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# Application of Pancasila in Economic System Monopoly Practices of State-Owned Enterprises PT PLN

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**Abstract:** *The Indonesian economic system based on Pancasila, is intended as a guideline for the basic direction of the structure of the national economy and the underlying mental attitude. Ideally, the Indonesian economic system is an economic order that is imbued with the ideology of Pancasila, a national economy which is a joint effort and based on kinship and cooperation under the leadership of the government. Indeed, maybe this system is financially not so profitable, but more humane because it prioritizes social elements, justice. The Business Competition Supervisory Commission (KPPU) acknowledges the alleged violation of Law No.5 / 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition by PT PLN (Persero) if the electricity sector SOE continues its capping policy for industrial sector TDL. KPPU will review according to the procedure through further examination. Possible Article to be reviewed by KPPU is Article 19d in Law Number 5/1999 which regulates the problem of discrimination related to the application of tariffs to industry players. For that reason, KPPU will immediately examine PLN data to see which industrial customers enjoy capping with those that don't. Meanwhile, the KPPU acknowledges that in 2010 there were differences in tariffs for industry groups.*

**Keywords :** *Implementation of the Pancasila Economic System, BUMN Monopoly Practices*

## I. PRELIMINARY

Capitalism is one of the developing economic systems, where productive wealth is mainly owned privately and production is mainly for sales. The purpose of private ownership is to obtain a reasonable profit from the use of productive assets or with minimal capital. At present, Indonesia is aiming at a system of capitalism that continues to develop. Capitalism is closely related to economic and industrial processes.<sup>1</sup> The capitalism system in Indonesia does not just grow, but through a long historical journey. The situation then changed when the wave of industrialization struck Western European countries. Monopoly is a condition in which a person or group of people who exercise absolute control over a certain field of activity without giving an opportunity for others to participate in monopolizing a field, in this case the oil and gas industry in which the monopoly as a power to determine not only the price, but also the quality of an activity or product offered to the public.<sup>2</sup>

The policy of protecting national interests both in the form of protection against new industries (infant industry) and in the form of monopoly policies is considered very appropriate. But in subsequent developments, monopoly tends to be seen as a negative policy for economic growth.<sup>3</sup> Even monopoly has become a policy that is very detrimental to many parties both for businesses (competitors) and consumers. Although not all bad, the image of monopoly is considered a crime. Even though many economic activities will be better and more efficient if done in a monopolistic manner. A number of economic activities such as electricity, oil and gas, water, telecommunications and so on have become business activities that are monopolized by the state. Through State-Owned Enterprises (SOEs), the state is here to serve the needs of the people who are scattered throughout the country.<sup>4</sup>

The Business Competition Supervisory Commission (KPPU) acknowledges the alleged violation of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition by PT PLN (Persero) if the electricity sector SOE continues its capping policy for industrial sector TDL. KPPU will review according to the procedure through further examination. It is possible that the article to be reviewed by KPPU is article 19d in Law No. 5/1999 which regulates discrimination

<sup>1</sup> Riesti Aqmarina, "Monopoly by SOEs in the ASEAN Economic Community (AEC) Perspective", E-Journal: Spirit Pro Patria, Volume IV Number 2, September 2018.

<sup>2</sup> Yani and Widjaja, Anti-Monopoly Business Law Series, (Jakarta: PT Raja. Grafindo Persada, 1999), p. 2

<sup>3</sup> Gunarto Suhardi, BUMN Revitalization, (Yogyakarta Atmajaya University, 2007), p. 5

<sup>4</sup> Ibid., P. 7

related to the application of tariffs to industry players. For that reason, KPPU will immediately examine PLN data to see who are industrial customers who enjoy capping with those who do not. Meanwhile, the KPPU acknowledges that in 2010 there were differences in tariffs for industry groups. For small industry or household groups that are subject to capping are rewarded Rp. 803 per KWh. While those who are not capping are subject to Rp. 916 per KWh. So there is a price disparity of around Rp.113 per KWh. While for the middle class with a medium voltage capacity, it differs Rp.667 per KWh if it is subjected to capping and Rp.731 KWh for those who do not. Comparison for industries that use capping with those who do not, for medium voltage of 23%. For tariff groups for large industrial needs, those who are subject to capping must pay Rp.594 per KWh while those who do not become Rp.605 per KWh (price disparity is Rp.11 per KWh).<sup>5</sup>

