

# THE RIGHT TO A FAIR TRIAL IN COMPETITION LAW ENFORCEMENT: GROWING CONCERNS FROM THE INDONESIAN PERSPECTIVE

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## ABSTRACT

The Indonesian Competition Supervisory Commission (ICSC) holds comprehensive powers, encompassing investigation, prosecution, adjudication, decision-making, and sanctioning of business actors who breach national competition laws. Additionally, it possesses the authority to formulate its own procedural regulations governing competition law enforcement. This concentration of powers presents significant concerns, especially regarding the protection of the right to a fair trial and the application of checks and balances. This article aims to examine the role of human rights, specifically the right to a fair trial, within the framework of competition law enforcement. The study concludes that such enforcement processes must operate within the boundaries of human rights standards, placing them as superior normative references. Drawing on Indonesia's experience, the research reveals that the ICSC's consolidation of functions conflicts with the country's human rights obligations in enforcing fair competition laws. As a proposed remedy, the article advocates for reforms that align with human rights principles and strengthen checks and balances, such as curbing some of the ICSC's powers and increasing the role of the Supreme Court in overseeing competition law enforcement.

**Keywords:** *Competition Law, Enforcement Procedures, Human Rights, Fair Trial, Indonesian Competition Supervisory Commission*

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## ARTICLE HISTORY

Received : July 12, 20xx

Final Revised : September 31, 20xx

Accepted : December 27, 20xx

Published : December 27, 20xx

## 1. INTRODUCTION

The nexus of human rights and competition law has recently emerged as a topic of interest in legal scholarship, though it remains relatively underexplored (Weber, 2013; De Schutter, 2010; Lianos & Darr, 2019). A pivotal aspect of this intersection lies in the procedural mechanisms of competition law enforcement, where the alignment of procedural safeguards with human rights standards is increasingly critical. Scholars such as Joshua and Alex Yeung have noted that many competition law enforcement practices, often grounded in civil standards of proof, fail to adequately incorporate human rights principles (Yeung & Yeung, 2021). In contrast, Stephen Crosswell highlights that since 2008, Hong Kong's Court of Final Appeal has mandated strict adherence to human rights norms in competition law proceedings (Crosswell, 2021). Similarly, Vincent Smith's analysis in the European context underscores persistent challenges in ensuring state compliance with due process obligations in this domain (Smith, 2017).

These scholarly insights form the foundation for this study, which seeks to examine the interplay between human rights, particularly the right to a fair trial, and competition law enforcement in Indonesia. While competition law typically involves administrative sanctions rather than criminal penalties, improper enforcement can infringe on fundamental rights. For instance, imposing excessive fines without proper damage assessments may violate property rights (Gabriel & Silviu, 2019). In Indonesia, the Indonesian Competition Supervisory Commission (ICSC) has issued sanctions, such as prohibiting companies found guilty of bid-rigging from participating in public tenders for a specified period, potentially restricting their rights to work and conduct business, both protected under human rights frameworks (ICSC, 2019b).

Given the significant legal and economic implications of competition law enforcement, adherence to high procedural standards is essential. Wils argues that even administrative sanctions must comply with the rule of law, particularly when they serve a deterrent function akin to criminal penalties (Wils, 2003). This raises critical questions: Can competition law enforcement balance efficiency with fairness? Can a single authority responsible for investigation, prosecution, and adjudication ensure impartial procedures? If human rights, especially the right to a fair trial, are sidelined for administrative convenience, the principles of justice are undermined.

Under Indonesia's legal framework, specifically Law No. 5/1999, the ICSC holds a broad mandate, acting as investigator, prosecutor, adjudicator, and sanctioning body for competition law violations (Law No. 5/1999, 1999). This consolidation of authority raises significant concerns about due process and judicial impartiality. From a human rights perspective, such a structure risks compromising the independence and objectivity required in legal proceedings. A key issue is how impartiality can be maintained when a single institution oversees all stages of enforcement, from investigation to final judgment.

In contrast, the European legal framework, particularly through the European Convention on Human Rights (ECHR), provides a more structured approach, where due process and fair trial principles have shaped competition law procedures. The ECHR's principles could serve as a valuable model for jurisdictions like Indonesia, where procedural reforms are needed to align with human rights standards.

