

SYNERGY BETWEEN PUBLIC AND PRIVATE LAW IN REALISING A HEALTHY BUSINESS CLIMATE: A STUDY ON THE IMPLEMENTATION OF THE PRINCIPLE OF BALANCE IN NATIONAL ECONOMIC LAW

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Abstract

This study discusses the synergy between public and private law in creating a healthy business climate in Indonesia, with a focus on the implementation of the principle of balance in national economic law. The synergy between these two areas of law is key to creating an economic system that is fair, efficient, and responsive to the dynamics of the modern economy. The study employs a normative legal method with a legislative approach and literature review, analysing written legal norms as well as relevant doctrines and court rulings. The results of the study indicate that the implementation of the principle of balance is crucial for maintaining the proportion of rights and obligations of parties in economic legal relationships, whether in business agreements, commercial transactions, or macro-level regulations. However, its implementation still faces various challenges, such as unequal bargaining positions, low legal literacy, regulations that are not adaptive, and weak law enforcement. Proposed solutions include strengthening legal literacy, regulatory reform, enhanced oversight, and collaboration between the government, businesses, and the public. Thus, the synergy between public and private law and the implementation of the principle of balance are expected to create a healthy, fair, and sustainable business ecosystem in Indonesia.

Keywords: Synergy between public and private law, principle of balance, national economic law, healthy business climate, regulation, legal protection.

Introduction

Indonesia, as a country governed by the rule of law, adheres to the principle that all aspects of state life, including economic activities, must be regulated by clear and explicit legal provisions. In this context, the law plays a central role in regulating, directing, and protecting business actors and maintaining order in economic activities. Broadly speaking, the law in Indonesia is divided into public law and private law (Prasetyo & Anggraeni, 2025). Public law encompasses rules governing the relationship between the state and its citizens or state apparatus, with a focus on the public interest,

while private law regulates relationships between individuals or legal entities, prioritising individual interests. This division has been recognised since Roman times and was adopted in the European Continental legal system before being implemented in Indonesia (Beckers, 2019) .

In practice, the separation between public and private law is not always clear-cut. Many aspects of life, especially in the economic and business fields, require synergy between the two. This synergy is evident in various regulations, such as the regulation of cooperation agreements between the government and the private sector in infrastructure development and business development, where public and private interests must go hand in hand (Maruyama, 2001) . One of the main aspects of concern is the implementation of the principle of balance in national economic law. This principle requires that relationships between parties in business activities must be fair, proportional, and transparent. The government, as the public interest holder, is obligated to create a conducive business climate, while business actors, as private entities, must actively contribute to advancing the national economy while upholding fairness and the interests of the community (Mahendrawati, 2021) .

Indonesia's rapid economic growth has given rise to new dynamics in the business world, across all sectors, including micro, small, medium, and large enterprises. Business modernisation, such as the growth of modern stores and the transformation of traditional market structures, requires adaptive legal regulations that can provide protection for all business actors, including Micro, Small, and Medium Enterprises (MSMEs). Efforts to create partnerships between large businesses and MSMEs are a concrete example of the implementation of the principle of balance, as outlined in the " " (Cindawati, 2012) .

In several regulations, such as Article 14 of the Law governing partnerships, the obligation of large businesses to partner with MSMEs in a fair, reasonable, and mutually beneficial manner is emphasised. Additionally, oversight by institutions such as the Competition Supervisory Commission (KPPU) strengthens the public legal framework to ensure that the principle of balance is not merely a formality but truly guarantees economic justice. (*Law No. 9 1995 Regarding Small Businesses*, n.d., p. 9) . Ambiguity and conflicts of norms often arise due to differing interests between the state and private businesses. For example, in public-private partnerships (PPPs) for the provision of public infrastructure, there are gaps, conflicts, and ambiguities in legal norms that hinder implementation on the ground. This highlights the need for synergy and harmonisation between both parties to ensure legal certainty and justice. (Rosenfeld, 2013) .