Basically, competition in the market mechanism applies to every business actor without exception. However, despite providing legal protection, legal certainty, and equal opportunities for every business actor, Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, also provides exceptions, among others are contained in Article 50 and Article 51 of the Law Law No. 5/1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.<sup>6</sup>

State control in Article 33 of the 1945 Constitution is a legal basis that legitimizes the government to control production branches that are important to the state and control the livelihoods of many people through state-owned enterprises (BUMN) on behalf of the state to almost all economic resources. Exemption of State Owned Enterprises (SOEs) contained in Article 51 of Law Number 5 Year 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition, eventually raises legal issues related to justice issues in the application of the law. The spirit of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition to create healthy competition for all business actors has been reduced by the exclusion of State-Owned Enterprises (SOEs) from the provisions of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.<sup>7</sup>

Related to the existence of exceptions to monopolies and / or centralization of activities by State-Owned Enterprises (SOEs), the Business Competition Supervisory Commission (KPPU) considers that most State-Owned Enterprises (SOEs) feel free from business competition law. Business actors of State-Owned Enterprises (SOEs) tend to take cover behind Article 51 of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. State-owned enterprises (BUMN) often monopolize because they position themselves as part of the state or government.<sup>8</sup>

The problem in this paper is about how to apply the Pancasila economic system concept in Indonesia, how the position of PT PLN (Persero) applies monopolistic practices related to Article 51 of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, how to overcome these obstacles the obstacle to the exclusion of monopolistic practices for PT PLN (Persero) to be used for the greatest prosperity of the people.

## II. THEORETICAL FRAMEWORK

In answering the formulation of the problem, there is a theoretical framework used as a knife for analysis in this paper, namely:

### A. Pancasila Economic System

Pancasila economy is an economic system based on the Pancasila ideology, based on the principle of kinship and national mutual cooperation. This system gives freedom to every citizen to try or build an economic business with certain restrictions and conditions. In the world of business competition, the implementation of a Pancasila economic system is vast and varied. With this conceptual foundation, the Pancasila economic system is at three levels at once, epistemology, ontological and axiological. The existence of the Pancasila economic concept already exists with Pancasila as its ideal foundation and the 1945 Constitution of the Republic of Indonesia as its constitutional foundation.<sup>9</sup>

Talking about monopoly and unfair business competition, the thing that needs attention is who are the business actors, who are the consumers and what are the products and services. Business actors are every person or business entity, both in the form of legal

<sup>5</sup> Anonymous. "KPPU Allegedly Conducts Monopolistic Practices", located on the website <http://hileud.com/hileudnews?title=KPPU+Duga+PLN+Do+Monopoly+Practices>, accessed on January 3, 2018.

<sup>6</sup> Zahro Puspitasari, "Reconciliation of Monopoly Exceptions Organized by State-Owned Enterprises in Business Competition Law in Indonesia", *Panorama Panorama Journal*, Volume 2, Number 2, December 2017.

<sup>7</sup> Marshias Mereapul Ginting, "Exceptions to Monopolistic Practices Conducted by SOEs In Accordance with Article 51 of Law No.5 Year 1999", *Journal of Economic Law*, Volume II Number 2, June 2013.

<sup>8</sup> Ibid

<sup>9</sup> Abdillah Mundir, *Comparison of Economic Systems*, (Surabaya: Kopertais IV Press, 2015), p. 118.



entity or non-legal entity established to carry out various business activities in the economic field.<sup>10</sup> In Indonesia, the implementation of monopolies and unfair business competition is prohibited by legal entities based on Act Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.<sup>11</sup>

However, in the provision of Article 51 of Law Number 5 Year 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition states that:

Monopoly and or centralization of activities related to the production and / or marketing of goods and or services which control the lives of many people and production branches that are important to the state are regulated by law and organized by State-Owned Enterprises and or bodies or institutions formed or appointed by the government. In Indonesia, the Pancasila economic system implicitly recognizes the existence of a monopoly by the state, which is contained in Article 33 paragraph (2) and (3) of the 1945 Constitution, a market is said to have a monopoly if: a business actor is an absolute price maker; no competition; there is an entry barrier for other business actors who want to enter a monopolized market.<sup>12</sup>

### B. Welfare State

The modern state is the personification of the rule of law.<sup>13</sup> That is, the state in all its activities is always based on law. The state in this context is commonly referred to as the rule of law. In the development of thinking about the rule of law, there are two groups of rule of law, namely the formal rule of law and the rule of law. This material state law is also known in the term Welfare State<sup>14</sup> or welfare state.