Human rights arguments are increasingly being raised in Indonesian competition law cases. For example, in a case involving an alleged anti-competitive agreement between PT Pelabuhan Indonesia II and PT Multi Terima, the defendants argued that the ICSC's investigative process violated due process, the presumption of innocence, and the right to be heard, characterizing these as human rights violations (ICSC, 2015). In another instance, a business actor challenged an ICSC investigative report as procedurally flawed, claiming it infringed on their human rights (ICSC, 2020). These cases demonstrate the growing relevance of human rights discourse in Indonesian competition law enforcement, particularly among business actors contesting ICSC decisions.

Despite this trend, Indonesian legal and academic literature has largely overlooked the human rights dimensions of competition law enforcement. There is an urgent need for comprehensive analysis to assess how the right to a fair trial is upheld or undermined in this context. This article aims to address this gap by focusing on the legal and procedural aspects of competition law enforcement in Indonesia, with an emphasis on human rights protections. Through real-world case studies, it explores how business actors have leveraged human rights-based claims to challenge ICSC decisions and procedures, providing a basis to evaluate the ICSC's commitment to procedural fairness.

The article is structured into three main sections. The first section offers a normative analysis of the right to a fair trial in competition law contexts, outlining international human rights standards and their applicability to administrative proceedings, including competition law cases. The second section examines the practical application—or lack thereof—of these principles in ICSC practices, drawing on case law and procedural regulations. The third section synthesizes these findings to propose structural and institutional reforms to align Indonesia's competition law enforcement with human rights obligations. It offers recommendations for enhancing procedural fairness through legal reforms, increased judicial oversight, and improved institutional accountability. By analyzing Indonesian competition law enforcement through a human rights lens, this study seeks to contribute to a more equitable legal framework that balances effective market regulation with robust protection of individual rights, particularly the right to a fair trial.

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procedural safeguards with human rights standards is increasingly critical. Scholars such as Joshua and Alex Yeung have noted that many competition law enforcement practices, often grounded in civil standards of proof, fail to adequately incorporate human rights principles (Yeung & Yeung, 2021). In contrast, Stephen Crosswell highlights that since 2008, Hong Kong's Court of Final Appeal has mandated strict adherence to human rights norms in competition law proceedings (Crosswell, 2021). Similarly, Vincent Smith's analysis in the European context underscores persistent challenges in ensuring state compliance with due process obligations in this domain (Smith, 2017).

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By analyzing Indonesian competition law enforcement through a human rights lens, this study seeks to contribute to a more equitable legal framework that balances effective market regulation with robust protection of individual rights, particularly the right to a fair trial.

## **2. THE RIGHT TO A FAIR TRIAL IN COMPETITION LAW ENFORCEMENT: A NORMATIVE PERSPECTIVE**

A fundamental question in this study is the relevance of human rights, specifically the right to a fair trial, in competition law enforcement, given that this domain involves not only individuals but also corporations and other business entities. The naturalistic approach to human rights, as seen in frameworks like the Universal Declaration of Human Rights (UDHR), traditionally limits human rights to individuals, excluding corporations (Alford, 2010; Beitz, 2009; Cruft et al., 2015; Griffin, 2008; Morsink, 2009; Wellmen, 2011). However, this view is countered by the doctrine of

methodological individualism, which argues that collective actions, including those of corporations, derive from individual behaviors (Fisse, 2019; Gustavo de Jesus Perez Duran, 2020; Kampourakis, 2020). This doctrine positions the individual as the core unit of analysis for collective activities, implying that corporate actions in competition law enforcement impact the human rights of associated individuals (Megiddo, 2019; Romano, 2017). Thus, examining human rights within this context is both pertinent and essential.

The right to a fair trial, the focus of this analysis, is a cornerstone of human rights, enshrined in various international and regional legal instruments (Bhandari, 2013; Šimonis, 2019). Internationally, Article 14 of the International Covenant on Civil and Political Rights (ICCPR) provides a primary basis for this right (Hill, 2016; Stone, 2021). This provision has shaped regional frameworks, such as the European Convention on Human Rights (1950), the American Convention on Human Rights (1969), the African Charter on Human and Peoples' Rights (1981), the Arab Charter on Human Rights (2004), and the ASEAN Human Rights Declaration (2012) (Clooney & Webb, 2020; Pressdee, 2022). The right ensures justice in legal proceedings, covering investigation, trial, decision-making, and execution, while protecting against arbitrary or unlawful restrictions on other rights (Mampilly, 2020; Petr, 2014).