For example, in the privatisation of state-owned enterprises, the main objective is not merely to generate state revenue, but also to promote the efficiency and performance of state-owned companies for the welfare of the community. Privatisation requires a balance between government (public) control and opportunities for the private sector (private) in the ownership and management of state assets. The success

of the synergy between public and private law is evident in the guarantees for public interests without neglecting the private rights of investors and business actors.

A healthy business climate is a condition that can only be achieved if there is legal certainty, justice, and balanced protection for all parties involved. The state is responsible for regulating and supervising with non-discriminatory principles, while the private sector is obliged to conduct business ethically and responsibly. The principle of balance serves as the common ground between the value of justice (public) and the freedom to conduct business (private) in national economic law (Maupin, 2013).

The concept of synergy between public and private law in the context of economic development does not stop at the normative level, but must be implemented in policies, contract arrangements, and effective dispute resolution mechanisms (Aggarwal, 2010). The government and business actors need regulations that are adaptive and responsive to changing times in order to encourage the growth of a healthy business climate. Especially in the era of globalisation, where foreign investment and market openness are increasingly inevitable, synergy between public and private law is absolutely necessary. Regulations must ensure the protection of local businesses, promote healthy competition, while still providing selective and fair access for foreign capital and technology (Lee, 2020).

Thus, research on the implementation of the principle of balance in the synergy between public and private law is very important, not only as a reflection of the dynamics of economic law practice, but also as a critical discourse for finding solutions to various challenges and disharmonies that still often arise. Balance is not merely a normative value, but also the foundation for sustainability in Indonesia's future economic development.

Research Method

The research method used in this study is the normative legal method, which focuses on the study of legal norms written in legislation, doctrine, and relevant court decisions related to the topic of synergy between public and private law in creating a healthy business climate (Eliyah & Aslan, 2025). Research data was obtained through a literature review of primary legal sources (laws, regulations, jurisprudence) and secondary legal sources (books, journals, scientific articles), which were then analysed using a descriptive-qualitative approach to examine the implementation of the principle of balance in national economic law and identify challenges and solutions encountered in practice (Ferrari, 2020).

Results and Discussion

Synergy between Public and Private Law in National Economic Law

Synergy between public and private law in national economic law is an important foundation in building a fair, efficient, and sustainable economic system in Indonesia.

National economic law not only regulates relationships between business actors, but also ensures the protection of public interests through strict and adaptive regulations.

Essentially, economic law has two main dimensions, namely public law and private law. Public law regulates the interests of the wider community through binding regulations, such as laws, government regulations, and state policies. Meanwhile, private law regulates relationships between individuals or legal entities in economic activities, such as business contracts, trade agreements, and commercial transactions (Lee, 2020). The synergy between these two legal domains is crucial in addressing the challenges of globalisation and national economic dynamics. The state cannot entirely delegate economic activities to the private sector, as public interest and social justice must be upheld through state intervention and oversight (Muhlizi, 2017).

The implementation of public and private law synergy can be seen in various national economic policies and regulations. For example, in infrastructure development through the Government and Business Entity Cooperation (KPBU) scheme, the government and the private sector work together to finance, build, and manage strategic projects. The government plays a role in supervision and policy determination, while the private sector provides capital and technical expertise (Petersmann, 2014).

The principle of balance is the main foundation of this synergy. This principle requires a fair balance between the rights and obligations of all parties, both in business agreements and in the implementation of public policies. Every legal decision must consider the interests of individuals and the community in a balanced manner. In practice, the application of the principle of balance often faces challenges, such as differences in bargaining power between large and small businesses, a lack of legal understanding, and the existence of regulations that are not yet fully harmonised. To address these challenges, the legal system provides protective mechanisms, such as oversight by authorised authorities, alternative dispute resolution, and the enforcement of strict sanctions for contract breaches (Hartanto, 2019).

Public and private law also work together to create a healthy business climate. Regulations such as Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and Law No. 8 of 1999 on Consumer Protection are important instruments for maintaining a balance between the interests of business actors and consumer protection. Legal certainty is a key factor in attracting investment and driving economic growth. Synergy between the public and private sectors, supported by clear and consistent regulations, creates a sense of security for investors and business actors to innovate and grow. (Law No. 9 1995, n.d.).