The main key in the welfare state is the issue of guaranteeing people's welfare by the state. Regarding this matter, Jurgen Habermas argues that guaranteeing the welfare of all the people is central to the modern state.<sup>15</sup>

In the 1945 Constitution, social welfare becomes a special title in Chapter XIV which contains Article 33 concerning the economic system and Article 34 concerning the state's concern for the weak group (the poor and neglected children) and the social security system. This means, social welfare is actually a platform for economic systems and social systems in Indonesia. Thus, in reality Indonesia is a country that embraces the understanding of the "welfare state" with the model "Participatory Welfare State" (participatory welfare state) which in social work literature is known as welfare pluralism or welfare pluralism.<sup>16</sup>

The application of the monopolistic practice of controlling natural resources by state-owned enterprises (BUMN) based on the concept of Welfare State is used for the prosperity of the people. In socialist countries, the welfare state also includes job security and administration of the prices of goods and services at the consumer level. The concept of welfare state is therefore usually based on the principle of equality of opportunity, equitable distribution of wealth, and public responsibility for those who are unable to provide for themselves the minimum needs to be able to live properly.<sup>17</sup>

## III. RESEARCH METHODS

The approach method used in this paper is a normative juridical approach. Normative juridical writing is legal writing carried out by examining library materials or secondary data and primary data as supplementary data.<sup>18</sup> Data collection techniques used are secondary data collection, taken from:

- A. Primary Legal Material, which is legal material that has juridical binding power such as: the 1945 Constitution, the Civil Code (KUHPer), Law Number 5 of 1999 concerning Prohibition of Monopoly and Unfair Business Competition, Law No. 20 of 2002 concerning Electricity.

<sup>10</sup> Koesrianti, "Formation of the Asean Economic Community (AEC) 2015: Economic Integration Based on Commitment without Witnesses". VOL Law Review. XIII November 2, 187, 2013.

<sup>11</sup> *Ibid*

<sup>12</sup> Abdillah Munir, Op. Cit., P. 119.

<sup>13</sup> Soemardi, General Theory of Law and State: The Basics of Normative Legal Studies as Descriptive-Empirical Legal Studies, (Bandung: Bee Media Indonesia, 2010), p. 225.

<sup>14</sup> Komara Yuda, "Welfare Regime Transformation in Indonesia: A Citizenship Debate", Journal of Sociology Law, Volume 1, No. 2

<sup>15</sup> *Ibid*

<sup>16</sup> Croissant, A. Changing welfare regimes in East and Southeast Asia: crisis, change and challenge. Social Policy & Administration, 38 (5), 504-524. doi: 10.1111 / j.1467-9515.2004.00404.x

<sup>17</sup> *Ibid*

<sup>18</sup> Soerjono Soekanto, Introduction to Legal Research, (Jakarta: UI Press, 1984), p. 23.

- B. Secondary Legal Materials, i.e. materials that are closely related to primary legal materials and can help analyze and understand primary legal materials, such as research results, seminar results, work from the legal community, as well as other documents relating to the position of PT PLN (Persero) implements monopolistic practices related to Article 51 of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.
- C. Tertiary Legal Materials, namely materials that provide information about Primary Legal Entities and Secondary Legal Materials, for example the Indonesian public dictionary, legal dictionary and so on.

