






## ARTICLE

# The Philosophy of Justice in Business Law: A Comparative Study of Ethical Values in Ghana and Indonesia's Constitutional Frameworks

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## Abstract

The role of the philosophy of justice in business law as a moral and normative foundation that ensures economic activities are not only oriented towards technical efficiency but also uphold principles of justice such as distributive, commutative, and fairness. The philosophy of justice is closely related to constitutional values because the constitution not only regulates legal norms but also contains ethics and social goals that must be reflected in business regulations.

not only regulates legal norms but also contains ethics and social goals that must be reflected in business regulations. This research aims to analyze the philosophy of justice in business law in relation to the principles and values in the constitution and ethical values of a country, with a legal comparison between Indonesia and Ghana. This research is a normative legal study with a conceptual, comparative legal, and legislative approach. The research findings affirm that a comparative study with Ghana shows that although both countries emphasize the importance of ethical and just economic governance based on constitutional values, their approaches differ. Indonesia has a structured system based on the constitution and the interpretation of the Constitutional Court, whereas Ghana relies on a pluralistic legal framework and sectoral regulations that are not fully integrated with the constitution. This difference highlights the importance of the role of the constitution and the judiciary in realizing fair, transparent, and sustainable business law.



## Keywords

Philosophy of Justice, Business Law, Constitution.

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## Introduction

The development of business law in the global era is marked by various significant changes triggered by globalization and advances in digital technology.<sup>1</sup> Globalization encourages the convergence of national business laws, including Indonesia, with the international legal system.<sup>2</sup> This creates legal certainty for business actors in cross-border transactions and encourages the alignment of business regulations with international standards to increase competitiveness in the global market. The development of information technology has led to the emergence of digital businesses and e-commerce which have changed the way business transactions are conducted.<sup>3</sup> Business laws must now recognize the validity of electronic contracts and regulate digital transactions, including consumer protection and personal data security. For example, Indonesia regulates electronic contracts<sup>4</sup>

Globalization encourages the simplification of business procedures such as licensing and tax payments to facilitate business operations. In addition, adequate legal protection for foreign investors is important to attract investment and encourage economic growth. The global era demands the application of transparency and accountability principles in business law to prevent corruption and strengthen good corporate governance.<sup>5</sup> Overall, globalization has had a positive impact on the development of business law in Indonesia and the world by increasing harmonization, transparency, and legal protection, but also demands rapid adaptation to technological developments and global market dynamics.<sup>6</sup>

<sup>1</sup> Nkechi Emmanuella Eneh Chidiogo Uzoamaka Akpuokwe, Seun Solomon Bakare and Adekunle Oyeyemi Adeniyi, "Corporate Law In The Era Of Globalization: A Review Of Ethical Implications And Global Impacts," *Finance & Accounting Research Journal* 6, no. 3 (2024): 304–19.

<sup>2</sup> Finna Nazran, Fitri Yanni, and Dewi Siregar, "Realizing People's Welfare in Economic Globalization, Perspective of Constitution of Electronic Information and Transaction," *Veteran Law Review* 5, no. 1 (2022): 5.

<sup>3</sup> Amirah Khadijah Roslan et al., "Legal Protection of E-Consumers in Malaysia," *International Journal of Law, Government and Communication* 7, no. 29 (2022): 223–41, <https://doi.org/10.35631/ijlgc.729016>.

<sup>4</sup> Hendra Dwi Prasetya, "The Role of Digital Contracts in The Insurance Business and Their Relationships on Digital Signature Using PrivyID," *International Journal of Social Science, Education, Communication and Economics* 2, no. 1 (2023): 135–44, <https://doi.org/10.54443/sj.v2i1.120>.

<sup>5</sup> Yapiter Marpi et al., "Legal Effective of Putting 'Business as Usual' Clause in Agreements," *International Journal of Criminology and Sociology* 10, no. 1 (2021): 58–70, <https://doi.org/10.6000/1929-4409.2021.10.09>.