In addition, the synergy between public and private law is also evident in the government's efforts to provide tax incentives for micro, small and medium enterprises (MSMEs). This policy not only encourages the growth of MSMEs, but also ensures economic opportunity and social justice (Usman, 2022).

In the context of globalisation, collaboration between the public and private sectors is becoming increasingly important. Foreign investment, technology transfer, and infrastructure development require a legal framework that is capable of accommodating national interests while opening up opportunities for global businesses. This synergy is also reflected in the management of State-Owned Enterprises (SOEs) and Regional-Owned Enterprises (ROEs). The state retains strategic control over key assets while allowing the private sector to participate in the management and development of businesses, thereby fostering greater efficiency and competitiveness. (Supeno, 2020).

The principles of openness and transparency are integral parts of the synergy between public and private law. Every policy and business agreement must be based on clear, measurable, and accountable considerations, thereby creating trust between the government, business actors, and the community. The application of the principle of balance also requires the protection of human rights and the maintenance of public order. Every legal action must be proportionate to the objectives sought, without sacrificing the fundamental rights of individuals or the public interest (Trager & Simon, 2020).

The synergy between public and private law in national economic law is not only oriented towards economic growth, but also towards equitable distribution of development outcomes and improved community welfare. Economic policies must be able to address the challenges of high social and economic disparities in Indonesia. Cross-sector collaboration, both at the national and regional levels, is key to creating a conducive business ecosystem. The government, private sector, and society must support and innovate together to achieve the goals of inclusive and sustainable economic development. (Buse & Walt, 2000).

Finally, the synergy between public and private law in national economic law is a dynamic process that requires commitment, adaptation, and continuous evaluation. Only with strong synergy can Indonesia realise an economic system that is fair, competitive, and globally competitive.

Implementation of the Principle of Balance in National Economic Law

The principle of balance is one of the fundamental principles of Indonesian national economic law. This principle requires a fair balance between the rights and obligations of all parties in every economic legal relationship, whether in business agreements, commercial transactions, or in regulations governing macroeconomic activities. The implementation of this principle is crucial for fostering justice, legal certainty, and protection for all economic actors, including consumers, businesses, and the government. (Provost, 2014).

In the context of business agreements, the principle of balance is reflected in the proportional distribution of rights and obligations between the parties. Each party

involved in a contract is expected to receive benefits commensurate with their contributions, and no party should be unfairly disadvantaged. This is regulated in Articles 1320 and 1338 of the Civil Code, which emphasise the importance of agreement and freedom of contract, while remaining within the bounds of justice and good faith. (Provost, 2014) .

The implementation of the principle of balance is also highly relevant in standard contracts, which are frequently used in modern business transactions. Standard contracts often result in imbalance because their contents are unilaterally determined by business entities with stronger bargaining power (Prasetyo & Anggraeni, 2025) . Therefore, regulations such as Law No. 8 of 1999 on Consumer Protection ensure that standard contracts adhere to the principle of balance, thereby protecting consumer rights and preventing the abuse of power by businesses.

In the field of business competition law, the principle of balance is implemented through regulations that prevent monopolistic practices and unfair business competition. Law No. 5 of 1999 explicitly stipulates that business entities must conduct their activities while balancing individual interests and public interests. This aims to create equal opportunities for all business entities and prevent market dominance by certain groups. (Law No. 5 1999 , *Prohibition of Monopoly Practices and Unhealthy Business Competition*, n.d.) .

The application of the principle of balance is also evident in government policies that encourage partnerships between large businesses and MSMEs. Regulations require large businesses to partner fairly and mutually beneficially with small businesses, thereby creating equal economic opportunities and strengthening national competitiveness. This policy not only protects small businesses but also encourages inclusive economic growth (Beckers, 2019) . In sales transactions, both conventional and online, the principle of balance requires that the rights and obligations between the seller and the buyer are fulfilled proportionally. For example, in online sales, consumer protection is regulated so that buyers who have fulfilled their obligations (payment) also receive their rights (the appropriate goods), and conversely, sellers who have delivered the goods are entitled to receive payment. The joint account system in e-commerce is one innovation that supports the implementation of this principle (Maruyama, 2001) .