#### IV. DISCUSSION

##### A. Monopolistic Activities Conducted by PT PLN

The Business Competition Supervisory Commission (KPPU) acknowledges the alleged violation of Law No.5 / 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition by PT PLN (Persero) if the electricity sector SOE continues its capping policy for industrial sector TDL. KPPU will review according to the procedure through further examination. Possible Article to be reviewed by KPPU is Article 19d in Law Number 5/1999 which regulates the problem of discrimination related to the application of tariffs to industry players. For that reason, KPPU will immediately examine PLN data to see which industrial customers enjoy capping with those that don't. Meanwhile, the KPPU acknowledges that in 2010 there were differences in tariffs for industry groups. For small industry or household groups that are subject to capping are rewarded Rp. 803 per KWh. While those who are not capped are subject to Rp916 per KWh. So there is a price disparity of around Rp.113 per KWh. While for the middle class with a medium voltage capacity, it differs Rp.667 per KWh if it is subjected to capping and Rp.731 KWh for those who do not. Comparison for industries that use capping with those who do not, for medium voltage of 23%. For tariff groups for large industrial needs, those who are subject to capping must pay Rp.594 per KWh while those who do not become Rp605 per KWh (price disparity is Rp11 per KWh). Based on these indications, KPPU will immediately conduct an examination according to the existing procedures based on a letter that came to his party on January 11 last.<sup>19</sup>

KPPU will also call parties who have been benefited with lower tariffs or who are jealous of price differences because they are subject to higher burdens than others. In addition, they will also call on the Government and the Ministry of Finance and the Director General of Electricity of the Ministry of Energy and Mineral Resources to ask for their views and will prove on the ground for example checking receipts so that there are facts and legal data not just statistical data.<sup>20</sup> The function of PT PLN as power generation, distribution and transmission has actually begun to be broken down. The private sector is permitted to participate in efforts to generate electricity. While for distribution and transmission, it will still be handled by PT PLN. There are currently 27 Independent Power Producers in Indonesia. They include Siemens, General Electric, Enron, Mitsubishi, Californian Energy, Edison Mission Energy, Mitsui & Co., Black & Veath International, Duke Energy, Hoppwell Holding, and many more. But in determining the price of electricity to be paid by the community it remains determined by PT PLN itself.<sup>21</sup>

The electricity crisis then also peaked when PT. The National Electricity Company (PT PLN) applies rotating power outages in various regions including Jakarta and surrounding areas, during the period 11-25 July 2008. This is exacerbated by the transfer of industrial working hours to Saturday and Sunday, once a month. All industries in Java-Bali must obey, and sanctions will be imposed on stubborn industries. For classical reasons, PT PLN argued that the blackouts were due to an increasingly severe power deficit due to a disruption in the supply of coal from the main power plants in the Java-Bali electricity system, namely the Tanjung Jati plant, Paiton Units 1 and 2, and Cilacap. However, at the same time there were also similar problems for the Muara Tawar gas-fired power plant (BBM) and Muara Karang power plant.<sup>22</sup>

As a result of PT PLN monopolizing national electricity, the electricity needs of the community are very dependent on PT PLN, but they themselves are unable to evenly and fairly meet the electricity needs of the community. Many areas where electricity needs have not been met and also often occur unilateral power cuts. This incident caused significant losses for the community, and investors became reluctant to invest.<sup>23</sup>

<sup>19</sup> Anonymous. KPPU Alleged PLN to Conduct Monopolistic Practices, there is a site [http://hileud.com/hileudnews?Title=KPPU + Duga + PLN + Do + Practice + Monopoly & id = 511698](http://hileud.com/hileudnews?Title=KPPU+Duga+PLN+Do+Practice+Monopoly&id=511698) downloaded on May 29, 2011, at 13.20.

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Ibid

*B. Analysis of the Implementation of the Pancasila Economic System Against Monopolistic Practices of PT PLN (Persero) The Implementation of the Pancasila Economic System Concept in Indonesia*

The Indonesian economic system based on Pancasila is intended as a guideline for the basic direction of the national economic structure and the underlying mental attitude. Ideally, the Indonesian economic system is an economic order that is imbued with the ideology of Pancasila, a national economy which is a joint effort and based on kinship and cooperation under the leadership of the government.<sup>24</sup> Indeed, maybe this system is financially not so profitable, but more humane because it prioritizes social elements, justice.