This right encompasses multiple interdependent components. Clooney and Webb outline thirteen components, including equality before the court, access to competent, independent, and impartial judges, the presumption of innocence, and the right to remedies (Clooney & Webb, 2020; Possi, 2017). Scholars like Mindaugas Šimonis further elaborate on these components' role in ensuring fair legal processes (Šimonis, 2019). Julia Sherman has also examined the right in the context of court interpreters, emphasizing its practical implications (Sherman, 2017).

In Indonesia, the 1945 Constitution does not explicitly mention the right to a fair trial but guarantees equal treatment before the law under Article 28D, paragraph 1, aligning with this right's components (1945 Constitution of Indonesia, 2002). Similarly, Law No. 39/1999 on Human Rights refers to the "right to justice," incorporating eight components, such as non-discriminatory access to justice, impartial judicial processes, the presumption of innocence, legal aid, and protections against double jeopardy or punishment for unfulfilled contractual obligations (Law No. 39/1999, 1999). These provisions reflect Indonesia's human rights commitments, even without explicit reference to a fair trial.

A critical element of the right to a fair trial is the entitlement to adjudication by a competent, independent, and impartial tribunal, as outlined in Article 14, paragraph 1 of the ICCPR and Article 10 of the UDHR (International Covenant on Civil and Political Rights, 1976; Universal Declaration of Human Rights, 1948; Slater et al., 2009). This right is absolute, allowing no derogation (The Human Rights Committee on ICCPR, 2007). It applies to all legal proceedings, including competition law cases (Teleki, 2021). In Indonesia, this right's significance was evident in a cartel case involving PT Charoen Pokphand Indonesia, PT Japfa Comfeed Indonesia, PT Malindo Feedmill, Tbk., and others, where an investigated party demanded the presumption of innocence to safeguard human rights from biased trials (ICSC, 2016). The Organisation for Economic Co-operation and Development (OECD) supports this, advocating for

competition law enforcement to incorporate impartial institutions and effective rules (OECD, 2022).

Competence requires adjudicators to have integrity, expertise, and institutional autonomy to issue binding decisions without external interference (Clooney & Webb, 2020). Independence ensures the adjudication body is free from external influence (The Human Rights Committee on ICCPR, 2007). Impartiality involves subjective neutrality, free from personal bias, and objective neutrality, where the body visibly demonstrates fairness (The Human Rights Committee on ICCPR, 2007; Sutrisno et al., 2022; Zeitune, 2007). These principles are vital for aligning competition law enforcement with human rights standards.

The OECD offers specific guidance for competition law enforcement, recommending that it be conducted by independent, accountable authorities using legal and economic reasoning. Authorities should evaluate all evidence, maintain transparent conflict-of-interest rules, and possess adequate resources and expertise in competition law, economics, and human rights (OECD, 2022). Cooperation with other entities is also encouraged. These guidelines are critical for jurisdictions like Indonesia, where the Indonesian Competition Supervisory Commission (ICSC) consolidates investigation, adjudication, and decision-making (Wise, 2005). This consolidation raises concerns about compatibility with human rights, particularly the right to a fair trial (Slater et al., 2009; Šimonis, 2019).

The obligation to respect the right to a fair trial, particularly to a competent, independent, and impartial tribunal, is a negative obligation, requiring competition authorities like the ICSC to avoid interfering with this right. Enforcement processes that are incompetent, externally influenced, or biased violate this obligation. The ICSC's integrated role heightens these risks, necessitating procedural reforms to ensure alignment with human rights standards and fair treatment for business actors.

This normative framework establishes the right to a fair trial as essential to competition law enforcement, providing a basis for evaluating the ICSC's practices and advocating for safeguards to uphold justice in market regulation.