The principle of balance is also fundamental to the procurement of goods and services by the government. In procurement contracts, the rights of goods/service providers must be protected, while the government as the service user must also receive guarantees regarding quality and timely delivery. Provisions regarding penalties and guarantees in procurement contracts are concrete forms of the implementation of the principle of balance in national economic law practice (Mahendrawati, 2021) . Imbalances in economic legal relationships often arise due to differences in bargaining power, lack of legal understanding, or the use of non-negotiable standard clauses. To

address this, the legal system provides protective mechanisms such as oversight by competent authorities, alternative dispute resolution, and the enforcement of strict sanctions for contract breaches. These efforts aim to ensure that the principle of balance is maintained in every economic transaction (Cindawati, 2012) .

In the context of business competition, the principle of balance also serves to protect small businesses from harmful oligopoly or monopoly practices. Regulations prohibit agreements that could lead to market domination by one or more businesses, thereby creating healthy and efficient competition. This protection of the " " is very important to prevent losses to small businesses and consumers.

The application of the principle of balance is not limited to material aspects, but also includes spiritual and social aspects. National economic law requires that every business policy and agreement take into account its impact on the wider community, the environment, and social justice values. Thus, the principle of balance becomes the foundation for sustainable and environmentally conscious economic development (Diaz, 2017) . In practice, the implementation of the principle of balance often faces challenges, such as differing interpretations, weak enforcement of the law, and resistance from business actors with specific interests. Therefore, commitment from all stakeholders, including the government, business actors, and the public, is needed to continue strengthening the application of this principle in every aspect of national economic law (Rosenfeld, 2013) .

The importance of the principle of balance is also reflected in efforts to harmonise public and private law. Synergy between state regulation and freedom of contract in the private sector is key to creating a healthy and competitive business climate. The state acts as regulator and supervisor, while business actors carry out their activities with a high sense of social responsibility and business ethics.

The principle of balance is also implemented in consumer protection, where consumer rights are guaranteed through strict regulations and effective complaint mechanisms. Consumers who suffer losses can demand compensation or cancellation of the agreement if it is proven that there is an imbalance in the implementation of the contract. This provides a sense of security and trust for the public in conducting transactions (Cepparulo et al., 2023) .

In the digital and globalised era, the implementation of the principle of balance has become increasingly complex. Cross-border transactions, foreign investment, and technological developments require regulatory adaptation that can maintain a balance between national interests and market openness. The government must be able to adjust policies to protect local businesses without hindering innovation and foreign investment (Maupin, 2013) .

Finally, the implementation of the principle of balance in national economic law is a dynamic process that requires continuous evaluation and adjustment. Only through

collective commitment and consistent enforcement of the law can this principle truly achieve justice, legal certainty, and welfare for all economic actors in Indonesia.

Challenges and Solutions in Applying the Principle of Balance to Create a Healthy Business Climate

The application of the principle of balance in national economic law faces various complex and interrelated obstacles. One of the main obstacles is the imbalance in bargaining power between large and small businesses, as well as between businesses and consumers. Large businesses often have greater capital and access to information, enabling them to dictate contract terms and place other parties in a weak position (Maupin, 2013). This imbalance makes it difficult to achieve balance in everyday business practices. In addition, low levels of legal and digital literacy among businesses and consumers are also significant obstacles. Many parties are unaware of their rights and obligations in economic transactions, especially in the fast-paced digital era. As a result, they are vulnerable to unfavourable contracts or becoming victims of digital fraud, leading to inadequate legal protection (Aggarwal, 2010).

Regulations that have not been adapted to technological developments and new business models also pose a challenge. Many regulations are still oriented towards conventional transactions and are unable to accommodate the needs of digital transactions, personal data protection, and online transaction security. These legal loopholes are often exploited by certain parties to harm consumers or other business actors (Lee, 2020).

Weak law enforcement exacerbates the problem. Although regulations are in place, law enforcement resources are limited, coordination between agencies is suboptimal, and dispute resolution processes are often slow and cumbersome. This situation means that businesses that violate the principle of balance do not receive adequate deterrence, so violations tend to be repeated.