The current economic system in Indonesia is known as the Pancasila economic system, in terms of the system of ownership of economic resources or factors of production, there is no reason to state that our economic system is capitalist. Likewise, there is not enough argumentation to say that we embrace a socialist economic system. Indonesia recognizes individual ownership of the factors of production, except for resources that control the lives of many people, controlled by the state. As is known, that the Pancasila economic system began to be developed more seriously since the National Seminar at Gadjah Mada University in 1980. It is undeniable that the warm polemic about the Indonesian economic system around 1980 to 1981 revolved around Mubyarto's ideas about the Pancasila Economic System (SEP).<sup>25</sup>

The application of the Pancasila economic system, there are 2 (two) perspectives, namely:<sup>26</sup>

- 1) Formal juridical pathway, which departs from the belief that the legal basis of the SEP is Article 33 of the 1945 Constitution, which is motivated by the spirit of the Preamble of the 1945 Constitution and is complemented by Article 23, 27 paragraph (2), Article 34, as well as an explanation of Article 2 of the 1945 Constitution. these pathways, for example are Sri-Edi Swasono and Potan Arif Harahap.
- 2) The second path is the orientation path, which connects the principles in the Pancasila. Included in this camp are Emil Salim, Mubyarto, and Sumitro Djojohadikusumo.

Basically they interpret the Pancasila economic system as an economic system oriented to the precepts I, II, III, IV, and V. Comparison of the thoughts of these three figures can be seen that the three of them try to describe the ideology of Pancasila in the economic and business world. This seems to be in line with the view that states that Pancasila is an open ideology, which means that the basic values remain, but the translation can be developed creatively and dynamically in accordance with the dynamics of the development of Indonesian society. The relevance of the Pancasila economic platform, as a medium to recognize the workings of economic understanding and morals characterized by neo-liberal capitalism in Indonesia. Pancasila Economics are economic moral (ideological) principles derived from Pancasila ethics and philosophy. Therefore, in addition to containing the visionary ideals of the realization of social justice, he also raised the socio-cultural reality of the economic people of Indonesia, as well as signs that have historical value not to fall prey to liberalism and capitalism.<sup>27</sup>

The first platform of Pancasila economics, namely religious morals which contains the principle of "the wheel of the nation's economic activities driven by economic, social and moral stimuli." Initially, Indonesia's founding fathers formulated prosperity politics, social justice and the building of national character based on the spirit of the application of moral and religious teachings. . That means development must go hand in hand with the development of moral or national character, and is aimed at ensuring justice among God's creatures, not just material development. This is the moral economy of the people who are not just looking for profit, but strengthen friendship, enforce the laws of God (Sharia), and pay attention to social interests. As long as they are not lazy to go down to the villages or to the people of the economy, it is not difficult to find this moral economic practice.<sup>28</sup>

The relevance of the Pancasila economic platform in this case is reinforced by the acute economic behavior in Indonesia that completely ignores morals, ethics, and even religion. Just look at the corruption that has been entrenched and institutionalized because it was never taken seriously, except for the final moments leading up to the 2004 elections with the formation of the Corruption Eradication Committee (KPK). There is another rampant natural looting in the form of illegal logging that has been left for too long to cause floods, landslides, and drought in parts of Java, Sumatra and other islands. What remains hot is the rampant erotic dangdut porn action, through TV media which is indeed left in the realm of freedom (liberalism) today. Regardless of

<sup>24</sup> Mubyarto, "Pancasila Economic System Rejects Ethatism and Monopoly", Pelita, May 21, 1987.

<sup>25</sup> The term SEP was actually made earlier by Emil Salim in an article in Kompas newspaper on 30 June 1966.

<sup>26</sup> The term SEP was actually made earlier by Emil Salim in an article in Kompas newspaper on 30 June 1966.

<sup>27</sup> Buku "Membangun Sistem Ekonomi" karya guru besar FE UGM ini sekali lagi menegaskan betapa konsistennya Mubyarto, dalam memperkenalkan dan memopulerkan sistem ekonomi yang pas bagi Indonesia.