<sup>6</sup> Elyatul Azizah, Armansyah Armansyah, and Yulianingsih Yulianingsih, "Development of Indonesian Business Contract Law in The Globalization Era," *International Journal of Social Science and*

The development of business law in the digital era is greatly influenced by advances in information technology that change the way transactions and business models are conducted. In this case, business practices are in fact developing with the rise of digital and virtual business practices. This requires the law to accommodate business developments that in the digital era are greatly influenced by the increasingly massive advances in information technology. According to Satjipto Rahardjo, the function of law in accommodating the digitalization era must be dynamic and adaptive to rapid social changes due to advances in information technology.<sup>7</sup> He emphasized that law is not only a tool to ensure certainty and order, but also as a means of social change and social control that must be able to answer new problems in the digital era, such as cybercrime and electronic transactions.

Satjipto Rahardjo also criticized the dominance of modern law which is too dogmatic and formalistic, so that in the digital era the law must be more progressive and flexible to accommodate the changing needs of society, including in terms of personal data protection, digital transaction security, and electronic dispute resolution.<sup>8</sup> Therefore, according to Satjipto Rahardjo, the law must continuously evolve and innovate to remain relevant and effective in regulating business and social life in the digital age.

The position of business law in the field of law is as a specialized branch or focus that regulates the procedures for conducting business activities, such as trade, industry, and finance, which are related to the production or exchange of goods and services with the motive of making a profit.<sup>9</sup> Business law is a body of legal rules, both written and unwritten, that govern the rights and obligations of business actors and the resolution of disputes arising from business activities.<sup>10</sup> Systematically, business law sits within the national legal system as a part of private law, specifically contract law, but also incorporates aspects of other laws such as tax law, intellectual property law, and corporate law.<sup>11</sup> Business law serves crucial functions: providing practical information for business actors, ensuring legal certainty, protecting businesses, and guaranteeing smooth and fair market mechanisms.<sup>12</sup>

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*Education Research Studies* 03, no. 04 (2023): 632–38, <https://doi.org/10.55677/ijssers/v03i4y2023-14>.

<sup>7</sup> Satjipto Rahardjo, *Ilmu Hukum*, 7th ed. (Bandung, 2012), Citra Aditya Bakti.

<sup>8</sup> Muhammad Zulfa Aulia et al., “The Use of Progressive Law Phrase in Constitutional Court Decisions: Context, Meaning, and Implication,” *Jurnal Konstitusi* 20, no. 3 (2023): 423–50, <https://doi.org/10.31078/jk3034>.

<sup>9</sup> Syamsul Maarif, “Job Creation Law: What’S Next Change in Indonesian Business Competition Law?,” *Jurnal Hukum Dan Peradilan* 10, no. 3 (2021): 479, <https://doi.org/10.25216/jhp.10.3.2021.479-500>.

<sup>10</sup> Munawar Kholil, Adi Sulistiyono, and Albertus Sentot Sudarwanto, “Issues and Challenges of Trademark Law Registration for Small,” *International Journal of Business, Economics and Law* 18, no. 5 (2019): 311–19.

<sup>11</sup> I Gede Agus Kurniawan, Putu Aras Samsithawrati, and Ni Ketut Supasti Dharmawan, “Legal Protection for Intellectual Property Holders in Business Activities in The Era of The Industrial Revolution 4.0,” *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 11, no. 1 (2024): 74–81, <https://doi.org/https://doi.org/10.24252/jurisprudentie.v11i1.48076>.

<sup>12</sup> Aminuddin Kasim et al., “Mining Business Licensing in Indonesia: Perspective Administrative Law After the Revision of the Mineral and Coal Law,” *Russian Law Journal* 11, no. 3 (2023): 1248–55, <https://doi.org/10.52783/rlj.v11i3.1538>.

