Companies so that it remains in line with the principles of kinship and social justice, which are the main foundations of the Indonesian economy.

Furthermore, the provision on the authorized capital for the establishment of a Limited Liability Company as stipulated in Law No. 40/2007, which sets a minimum of Rp50,000,000.00 as the initial requirement for the establishment, also raises the issue of inequality of access. According to reality, not all people have the financial capacity to fulfill this basic capital requirement, thus potentially inhibiting the participation of small communities or micro business actors in accessing this form of legal entity. This substantially contradicts the value of the fifth principle of Pancasila, namely "Social Justice for All Indonesian People," because it does not reflect inclusiveness and equality in business opportunities.

The absolute application of the One Share One Vote principle in Limited Liability Companies also has the potential to strengthen the dominance of majority business actors in controlling minority business actors, including through corporate takeovers. This kind of domination can lead to unfair business competition practices and lead to a form of monopoly of economic power in the company. Therefore, restrictions on this principle are very important, not only as an effort to create a fairer and healthier business climate but also as a step to prevent inequality in the business world, which is contrary to the spirit and basic economic values of Pancasila.

The concept of unfair business competition dispute resolution within the framework of the Pancasila Economic System can be analyzed from two main approaches, namely through the limitation of the Majority Rule principle in Limited Liability Companies and the application of business ethics by the values of Pancasila. The first approach can be explained through the Economic Analysis of Law theory developed by Richard A. Posner. In his theory, Posner explains that efficiency occurs when resources are allocated optimally so that the resulting value can be maximized. Economic analysis of Law emphasizes that efficiency is one of the ethical criteria in social decision-making, including in regulating the welfare of society at large (Posner, 1986). Therefore, restrictions on the application of the Majority Rule principle in Limited Liability Companies are in line with the objective of a fairer and more efficient allocation of resources in the economic structure of Indonesian society.

The second approach relates to the application of business ethics principles in economic practice by the values of Pancasila. Ethics is understood not only as a normative rule but also as a manifestation of moral values derived from the first principle of Pancasila, namely, Belief in One God. The concepts of ethics and morality are rooted in different but interrelated philosophical traditions. When business actors conduct their business based on religious values and uphold the principles of fair and civilized Humanity as contained in the second principle of Pancasila, they will avoid actions that create unfair business competition. This condition shows that economic democracy as an integral part of the Pancasila Economic System can only work if business actors carry out their business practices ethically and fairly.

Disputes in business practice often arise due to inequality in the distribution of justice between business actors, including when the government grants privileges or facilities to certain business groups, which leads to a form of monopoly. Researchers highlight that such practices are often triggered by legal recognition of the Majority Rule principle in Limited Liability Companies, as accommodated in Law No. 40/2007. The domination by majority shareholders facilitated by the system has caused minority business actors to be excluded from fair competition. For this reason, the principles of social and economic justice embodied in Pancasila demand that the legal system and economic policies prevent forms of competition that disadvantage some business actors.

The concept of the Pancasila economic system championed by Mubarto emphasizes the importance of an economic foundation that is in accordance with the noble values of the Indonesian nation, as contained in the Preamble and the body of the 1945 Constitution (Mubarto, 2004). This idealism should not be a utopian dream but should be rooted in Indonesia's own social, cultural, and historical realities. Therefore, Indonesia's economic system should not be shaped by foreign ideologies but rather derived from the values of the motherland.

Basically, Pancasila Economics is a synthesis of the values of justice that have been developed since the time of Aristotle to modern thinkers such as John Rawls. These values are then combined with the principles of justice in the economic analysis of Law, and everything boils down to one main goal: creating economic justice for all Indonesian people. Pancasila, as the basis of the State and the source of all laws, has an important role in shaping a fair economic legal system. This development continues, including with the presence of the Constitutional Court, which produces legal decisions with Pancasila nuances as a tangible form of the implementation of Pancasila values in the legal system and the national economy.

It cannot be denied that the existence of Pancasila, in this case, economic democracy through the Pancasila Economic system, is an antidote so that Indonesian society, including business people, does not participate in making a phase jump to capitalism, which only brings benefits to the strong and prepared, but brings disaster to the weak and has not been able to enter the global competition as a basic philosophy and ideal foundation. Pancasila animates all the actions and activities of the Indonesian people, including in the field of business activities, related to Pancasila business ethics.

The Pancasila business ethics rejects the attempt to reduce human beings to mere means of production. The emphasis of business on material gain is always echoed by the thinkers of the free business school, which is not fully able to provide a decent life equally for the welfare of the Indonesian people. Although property rights are recognized, in the Pancasila state, it is necessary to balance the enjoyment of the physical with the spiritual. This means that Pancasila business ethics is not oriented to mere physical aspects because it contains spiritual understanding in the form of morals, the Godhead, and also the glory of human dignity and Humanity. Business behavior also needs to reflect its attachment to the morals of Godhead and Humanity, which rejects the arbitrariness of personal welfare without awareness to also realize the welfare of society.

The realization of the fifth precept of Pancasila as a welfare state concept can only be achieved if the government takes firm steps to limit the application of the Majority Rule principle in decision-making. Instead, the decision-making mechanism needs to be based on an economic democracy system that prioritizes deliberation for consensus in accordance with the value of the fourth precept of Pancasila so as to create maximum justice and welfare.