Supervision of business actors, especially in terms of product and service quality, is still ineffective. Many products that do not meet standards or are even dangerous remain on the market due to weak supervision by the authorities. This poses a risk to consumers and undermines confidence in the national economic legal system. Unhealthy business competition practices such as monopolies, cartels, and market domination by large business actors are still common. These conditions hinder the creation of healthy competition and harm small businesses and consumers. The principle of balance in business competition is also difficult to achieve without strict supervision and enforcement of the law (Prasetyo & Anggraeni, 2025).

Legal uncertainty resulting from frequent regulatory changes and inconsistent legal interpretations is also a major obstacle. Business actors are reluctant to invest or innovate due to concerns about future legal risks. This uncertainty hinders economic growth and innovation in the business sector. Limited access to legal information,

markets, and technology widens the gap between large and small businesses, as well as between businesses and consumers. Not all parties have equal opportunities to obtain the information needed to run their businesses fairly and equitably (Beckers, 2019).

A business culture that is not yet fully based on ethics and social responsibility also poses a challenge. Many business actors still prioritise short-term profits () without considering principles of balance and fairness, resulting in practices that harm others still occurring frequently. The capacity of dispute resolution institutions such as the Consumer Dispute Resolution Body (BPSK) and arbitration remains limited, both in terms of human resources and infrastructure. As a result, dispute resolution is often ineffective and inefficient, making it difficult to achieve justice for the aggrieved parties (Maruyama, 2001).

Globalisation and free trade bring new challenges in the form of low-quality imported products and increasingly fierce competition. National regulations must be able to adapt in order to continue protecting domestic businesses and consumers without hindering innovation and foreign investment (Mahendrawati, 2021).

Protection for Micro, Small, and Medium Enterprises (MSMEs) remains limited. MSMEs often find themselves in the most vulnerable position in business relationships and require special protection to compete fairly with larger businesses. The lack of collaboration between the government, businesses, and the community also hinders efforts to create a healthy and equitable business ecosystem. Synergy among stakeholders is essential to address the various challenges faced (Cindawati, 2012).

As a solution, strengthening legal and digital literacy is an important step. Massive legal and digital education for business actors and consumers can increase understanding of rights and obligations in economic transactions, so that they are better able to protect themselves from harmful practices. Regulatory reform and law enforcement are also essential. Regulations must be continuously updated to adapt to technological advancements and new business models, while law enforcement must be strengthened by enhancing the capacity of law enforcement agencies, expediting dispute resolution processes, and improving coordination among relevant institutions. (Rosenfeld, 2013).

Strengthening oversight of business actors, both by the government and the public, is crucial to ensuring compliance with standards and principles of balance. Collaboration between the government, business actors, and consumers must be enhanced to create a healthy business climate. Special protection for MSMEs and small business actors must also be prioritised to achieve balance and fairness in the national business ecosystem.

By identifying challenges and implementing appropriate solutions, the application of balance principles in national economic law can be more effective, thereby fostering a healthy, fair, and sustainable business environment in Indonesia.

Conclusion

s between public and private law in national economic law is an important foundation for creating a healthy business climate in Indonesia. Public law regulates the public interest through binding regulations, while private law regulates relationships between individuals or legal entities with a focus on individual interests. Collaboration between the two enables the creation of an economic legal system that is not only fair and efficient, but also responsive to the dynamics and challenges of the modern economy.

The implementation of the principle of balance is key to maintaining the proportion of rights and obligations between parties in every economic legal relationship. This principle requires that no party be disadvantaged unilaterally, whether in business agreements, commercial transactions, or macro-level regulations. The state, through public law, acts as regulator and supervisor, while business actors, through private law, carry out economic activities with a high sense of social responsibility and business ethics. State intervention is necessary to restore balance when there is an imbalance in bargaining power, thereby ensuring protection for the weaker party.

Thus, the synergy between public and private law and the implementation of the principle of balance in national economic law are not only oriented towards economic growth, but also towards equitable distribution of development outcomes and improved community welfare. Continuous harmonisation and adaptation of regulations are essential to create a healthy, fair and sustainable business ecosystem in Indonesia.

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