<sup>28</sup> *Ibid*

morality, religion, and social impact on society, singers, producers, companies (advertisements), and TV stations, rake in rents from their economic (business) activities. There are still evictions of the poor, ignoring the fate of migrant workers, and fuss over severance pay or DPRD retirement funds in various places. This condition confirms the need for a moral economic revolution towards the embodiment of the moral and non-secular Pancasila economic platform.<sup>29</sup>

The second platform is "social equality, that is, there is a strong will of the citizens to realize social equality, not allowing economic inequality and social inequality to develop and develop." priority is not on individuals' prosperity. Until now, it is still difficult to believe in the realization of this spirit because every effort to prosper the economy turns out to be more felt by the big people, businessmen or government officials. Still, socio-economic inequality is difficult to minimize. At the top of the pyramid which controls the majority of national cakes is inhabited by a few people. Conversely, at the bottom of the pyramid whose cakes are small, there are tens of millions of people.<sup>30</sup>

### *C. Position of PT PLN (Persero) Applying Monopolistic Practices Regarding Article 51 of Law Number 5 Year 1999 Regarding Prohibition of Monopolistic Practices and Unfair Business Competition*

The state-owned companies that conduct electricity supply business in Indonesia are state electricity companies or PT PLN (Persero). PT PLN (Persero) is a state-owned company with a legal entity in the form of a company engaged in the business of supplying electricity for both industry and households. The purpose and objective of PT PLN (Persero) is to carry out the business of supplying electricity for the public interest in sufficient quantity and quality, as well as to foster profits and carry out government assignments in the electricity sector in order to support development by applying the principles of a Limited Liability Company.<sup>31</sup>

Related to PT PLN (Persero) is a BUMN whose business form is a limited company or PT. The form of such a state-owned company is certainly not much different in nature from a limited liability company or private PT that is both pursuing the highest or maximum profit. The majority of Persero's shares or the equivalent of 51% must be controlled by the government. Because Persero is expected to obtain large profits, the company is automatically required to be able to provide the best products and services so that the resulting output products remain in demand and continue to make profits. The Persero Organs are the directors, commissioners and GMS (General Meeting of Shareholders).<sup>32</sup> The state grants monopoly rights to SOEs through Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition to SOEs. The state monopoly in Indonesia is an order of the 1945 Constitution with the aim of improving the welfare of the people. State monopoly in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is in a competition policy where economic liberalization becomes the basis. However, state monopolies have requirements including a time limit so that monopoly policies can be evaluated, there are institutions that oversee, and there are clear formulations of economic activities that are the livelihood of many people.<sup>33</sup>

Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, contains provisions prohibiting various business activities that may result in monopolistic practices and unfair business competition. These provisions include prohibited agreements, prohibited activities and abuse of dominant positions, in addition to Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition also regulates a number of exceptions, including the provisions of Article 51 which stipulates the State Owned Enterprises and or entities or institutions which are given authority or special rights in their business activities.<sup>34</sup> Article 51 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, discusses the problem of the complex relationship between business competition law and state-owned enterprises, which are internationally disputed. This provision mainly deals with the treatment of state monopolies by business competition law. the House of Representatives does not follow the current trends in developed countries which prohibit the establishment of new state monopolies, while existing state monopolies are limitedly controlled by business competition law. Article 51 contains obligations to regulate state monopolies through law to be justified, state monopolies require a law that is passed by the House of Representatives.<sup>35</sup>

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<sup>29</sup> *Ibid*

<sup>30</sup> *Ibid*

<sup>31</sup> *Ibid*

<sup>32</sup> Zuhro Puspitasari, "Rekonsepsi Pengecualian Monopoli yang Diselenggarakan Oleh Badan Usaha Milik Negara Dalam Hukum Persaingan Usaha Di Indonesia", *Panorama Hukum*.Vol.2 No.2, Desember 2017, hlm 230

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*

<sup>35</sup> Knud Hansen, *Law on Prohibition of Monopolistic Practices and Unfair Business Competition*, (Jakarta: PT Tema Baru 2002)



Although granted the right to monopolize, PT PLN (Persero) is not free from the reach of business competition law, monopoly authority by PT PLN (Persero) remains limited and regulated by law. In brief, the granting of monopoly rights to PT PLN (Persero) can be explained as follows, after the government with the approval of the Parliament determines that electricity is an item that controls the livelihoods of many people, then electricity must be monopolized by the state and regulated in the Law, which will determine that electricity must be controlled by the state and its business (which includes exploitation, exploration and distribution) carried out by SOEs whose business must be in harmony and not in conflict with what is meant by the guidelines in Article 51 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, and subsequently the government issued a Government Regulation as an implementer of the Electricity Law which appointed BUMN PT PLN (Persero) as the organizer of the monopolization of electricity control in all regions of Indonesia.