4. CONCLUSION

Indonesia, as a legal state, embraces the concept of a unique Welfare State, based on Pancasila as the ideology and philosophy of the nation. The Constitutional Court affirmed that the Preamble of the 1945 Constitution holistically reflects the spirit of the constitution, starting from the realization of the nation's independence, the establishment of a government that protects the entire Indonesian homeland, advancing public welfare, educating the nation's life, to participating in a world order based on independence, eternal peace, and social justice. The people's sovereign republic based on Pancasila aims to realize a just and prosperous society.

The concept of an Indonesian welfare state is different from other countries because its national economic system is based on Pancasila, which is mandated in Article 33 of the 1945 Constitution. The State must provide jobs and a decent livelihood for the people, as affirmed by Article 27, paragraph (2) of the 1945 Constitution. However, the introduction of capitalist economic policies legitimized by Article 33 paragraph (4) of the 1945 Constitution, which emphasizes "efficiency of justice" without clarity on the impact on all the people, has caused misalignment with the spirit of the original Article 33 of the 1945 Constitution. This can be seen from the high poverty and unemployment rates, which show that the goal of social justice for all Indonesians has not been achieved.

In the face of this complexity, Economics Analysis of Law (EAL) becomes relevant as an approach to bridge the values of justice and legal certainty. EAL uses the principles of economics to analyze legal issues, assuming that humans are rational beings who act based on economic considerations. EAL theories, such as Pareto Efficiency and Kaldor-Hicks Efficiency, offer a policy evaluation framework that considers economic impact and public welfare. However, the application of efficiency without considering aspects of substantive justice can lead to inequality. Therefore, it is necessary to prioritize the formation of neutral laws and regulations that are able to balance competing interests so that the Law can function as a means of reforming society that leads to certainty and justice and prevents the repetition of history where order ignores justice. Restoring the national economic system to the Pancasila Economic System championed by Prof. Mubyarto, with the principle of kinship and the goal of social justice for all Indonesian people, is considered the closest step to the characteristics of the Indonesian nation and State.

5. REFERENCES

- A. Asshiddiqie, J. (2020). *Pancasila: identitas konstitusi berbangsa dan bernegara*.
- B. Dewata, M. F. N. & Y. A. (2010). Dualisme Penelitian Hukum Normatif & Empiris. Yogyakarta: Pustaka Pelajar. Fried, Charles. 1981. Contract as Promises, a Theory of Contractual Obligation. *Jurnal Berkala Fakultas Hukum Universitas Gadjah Mada* Vol, 24(3).
- C. Elza Syarif, S. H. (2021). *Sengketa Antarorgan Perseroan: Perspektif Teori, Praktik Dan Penyelesaian Sengketa Di Pengadilan*. Sinar Grafika (Bumi Aksara).
- D. Febriansyah, F. I. (2016). *Keadilan berdasarkan Pancasila: (dasar filosofis dan ideologis bangsa)*. Deepublish.
- E. Harjono, K. D. (2008). *Pembaruan Hukum Perseroan Terbatas: Tinjauan Terhadap Undang-Undang No. 40 Tahun 2007 Tentang Perseroan Terbatas*.
- F. Kadir, T. (2024). Gugatan Derivatif: Perlindungan Hukum Pemegang Saham Minoritas. *Jurnal Review Pendidikan Dan Pengajaran (JRPP)*, 7(1), 2881–2888.
- G. Kamal, M. (2010). *Hukum Persaingan Usaha (Teori dan Praktiknya di Indonesia)*. Raja Grafindo Persada.
- H. Mubyarto, M. (2004). Menuju Sistem Ekonomi Pancasila: Reformasi Atau Revolusi. *Journal of Indonesian Economy and Business (JIEB)*, 19(1).
- I. Nadapdap, B. (2020). *Hukum perseroan terbatas berdasarkan Undang-Undang no. 40 tahun 2007*. Permata aksara.
- J. Nurnaningsih, R., & Solihin, D. (2020). Kedudukan Perseroan Terbatas (PT) Sebagai Bentuk Badan Hukum Perseroan Modal Ditinjau Menurut Undang-Undang PT dan Nieuw Burgerlijk Wetboek (NBW). *JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial Dan Pendidikan*, 1(2), 142–151.
- K. Posner, R. A. (1986). *Economic analysis of law*.
- L. Pramono, N. (2007). Tanggung Jawab Dan Kewajiban Pengurus PT (Bank) Menurut UU No. 40 Tahun 2007 Tentang Perseroan Terbatas. *Buletin Hukum Perbankan Dan Kebanksentralan*, 5(3), 15.
- M. Purba, A. Z. U. (2016). *Hukum dalam kolom: kumpulan tulisan hukum bisnis, hukum kekayaan intelektual, hukum laut, dan hukum lingkungan*. Tempo Publishing.
- N. Rasyid, A., & Sofian, A. (2023). *Aspek Hukum Ekonomi Dan Bisnis: Edisi Revisi*. Prenada Media.
- O. Soemitro, R. (1993). *Hukum Perseroan Terbatas, Yayasan dan Wakaf*. Eresco.
- P. Wilamarta, M. (2002). *Hak Pemegang Saham Minoritas Dalam Rangka Good Corporate Governance*. Jakarta: FH UI.