Regarding the Indonesian Constitution, the development of business law aligns with the formulation of Article 33 paragraph (4) of the 1945 Indonesian Constitution, which states that the national economy is organized based on economic democracy with principles including togetherness, equitable efficiency, sustainability, environmental awareness, independence, and maintaining a balance between national economic progress and unity.<sup>13</sup> Equitable efficiency is a crucial aspect of the 1945 Indonesian Constitution, particularly concerning the orientation of business law in Indonesia. Equitable efficiency means that economic activities must be conducted effectively and resourcefully, while still upholding social justice for all citizens. This implies that economic efficiency cannot come at the expense of justice, especially in the distribution of economic benefits and the protection of small businesses and broader public interests. This principle demands a balance between competition and cooperation in economic life, thus prioritizing not only profit but also collective well-being.<sup>14</sup> In practice, this principle underpins the restriction of monopolies and unfair business competition, and the protection of small businesses from being overwhelmed by dominant large enterprises. The aspect of business law emphasizing the dimension of business justice is compelling to examine, particularly in relation to a nation's constitution. A nation's constitution, which generally regulates various aspects of national life, inherently accommodates universal values that also govern business law. In Indonesia, for instance, the aspect of equitable efficiency, as formulated in Article 33 paragraph (4) of the 1945 Indonesian Constitution, is a crucial principle in business law, accommodating not only the philosophy of business law but also business ethical values.

This research aims to analyze the philosophy of justice in business law concerning principles and values within the constitution and ethical values of a nation. This research involves a comparative legal study between Indonesia and Ghana. The comparative legal study focusing on the philosophy of business law in Indonesia and Ghana is intended to analyze the philosophy of business law in developing countries in Asia and Africa. The legal issues to be analyzed in this research are: (i) the philosophy of justice in business law and its relevance to the constitution and business ethics in a nation, and (ii) a comparative legal study of business law regulations between Indonesia and Ghana and their connection to the constitution and business ethics in a nation.

## Methods

This research, which explores the philosophy of justice in business law concerning constitutional principles, ethical values, and a comparative legal analysis

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<sup>13</sup> Akhmad Farhan Nazhari and Naufal Irkham, "Analisis Dugaan Praktik Predatory Pricing Dan Penyalahgunaan Posisi Dominan Dalam Industri E-Commerce," *Jurnal Persaingan Usaha* 3, no. 1 (2023): 19–31, <https://doi.org/10.55869/kppu.v3i1.85>.

<sup>14</sup> Asmah, "Penguatan Kewenangan Komisi Pengawas Persaingan Usaha Lewat Putusan Mahkamah Konstitusi (Putusan Mk No.85/Puu-Xiv/2016)," *Kertha Wicaksana* 15, no. 1 (July 23, 2021): 11–17, <https://doi.org/10.22225/kw.14.2.1863.77-86>.

between Indonesia and Ghana, is a normative legal study. As a normative legal study, the primary focus will be on examining relevant theories, philosophies, and regulations.<sup>15</sup> The primary legal materials used are the Indonesian and Ghanaian constitutions, specifically those sections related to values and ethics concerning the philosophy of justice. Secondary legal materials include books and journal articles in the fields of business law, the philosophy of justice, and those discussing the Indonesian and Ghanaian constitutions. Non-legal materials used include Black's Law Dictionary. Legal materials are analyzed prescriptively, selecting gathered materials and adapting them to the legal issues to formulate legal solutions.

## Results and Discussion

### Philosophy of Justice in Business Law and Its Relevance to the Constitution and Business Ethics in a Country

The development of business law studies at the global level is marked by several main trends that reflect the adaptation of law to the dynamics of the economy, technology and international regulations.<sup>16</sup> The study of business law is increasingly focused on the role of legal professionals in supporting the stability of the expanding financial sector, encompassing not only capital markets but also banking, insurance, and fintech. The digitalization of legal processes is a major trend, accelerating the adoption of technologies such as online hearings and electronic documents.<sup>17</sup> This increases the efficiency of resolving cross-border business disputes, but also presents regulatory challenges related to digital evidence, data security, and equitable access to justice.