The position of PT PLN (Persero) applies monopolistic practices related to Article 51 of Law Number 5 Year 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition, as follows:

- 1) *Business Entity, Is One Of The Economic Actors In The National Economic System, In Addition To Private Businesses And Cooperatives That Support Each Other Based On Economic Democracy:* PT PLN (Persero) also referred to as BUMN is a business entity whose entire or most of its capital is owned by the state through direct investment from separated state assets. In number (2) of this article it is also said that the Company, hereinafter referred to as Persero, is a BUMN in the form of a limited liability company whose capital is divided into shares which are all or at least 51% (fifty one percent) of its shares owned by the Republic of Indonesia whose main purpose chasing after profits.<sup>36</sup> With respect to PT PLN (Persero) all applicable provisions and principles that apply to limited liability companies as contained in the focus of the author are those of BUMN Persero. Law No. 40 of 2007 concerning Limited Liability Companies. This is as stated in Article 11 of the BUMN Law jo. Article 3 of the BUMN Law and its explanation. Thus, all regulations that apply to limited liability companies also apply to SOEs in the form of Persero as long as they are not regulated by the BUMN Law.
- 2) *The Development Agent, PT PLN (Persero) Is Required To Carry Out The Government's Mission As Well As Possible:* One of the real roles of the government in participating in developing the Indonesian economy is by establishing SOEs which are intended to be agents of development. As an agent of SOE development, it must take the position of a motive for seeking profit, certainly by not forgetting its role in providing services to the community that cannot be provided by other government institutions. As stated by the Minister of State-Owned Enterprises (BUMN) Rini Suwandi said, the government continues to encourage a number of state-owned enterprises (SOEs) to act as agents of development in the field of infrastructure. The public must start thinking about how to use SOEs to develop the economy, so that SOEs can be used as agents of development.<sup>37</sup>
- 3) *Producer Of Goods And / Or Services In The Context Of Realizing The Maximum Prosperity Of The Community:* PT. PLN (Persero) authorized by the Government Electricity, in accordance with Law No. 30 of 2009 concerning Electricity, has the main duty to carry out the business of providing electricity to the maximum extent possible for the public interest. This is in line with Indonesia's National goals as stipulated in the Preamble of the 1945 Constitution, specifically to participate in advancing the general welfare and intellectual life of the nation.<sup>38</sup> The purpose and objective of PT PLN (Persero) is to carry out the business of providing electricity for public purposes in sufficient quantity and quality as well as to foster profits and carry out Government assignments in the electricity sector in the context of supporting development by applying the principles of a Limited Liability Company. The principles and objectives adhered to by Law No. 30 of 2009 concerning Electricity, that electricity development (PT PLN) aims to ensure the availability of electricity in sufficient quantities, good quality, and reasonable prices in order to improve the welfare and prosperity of the people fairly and evenly and to realize sustainable development,<sup>39</sup> has been reflects the obligation to provide protection for electricity consumers. Service means serving a service needed by the community in all fields. Service activities to the public is one of the tasks and functions of the state administration. PT PLN (Persero) in carrying out its duties the customer service function must be able to provide information to customers, prospective customers and other general public about matters relating to connection and concepts in using electricity.

<sup>36</sup> Zuhro Puspitasari, Op. Cit.

<sup>37</sup> Indonesia, Law Number 19 of 2003 concerning SOEs (State Gazette of the Republic of Indonesia of 2003 Number 64, Supplement to the State Gazette of the Republic of Indonesia Number 3608), Article 1.