### **3. THE RIGHT TO A FAIR TRIAL IN INDONESIAN COMPETITION LAW ENFORCEMENT PRACTICES: EMERGING PROCEDURAL CONCERNS**

The question of whether human rights, particularly the right to a fair trial, are relevant to competition law enforcement is central to this analysis, especially given that enforcement often targets corporations rather than individuals. The naturalistic perspective on human rights, as reflected in instruments like the Universal Declaration of Human Rights (UDHR), traditionally restricts rights to individuals, excluding legal entities such as corporations (Alford, 2010; Beitz, 2009; Cruft et al., 2015; Griffin, 2008; Morsink, 2009; Wellman, 2011). However, the doctrine of methodological individualism offers a counterpoint, asserting that collective actions, including those of corporations, can be traced back to individual decisions and behaviors (Fisse, 2019; Perez Duran, 2020; Kampourakis, 2020). By placing individuals at the core of social analysis, this doctrine suggests that competition law enforcement, even when directed at corporations, impacts the human rights of associated individuals (Megiddo, 2019;

Romano, 2017). Thus, the consideration of human rights in competition law enforcement is not only pertinent but imperative.

The right to a fair trial, a cornerstone of human rights law, is the focal point here, enshrined in various international and regional legal frameworks (Bhandari, 2013; Šimonis, 2019). Globally, Article 14 of the International Covenant on Civil and Political Rights (ICCPR) serves as a key provision, influencing regional instruments such as the European Convention on Human Rights (1950), the American Convention on Human Rights (1969), the African Charter on Human and Peoples' Rights (1981), the Arab Charter on Human Rights (2004), and the ASEAN Human Rights Declaration (2012) (Clooney & Webb, 2020). This right spans the entire adjudicative process, from investigation to enforcement, ensuring fairness when entities face allegations and sanctions (Mampilly, 2020; Šimonis, 2019). Its purpose is to deliver justice through equitable procedures and protect against arbitrary restrictions on legal rights (Petr, 2014; Bhandari, 2013; Didace, 2020).

The right to a fair trial is not a singular entitlement but comprises interdependent components, including equality before the court, the presumption of innocence, adjudication by an impartial and competent tribunal, and access to remedies (Clooney & Webb, 2020; Possi, 2017). Mindaugas Šimonis underscores the structural nature of these components, while Julia Sherman highlights practical aspects, such as the right to interpretation in legal proceedings (Šimonis, 2019; Sherman, 2017).

In Indonesia, the 1945 Constitution does not explicitly reference the right to a fair trial but guarantees equal protection under the law through Article 28D(1), aligning with elements of this right (1945 Constitution of Indonesia, 2002). Similarly, Law No. 39/1999 on Human Rights introduces the “right to justice,” encompassing components such as equal access to justice, impartial trials, the presumption of innocence, legal assistance, and protections against double jeopardy or criminal liability for civil debts (Law No. 39/1999, 1999). A critical component is the right to adjudication by a competent, independent, and impartial tribunal, as recognized in Article 14(1) of the ICCPR and Article 10 of the UDHR, which is absolute and non-derogable (International Covenant on Civil and Political Rights, 1976; Universal Declaration of Human Rights, 1948; Human Rights Committee on ICCPR, 2007). This standard applies universally, including to competition law disputes (Teleki, 2021).

In Indonesian practice, the significance of this right is evident in cases like the cartel involving PT Charoen Pokphand Indonesia and others, where an accused party demanded the presumption of innocence to guard against biased adjudication, citing potential human rights violations (ICSC, 2016). The Organisation for Economic Co-operation and Development (OECD) reinforces this, advocating for competition law enforcement by transparent, impartial, and competent authorities (OECD, 2022).

Competence requires adjudicators to possess legal authority and expertise, issuing binding decisions free from external interference, with institutional autonomy rooted in legal principles (Clooney & Webb, 2020). Independence ensures freedom from

governmental or vested interests (Human Rights Committee on ICCPR, 2007). Impartiality demands both subjective neutrality—absence of personal bias—and objective neutrality, demonstrated through visible fairness (Human Rights Committee on ICCPR, 2007; Sutrisno et al., 2022; Zeitune, 2007). These principles are essential for aligning competition law enforcement with human rights standards.

The OECD provides specific guidance, recommending that competition enforcement be conducted by independent, accountable bodies using legal and economic reasoning. Authorities must consider all evidence, maintain transparent conflict-of-interest rules, and possess adequate resources and expertise in law, economics, and human rights, while fostering cooperation with external stakeholders (OECD, 2022). These guidelines are particularly relevant for Indonesia, where the Indonesian Competition Supervisory Commission (ICSC) consolidates investigation, adjudication, and sanctioning roles, raising concerns about compliance with human rights standards (Wise, 2005; Slater et al., 2009; Šimonis, 2019).