Global business law studies also observe an increasing trend in mergers and acquisitions, particularly in the technology, renewable energy, and finance sectors. Companies are striving to strengthen their competitiveness by acquiring technology startups that excel in digitalization. This necessitates strict oversight of competition to prevent monopolistic practices or market dominance that harm small businesses. In a global context, there are efforts to harmonize minimum taxes for multinational corporations to address base erosion and profit shifting (BEPS). Furthermore, international carbon trading is beginning to be regulated with transparent and inclusive standards, as part of the global commitment to environmental sustainability and sustainable business.

Business law studies also consider the impact of geopolitical risks and global economic uncertainty on business strategies and legal policies. Slowing global economic growth necessitates adapting business regulations to remain relevant and

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<sup>15</sup> Irwansyah, *Penelitian Hukum: Pilihan Metode Dan Praktik Penulisan Artikel*, 3rd ed. (Yogyakarta: Mira Buana Media, 2020).

<sup>16</sup> Dennis Wye Keen Khon, Muhammad Iqbal Baiquni, and Waspiah Waspiah, "Two Decades of Business Competition Law: How Has Indonesian Competition Law Transformed?," *Journal of Private and Commercial Law* 7, no. 1 (July 31, 2023): 45–68, <https://doi.org/10.15294/jpcl.v7i1.44355>.

<sup>17</sup> S Yulianti et al., "The Efforts To Improve Products For Development Of Micro Small Medium Enterprises (Msmes) Based On Digital Creative Economy In The South Tangerang Region," *International Journal of Engagement and Empowerment* 2, no. 2 (2022): 191–200.

support economic stability and consumer protection. Current global business law studies are evolving towards an integration of technology, broader financial regulation, and strict competition oversight. The digitalization of legal systems and business innovation are the main focus, while issues of sustainability and international tax governance are receiving increasing attention. These developments require business law practitioners to continually develop their competencies and adapt to the dynamic changes in regulations and global economic conditions.

Further developments show that business law studies are also relevant to the theory of justice. Business law and the philosophy of justice are closely related because business law not only regulates the technical and formal aspects of economic activity but must also be based on the principle of justice to create balance and fair treatment for all parties involved.<sup>18</sup> The philosophy of justice provides the moral and normative foundation for business law. Principles of justice, such as distributive justice (fair distribution of resources) and commutative justice (fairness in exchanges or business transactions), guide the formulation and application of business rules to prevent exploitation, discrimination, or injustice in business relationships.<sup>19</sup>

In a business context, commutative justice is crucial because business inherently involves the exchange of goods and services. Justice demands equality and balance in the performance and counter-performance between parties in a contract, so that no party is unfairly disadvantaged. Modern philosophies of justice, such as those articulated by John Rawls, emphasize fairness—justice that provides equal opportunities and considers the balance between rights and obligations in business relationships.<sup>20</sup> This principle avoids extreme inequality and provides space for disadvantaged parties to receive fair treatment in the business legal system.<sup>21</sup>

Legal philosophy helps build the theoretical framework that underpins the creation of business law that is both just and responsive to societal needs. Thus, business law becomes not merely a technical set of rules, but also a reflection of social justice values that guarantee the protection of the rights and obligations of both businesses and consumers. Business law must be grounded in the philosophy of justice to create a legal system that not only regulates formal and economic aspects but also ensures balance,<sup>22</sup> Equality and fair treatment for all parties involved in business activities. The principles of distributive justice, commutative justice, and

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<sup>18</sup> I Gede Agus Kurniawan et al., “The Business Law in Contemporary Times: A Comparison of Indonesia, Vietnam, and Ghana,” *Substantive Justice International Journal of Law* 7, no. 2 (December 2024): 114–41, <https://doi.org/10.56087/substantivejustice.v7i2.297>.