<sup>38</sup> "Should BUMN be called the National Development Agency", there is a site <http://www.pajak.go.id/article/pantaskah-bumn-is-agent-agent-development->

<sup>39</sup> *Ibid*



In terms of public services, PT PLN (Persero) is essentially providing quality services to all people in need. Public services are obliged and responsible to provide good and professional services. The services provided will be categorized accordingly if the performance of the services provided to the community is greater than their expectations. To achieve a good quality of service, then of course the service must also be good and maximum. Measurement of the level of community satisfaction can be done by finding the level of compatibility between the value of the performance of services provided with the value of the interests or expectations of the community itself. Based on the description above, related to the concept of welfare state (welfare state) as known to modern democracies from the point of view of macro analysis, the basic values of political society are independence (liberty), equality (equality), and welfare (welfare). To advance independence, government power must be divided in such a way that individuals are able to be protected from arbitrary actions (constitutional effect). To advance equality, government power must be divided in such a way as to provide broad opportunities for citizens to participate in political decision making (democratic effect). Meanwhile, to advance prosperity, government power must be divided in such a way that it is effective for the interests and needs of the people to be met (facilitating effect).<sup>40</sup> Based on the above description, the position of PT PLN (Persero) in the Indonesian economy so that it gets the right to conduct monopolistic practices in conducting business activities is first, as a business entity, is one of the economic actors in the national economic system, in addition to private businesses and cooperatives that are mutually support based on economic democracy; secondly, as a development agent, SOEs are required to carry out the government's mission as well as possible; third, producers of goods and / or services in the context of realizing the greatest prosperity of the people; fourth, as the executor of public services, balancing large private forces, and contributing to economic development.<sup>41</sup>

With the explanation of the position of PT PLN (Persero) in the Indonesian economy so that it gets the right to conduct monopolistic practices based on the concept of Welfare State (welfare state) used for the prosperity of the people. In socialist countries, the welfare state also includes job security and administration of the prices of goods and services at the consumer level. The concept of welfare state is therefore usually based on the principle of equality of opportunity, equitable distribution of wealth, and public responsibility for those who are unable to provide for themselves the minimum needs to be able to live properly.<sup>42</sup>

The concept of Welfare State for the position of PT. PLN (Persero) has the right to conduct monopolistic practices, with the objectives to be achieved; that is:<sup>43</sup>

- a) Control and utilize social economic resources for the public benefit;
- b) Ensuring the distribution of wealth fairly and equally;
- c) Reducing poverty;
- d) Providing social insurance (education and health) for the poor;
- e) Provide subsidies for basic social services for disadvantage people;
- f) Providing social protection for every citizen.

## V. CONCLUSION

- A. The application of the Pancasila economic system concept in Indonesia is a manifestation of the philosophy of the Pancasila and the 1945 Constitution which is based on kinship and mutual cooperation from, by, and for the people under the leadership and supervision of the government. In a system of economic democracy, the government and all people, both economically weak groups and active entrepreneurs in the effort to achieve national prosperity. In addition, the state plays a role in planning, guiding and directing economic activities. Thus there is cooperation and mutual assistance between the government, the private sector and the community.
- B. The position of PT PLN (Persero) implements monopolistic practices related to Article 51 of Law Number 5 Year 1999 Regarding Prohibition of Monopolistic Practices and Unfair Business Competition, as a business entity, development agents carry out the government's mission as well as possible, producing goods and / or services in the context of realizing the greatest prosperity of the people and implementing public services, balancing large private forces, and contributing to economic development.

<sup>40</sup> Indonesia, Law Number 30 Year 2009 Concerning Electricity Jo. Article 41 paragraph (2) Government Regulation Number 14 of 2012 concerning Provision and Use of Electric Power, Article 2 paragraph (2)

<sup>41</sup> Pisani, E., Kok, M. O., & Nugroho, K. (2016). Indonesia's road to universal health coverage: a political journey. *Health Policy and Planning*, 00(0), 1–10. doi: 10.1093 / heapol / czw120

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<sup>43</sup> *Ibid*

## VI. SUGGESTION

It is expected that the application of the Pancasila economy needs to be affirmed as an economy that aims to eradicate society from poverty and eliminate inequality, inequality, exploitation and dependence, through people's participation in economic activities so that a fair and prosperous society is established based on Pancasila.

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