In practice, the ICSC's extensive powers under Law No. 5/1999, including the authority to set procedural rules, have sparked procedural fairness concerns (Law No. 5/1999, 1999). Business actors have increasingly invoked human rights to challenge ICSC procedures, as seen in the case of PT Pelabuhan Indonesia II and PT Multi Terima, where defendants argued that the investigation violated due process, the presumption of innocence, and the right to be heard, constituting human rights breaches (ICSC, 2015). In another case, a business actor contested an ICSC investigative report as procedurally flawed, claiming it infringed on their human rights (ICSC, 2020).

These challenges highlight a growing awareness among business actors of human rights in competition law enforcement, yet the ICSC's responses often fail to address these concerns adequately. For instance, in a tender conspiracy case involving the Regional Drinking Water Company (PDAM) and contractors, the ICSC's Commission Assembly interpreted procedural rules expansively, undermining impartiality and fairness (ICSC, 2021a). Such interpretations, combined with the ICSC's consolidated roles, suggest a lack of checks and balances, risking violations of the right to a fair trial.

The ICSC's authority to design procedural laws further exacerbates these issues, as it enables the commission to shape enforcement processes without external oversight. This concentration of power contrasts with international standards, such as those under the ECHR, which emphasize independent and impartial adjudication (Teleki, 2021). The absence of robust judicial oversight in the ICSC's initial processes amplifies the risk of procedural unfairness, as business actors can only appeal to the Commercial Court or seek cassation at the Supreme Court after decisions are made (Wils, 2003).

The rising invocation of human rights in Indonesian competition law cases underscores the need for reform. Business actors' reliance on fair trial arguments reflects a broader demand for procedural justice, yet the ICSC's practices indicate a gap in applying human rights standards. This gap is partly due to the commission's limited

engagement with human rights law and its focus on administrative efficiency over procedural fairness.

To address these concerns, reforms are necessary to align ICSC practices with human rights obligations. Expanding the Supreme Court's role in overseeing procedural frameworks could enhance impartiality and independence, ensuring that enforcement aligns with fair trial standards. Limiting the ICSC's authority to set procedural rules and subjecting its processes to external judicial review would strengthen checks and balances, safeguarding business actors' rights while maintaining effective enforcement.

In conclusion, the right to a fair trial is increasingly relevant in Indonesian competition law enforcement, as evidenced by business actors' human rights-based challenges. The ICSC's consolidated roles and procedural autonomy pose significant risks to impartiality and fairness, necessitating reforms to uphold human rights standards and ensure just enforcement practices.

#### **4. SAFEGUARDING HUMAN RIGHTS BY ENSURING THE RIGHT TO A FAIR TRIAL IN COMPETITION LAW ENFORCEMENT PROCEDURES**

The Indonesian Competition Supervisory Commission (ICSC) has often overlooked human rights arguments in its enforcement practices, revealing a lack of clarity in how human rights law intersects with competition law enforcement in Indonesia. This ambiguity likely stems from an underdeveloped understanding of the relationship between these two legal domains within the Indonesian legal framework. This section seeks to explore the connections between human rights law and competition law enforcement, laying the foundation for frameworks that would enhance respect for the right to a fair trial in future competition law proceedings.

From a normative perspective, legal systems traditionally distinguish between public law, which addresses societal interests, and private law, which focuses on individual interests, a classification rooted in Roman legal traditions (Cherednychenko, 2007a). This "theory of interest" positions public law as safeguarding collective welfare, while private law governs individual interactions (Cherednychenko, 2007a). Historically, human rights law has been primarily associated with public law, addressing state-citizen relationships (Begari, 2021; Gorgenyi, 2022; Jiao, 2017; O'Flaherty, 2015; Oster, 2015; Sloss & Sandholtz, 2019; Trstenjak, 2016). Private law, conversely, was considered largely insulated from human rights norms, focusing on contractual and commercial interactions (Cherednychenko, 2007b).