<sup>19</sup> Saparyanto Saparyanto Abdul Rahman, Annisa Khusnur Rosyida, Nur Afifah Aminudin, “Principle of Proportionality as a Reflection of the Theory of Justice and Its Application by Judges in the Resolution of Business Contract Disputes,” *De Lega Lata* 7, no. 1 (2022): 164.

<sup>20</sup> Yati Nurhayati M. Yasir Said, “A Review On Rawls Theory Of Justice,” *Int’ Journal of Law, Environment, and Natural Resources (INJURLENS)* 1, no. 1 (2021): 30.

<sup>21</sup> Sunaryo Sunaryo, “Konsep Fairness John Rawls, Kritik Dan Relevansinya,” *Jurnal Konstitusi* 19, no. 1 (2022): 001, <https://doi.org/10.31078/jk1911>.

<sup>22</sup> Alum Simbolon and Calvin Pramarta, “The Ambiguity Application of Business Judgment Rule Doctrine As Director Immunity Right in the Company Law (Analysis of Supreme Court Verdict No 121k/Pid.Sus/2020),” *Journal Equity of Law and Governance* 3, no. 1 (2023): 1–12, <https://doi.org/10.55637/elg.3.1.6613.1-12>.

fairness are essential foundations in formulating and implementing ethical and just business law.

The philosophy of justice in business law is also linked to a nation's constitution. Generally, as Jimly Asshidiqie's perspective suggests, a constitution is not only concerned with norms but also with the ethics that govern all aspects of national life.<sup>23</sup> The constitution as the basis of the state and the main source of law must reflect the values of social justice which form the basis for the formation of business law.<sup>24</sup> For example, Pancasila as the foundation of the Indonesian state contains values of social justice that must be realized in the national legal system, including business law.<sup>25</sup>

Legal philosophy helps build a theoretical framework so that the resulting business law aligns with the moral and ethical values enshrined in the constitution. This ensures that business law not only regulates technical aspects but also guarantees justice for the wider community. The spirit of justice within the constitution demands that business law protects the rights of all parties, including small businesses and consumers, and prevents monopolistic practices or economic injustices that harm society.<sup>26</sup> The philosophy of justice provides the moral and theoretical foundation for business law to achieve substantive justice in business practices. This is highly relevant to the spirit of justice embedded in a nation's constitution, which demands that business law be not only formal and technical but also oriented towards social justice, the protection of rights, and the overall well-being of society.<sup>27</sup>

One example of the development of ideas on the philosophy of justice in business law relating to a nation's constitution is the construction of Article 33 paragraph (4) of the 1945 Indonesian Constitution. This article affirms the value of "just and efficient" (*efisiensi berkeadilan*) as a fundamental principle in conducting business law in Indonesia. The principle of just and efficient economics also underpins regulations prohibiting monopolistic practices and unfair business competition, aiming to create a fair and equitable business climate for all economic actors. This principle, explicitly stated in Article 33 paragraph (4) of the 1945 Constitution, means that the national economy must be managed using the minimum amount of resources to achieve maximum prosperity that can be enjoyed equally by all citizens. This principle combines two seemingly opposing concepts:

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<sup>23</sup> Jimly Asshidiqie, *Perkembangan Baru Tentang Konstitusi Dan Konstitusionalisme Dalam Teori Dan Praktik*, 1st ed. (Yogyakarta: Genta Publishing, 2018).

<sup>24</sup> I Dewa Gede Atmadja, "Legal Ideology on Social Justice Perspective," *Journal Equity of Law and Governance* 1, no. 2 (2021): 158–63, <https://doi.org/10.55637/elg.1.2.4345.158-163>.

<sup>25</sup> Dicky Eko Prasetyo, "Pancasila Sebagai Pengembangan Moral Virtual Dalam Perspektif Living Ideology," *Pancasila : Jurnal Keindonesiaan* 3, no. 2 (2023): 127.