Recent scholarship, however, challenges this rigid dichotomy. Olha Cherednychenko, examining legal practices in Germany, the Netherlands, and the UK, argues that human rights influence private law through either subordination or complementarity (Cherednychenko, 2007b). Aharon Barak proposes models for applying constitutional human rights to private law, including direct and indirect application frameworks (Barak, 1996). Eli Bukspan and Asa Kasher advocate for direct application, critiquing indirect approaches for failing to address modern democratic values and the growing influence of private actors (Bukspan & Kasher, 2019). Verica

Trstenjak further elaborates on direct and indirect horizontal effects of human rights on private law (Trstenjak, 2016). In Indonesia, scholars like Shidarta, Stijn van Huis, and Eko Riyadi explore how judges incorporate human rights into private law disputes, reflecting a growing recognition of this interplay (Shidarta et al., 2022). These developments underscore that confining human rights to public law is outdated, as human rights principles increasingly permeate both legal spheres.

Indonesia's competition law enforcement exemplifies this dual nature, blending public and private law elements. Its public law characteristics include evidentiary rules akin to criminal procedure, criminal sanctions, the ICSC's investigative and prosecutorial powers, reliance on circumstantial evidence, and a "beyond reasonable doubt" standard of proof. Law No. 5/1999 explicitly aims to protect public interest and enhance public welfare (Law No. 5/1999, 1999). Simultaneously, it exhibits private law traits, regulating interactions among market actors driven by commercial interests, reflecting economic democracy that balances public welfare with individual business rights.

Given this hybrid nature, defining the relationship between competition law enforcement procedures and the right to a fair trial is critical, drawing on scholarly insights into human rights' application across public and private law.

#### **a. Subordination of Competition Law Enforcement Procedures to the Right to a Fair Trial**

To understand competition law enforcement, one can analyze its intended function as envisioned by lawmakers (Burchardt, 2019; Finnis, 2011). Kenneth Ehrenberg and Dana Burchardt argue that a law's function is tied to its expected societal impact (Ehrenberg, 2016; Burchardt, 2019). In Indonesia, competition law serves as a tool for social control, regulating business conduct by defining permissible and prohibited behaviors, as articulated by legal theorists like Roscoe Pound and Donald Black (Pound, 2006; Black, 2020). This function aligns with Joseph Raz's view that law establishes social order by delineating right and wrong (Raz, 2009).

Indonesia's competition law enforces this control by prohibiting monopolistic practices and unfair competition, targeting prohibited agreements, acts, or abuses of dominant market positions (Law No. 5/1999, 1999). Sanctions, including administrative penalties, fines, and imprisonment as a fine substitute, aim to protect public welfare and other business actors, embodying economic democracy. However, these sanctions engage fundamental rights, such as property rights through fines and personal liberty through imprisonment (Gabriel & Silviu, 2019).

Human rights law imposes strict conditions on restricting rights. While limitations may be justified to prevent harm, they must be non-arbitrary, comply with procedural safeguards, and respect the broader human rights framework (The Human Rights Committee on ICCPR, 2014; International Covenant on Civil and Political Rights, 1976). The interdependent nature of human rights means that limiting one right must not violate others. In competition law, sanctions must adhere to procedural rights,

particularly the right to a fair trial, ensuring business actors are heard by competent, independent, and impartial adjudicators. This right, a core civil and political right, is non-derogable, and state institutions, including the ICSC, are obligated to uphold it (The Human Rights Committee on ICCPR, 2007).

The right to a fair trial is thus paramount, preventing arbitrary restrictions on other rights during enforcement. Cherednychenko argues that subordinating legal processes to human rights ensures their legitimacy (Cherednychenko, 2007a). Barak emphasizes that procedural rules in competition law protect the dignity and liberty of accused actors (Barak, 1996). This study asserts that while sanctions are necessary for a fair market, they must stem from legitimate procedures. Upholding the right to a fair trial in enforcement safeguards substantive rights, fostering a just regime.

### **b. Key Mechanisms for Upholding the Right to a Fair Trial in Competition Law Enforcement**

The ICSC's integrated roles—investigation, prosecution, adjudication, and sanctioning—raise concerns about its ability to uphold the right to a fair trial. Its legally binding decisions are enforceable unless appealed to the Commercial Court or cassated at the Supreme Court (Wils, 2003). This consolidation of functions risks compromising impartiality, a cornerstone of fair adjudication. Impartiality requires adjudicators to be uninvolved in investigation or prosecution, free from personal or institutional bias, and without financial or personal stakes in outcomes (Bassett & Perschbacher, 2011; Maladi, 2010; Foster, 2006). Both actual and apparent impartiality are essential to maintain public trust. The ICSC's additional power to design procedural rules amplifies concerns about unchecked authority.