<sup>26</sup> Dwi Desi Yayi Triana Mahdi, Rafi Oktario, "State-Owned Enterprises Restructuring and Its Challenges in Business Competition from the Perspective of Antitrust and Competition Law in Indonesia," *UNRAM Law Review* 8, no. 2 (2024): 258–61.

<sup>27</sup> Bambang Soesatyo, "The Staples of the State Policy as the Legal Basis for Sustainable Development to Face the Industrial Revolution 5.0 and Golden Indonesia 2045," *International Journal of Engineering Business and Social Science* 2, no. 03 (2024): 1009–19, <https://doi.org/10.58451/ijebss.v2i03.118>.



efficiency (optimal use of resources) and justice (equity and fair treatment), resulting in a balance between individual and collective interests in economic life.<sup>28</sup>

The principle of just and efficient economics is part of economic democracy, demanding that the national economy be managed based on the principles of family-like cooperation, healthy competition, and balanced cooperation. In the context of business law, this principle demands business rules and policies that not only pursue economic efficiency but also consider aspects of social justice and equitable distribution of prosperity. In Indonesian business law, this principle is relevant in regulating State-Owned Enterprises (BUMNs), which must optimize the efficient use of state resources while ensuring accessibility and equitable distribution of benefits for the wider community.<sup>29</sup> However, studies show that current BUMN regulations do not fully reflect the principle of just and efficient economics as mandated by the constitution, as they still focus more on institutional aspects without explicitly guaranteeing fairness and equitable distribution. The Constitutional Court has affirmed that certain production branches, such as electricity, must remain under state control and not be fully handed over to free market mechanisms.<sup>30</sup> The principle of just and efficient economics demands a balance between economic efficiency and social justice. For example, the 2002 Electricity Law, which regulates unbundling and competition in the electricity sector, was declared unconstitutional because it failed to meet the principle of just and efficient economics. In business law, this principle dictates that business competition should not be a "survival of the fittest" free-for-all (free fight liberalism), but must be balanced with cooperation that supports equitable distribution and social welfare. This is crucial for creating a healthy and just business climate for all businesses, including small and medium enterprises (SMEs).

The principle of just and efficient economics in Indonesia is a constitutional foundation that guides business law to focus not only on economic efficiency but also on ensuring social justice and equitable distribution of benefits in business activities. This principle demands balanced business law regulations that optimize resources while protecting the interests of the wider community, particularly in the management of state resources and strategic sectors.

In conclusion, the philosophy of justice in business law plays a vital role in ensuring that economic activity is not only regulated technically and formally but also based on principles of justice that guarantee balance, equality, and fair treatment for all parties. The principles of distributive justice, commutative justice,

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<sup>28</sup> Ahmad Fuad and Dima Hafizul Ilmi, "Konsep Ekonomi Pancasila Dan Relevansinya Terhadap Nilai-Nilai Ekonomi Islam Studi Atas Pemikiran Prof. Dr. Mubyarto," *Jurnal Syariah* 9, no. 1 (2021): 41.

<sup>29</sup> Andi Wahyu Wibisana, "Can Business Judgment Rule Be a Justification Reason in Corruption Cases in State-Owned Enterprises in the Form of Limited Liability Companies?," *International Journal of Research in Business and Social Science* 11, no. 6 (2022): 560–71, <https://doi.org/10.20525/ijrbs.v11i6.1975>.