Business actors have expressed concerns about impartiality, as seen in the cartel case involving PT Charoen Pokphand Indonesia and others, where defendants used human rights arguments to challenge procedural flaws (ICSC, 2016). The ICSC's failure to address these concerns suggests a lack of expertise or willingness to engage with human rights law. In a tender conspiracy case involving the Regional Drinking Water Company (PDAM) and contractors, the Commission Assembly's expansive interpretation of procedural rules further highlighted impartiality issues, undermining fairness (ICSC, 2021a). The ICSC's combined roles and rule-making authority weaken institutional checks and balances.

To address these challenges, this study proposes reforms rooted in checks and balances and the state's human rights obligations. A key recommendation is expanding the Supreme Court's role in competition law enforcement. Currently, the ICSC's broad powers include procedural rule-making, with the Supreme Court and Commercial Court intervening only post-decision. Empowering the Supreme Court to design the procedural framework for ICSC enforcement would enhance impartiality and independence. Additionally, the Supreme Court should serve as the authoritative interpreter of ambiguous procedural provisions, reducing the ICSC's discretion and ensuring consistent, fair application.

These reforms would align enforcement with international human rights standards, such as those under the European Convention on Human Rights, which emphasize independent adjudication (Teleki, 2021). By limiting the ICSC's procedural autonomy and introducing judicial oversight, the system would better protect business actors' fair trial rights while maintaining effective enforcement. Such changes would also respond to business actors' growing reliance on human rights arguments, fostering a more equitable and transparent competition law regime in Indonesia.

## **5. CONCLUDING REMARKS**

The Indonesian Competition Supervisory Commission (ICSC) wields extensive authority in enforcing competition law, with powers encompassing the establishment of procedural rules, investigation, adjudication, and sanctioning. This concentration of functions raises significant human rights concerns, particularly regarding the right to a fair trial for business actors subject to enforcement actions. This study highlights that numerous business actors have expressed apprehensions about violations of their fair trial rights within the ICSC's procedural framework. A core component of the right to a fair trial is the entitlement to adjudication by a competent, independent, and impartial tribunal. State institutions, including the ICSC, are obligated to uphold this right by ensuring enforcement processes are free from both subjective and objective bias. When the ICSC fails to demonstrate impartiality, it breaches its duty to respect the right to a fair trial. Consequently, business actors have increasingly invoked human rights arguments to contest enforcement proceedings that may infringe upon their fair trial protections. The research also identifies instances where the ICSC's impartiality has been questioned, notably when the Commission Assembly has interpreted procedural rules in an overly broad or unreasonable manner, undermining fairness in competition law enforcement.

This analysis underscores that competition law enforcement procedures must adhere to fair trial standards, ensuring that every business actor is judged by an independent and impartial tribunal. However, the current enforcement landscape in Indonesia falls short of this commitment, as the ICSC's practices appear inconsistent with the state's obligation to uphold fair trial rights, particularly the requirement for impartial adjudication. To address these shortcomings, this article proposes reforming Indonesia's competition law enforcement framework by enhancing the Supreme Court's role. Specifically, it recommends empowering the Supreme Court to design the procedural rules governing ICSC enforcement and to serve as the authoritative interpreter of ambiguous procedural provisions. This would curtail the ICSC's discretion in rule interpretation, promoting a more consistent and equitable application of the law. By strengthening the Supreme Court's oversight, a robust system of checks and balances would be established, fostering greater respect for the right to a fair trial for all business actors involved in competition law proceedings.

### **Author Contributions**

Conceptualization, S.A. and S.H.; methodology, S.A. and S.H.; formal analysis, S.A. and S.H.; writing—original draft preparation, S.A. and S.H.; writing—review and editing, S.A. and S.H.; project administration, S.H.; funding acquisition, S.A. All authors have read and agreed to the published version of the manuscript.

### **Funding**

This research was supported by the Faculty of Law of Universitas Islam Indonesia.

### **Institutional Review Board Statement**

**Not applicable.**

### **Informed Consent Statement**

Not applicable.

### **Data Availability Statement**

The data presented in this study are openly available.

### **Conflicts of Interest**

The authors declare no conflict of interest.

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