<sup>30</sup> Ivan Ferdiansyah Agustinus, "Mineral and Coal Mining Business and Management in Indonesia from the Indonesian Constitutional Viewpoint," *Journal of World Science* 1, no. 7 (2022): 500–510, <https://doi.org/10.58344/jws.v1i7.68>.



and fairness are foundational in the creation of ethical and non-discriminatory business regulations, particularly amidst global dynamics such as legal digitalization, business consolidation, and the challenges of sustainability and economic inequality. In a national context, the philosophy of justice is strongly relevant to the constitution because the constitution contains not only legal norms but also moral and ethical values that must be reflected in business law. In Indonesia, this is evident in the principle of just and efficient economics enshrined in Article 33 paragraph (4) of the 1945 Indonesian Constitution, which demands that business law be able to combine economic efficiency with equitable distribution of prosperity. Therefore, ideally, business law should not be an instrument solely for market interests but also a means of protecting and empowering the people's economy and a concrete manifestation of social justice as envisioned in the constitution and national business ethics.

### **Comparison of Business Law Regulations between Indonesia and Ghana and Their Relation to the Constitution and Business Ethics**

Business law regulation and practice in developing countries have unique characteristics reflecting different socio-economic and political conditions compared to developed nations. Business law in developing countries often fails to provide equal protection for all economic actors, particularly the poor, women, and micro-entrepreneurs in the informal sector.<sup>31</sup> Regulations and legal institutions tend to favor elites and large formal businesses, while small and informal businesses often face obstacles and discrimination in accessing justice and protection.

Business law reforms in developing countries are typically top-down, focusing on establishing internationally ideal legal frameworks without considering the local social and economic context. This approach often ignores the needs and realities of micro and informal businesses that dominate the economies of developing countries.<sup>32</sup> Many developing countries adopt business law systems from developed nations (legal transplants) that are not always compatible with local social norms, economic conditions, and customary practices. Therefore, there's a need to integrate formal law with existing customary or customary legal systems for more effective and socially acceptable legal regulation. Developing countries often implement protectionist policies to shield domestic industries and jobs from foreign competition, contrasting with developed nations that promote free trade.

Business law in developing countries is often incomplete and weakly implemented. For instance, in Indonesia, business law hasn't fully addressed crucial aspects like corporate law that supports inclusive and equitable economic growth.

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<sup>31</sup> Hari Sutra Disemadi, "Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia," *Law Reform: Jurnal Pembaharuan Hukum* 18, no. 1 (2022): 89–110, <https://doi.org/10.14710/lr.v18i1.42568>.

<sup>32</sup> Endang Purwaningsih, Muslikh, and Suhaeri, "Innovation and Supply Chain Orientation Concerns toward Job Creation Law in Micro, Small, and Medium Enterprises Export-Oriented Products," *Uncertain Supply Chain Management* 10, no. 1 (2022): 69–82, <https://doi.org/10.5267/j.uscm.2021.10.009>.

Most businesses in developing countries operate informally, outside the scope of formal business law. Dispute resolution often relies on informal and customary methods rather than formal legal mechanisms. Uncertainty is prevalent due to weak law enforcement, corruption, and complex bureaucracy, creating high legal risks, especially for foreign investors and large corporations. Dispute resolution systems are often inefficient and opaque, hindering justice. This encourages unethical and irresponsible business practices.

Some developing countries are integrating business ethics and corporate social responsibility into business practices for sustainable and equitable development. Regulations protecting consumers, workers, and the environment are becoming increasingly important. Governments play an active role in regulating and intervening in business activities to achieve economic and social development goals, including through protectionist policies and regulations that support economic equality.

Developing country business law is characterized by unequal legal protection that favors large, formal businesses, marginalizing small and informal ones. Reforms often adopt developed-country models without full adaptation to local conditions. High legal uncertainty and limited access to effective dispute resolution mechanisms are also challenges. However, efforts are underway to integrate ethical and social responsibility aspects to support inclusive and sustainable economic development. Therefore, developing business law contextually, using a bottom-up approach addressing the needs of micro and informal businesses and accommodating local social norms and customs, is crucial for creating a fair, effective legal system that supports inclusive economic growth.

Developing countries, conceptually often referred to as the Global South, particularly in Asia and Africa, have their own characteristics and dynamics in business law and economics, shaped by their social, economic, and political contexts.<sup>33</sup> In the context of business law, developing countries are increasingly integrated into global and transnational business, requiring adjustments to accommodate international practices and standards while considering local conditions and the needs of domestic businesses. Developing countries in the Global South often face criticism regarding inequalities in global trade, exploitation of natural resources, and the dominance of economic power by developed nations—issues reflected in business law regulations and economic policies.<sup>34</sup> Business law in developing countries, particularly in the Global South regions like Asia and Africa, has unique characteristics influenced by their specific socio-economic conditions and global dynamics.

In the context of international trade, developing countries receive special treatment (Special and Differential Treatment - SDT) under WTO rules to

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<sup>33</sup> Brian Z. Tamanaha, "Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences," in *Washington University in St. Louis Legal Studies Research Paper No. 21-06-01*, 2021, 30–33.

<sup>34</sup> Günther Maihold Sebastian Haug, Jacqueline Braveboy-Wagner, "The 'Global South' in the Study of World Politics: Examining a Meta Category," *Third World Quarterly* 42, no. 9 (2021): 1927.

accommodate their capacity limitations and economic conditions.<sup>35</sup> This provides flexibility in implementing trade obligations to avoid burdening developing countries. Businesses in developing countries are increasingly integrated with global and transnational businesses, requiring adjustments in business law to accommodate international practices and standards while still considering local conditions and the needs of domestic businesses. Business law in developing countries is generally based on civil law and commercial law, which regulate contracts, liability, and commercial transactions. However, the application of this law often needs to be adapted to social norms and local practices to be effective.

Enforcement of business law in developing countries often faces challenges such as complex bureaucracy, corruption, and limited resources, which lead to legal uncertainty and risks for businesses, especially small and medium enterprises and foreign investors. Governments in developing countries tend to play an active role in regulating business to protect domestic industries and jobs, often with protectionist policies that limit full free trade. Business law encompasses various sources such as national legislation, business contracts, international treaties, and jurisprudence. Business agreements and international treaties are crucial in regulating cross-border business relationships, becoming increasingly relevant in the era of globalization. Developing countries in the Global South often face criticism regarding inequalities in global trade, exploitation of natural resources, and the dominance of economic power by developed countries, which is also reflected in business law regulations and economic policies. Business law in developing countries in Asia and Africa in the Global South is a combination of national legal regulations based on civil and commercial law with adaptations to local socio-economic conditions and the demands of globalization.<sup>36</sup> These nations receive special treatment in the international trading system to address inequalities and capacity limitations. However, law enforcement practices still face significant challenges such as legal uncertainty and government protectionism. Therefore, the development of business law in developing countries must balance global integration with the protection of national and social interests.

This research focuses on a comparative study of business law, viewed from the aspect of the philosophy of justice, between Indonesia and Ghana, as fellow Global South countries located in Asia and Africa. Indonesia's business law framework is constitutionally based on the 1945 Indonesian Constitution, particularly Article 33, which regulates the national economy and cooperative efforts for the greatest prosperity of the people. Indonesian business law is designed to create legal certainty, justice, and protection for businesses and the wider community in conducting economic activities.

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<sup>35</sup> Ruolin Liao, "Applications and Responses to RCEP Rules on Geographical Indications Protection in China," *SHS Web of Conferences* 178 (2023): 03008, <https://doi.org/10.1051/shsconf/202317803008>.

<sup>36</sup> Enrico Buono, "Columbus' Mistake, Bridging the Gap in the Global South: Intercultural Constitutional Engineering Between India and Las Indias," *Revista General De Derecho Publico Comparado* 1, no. 26 (2019): 1–32.

Referring to the Indonesian Constitution, Article 33 paragraph (4) of the 1945 Indonesian Constitution states that the national economic system is run based on the principles of a democratic economy, encompassing values such as togetherness, just efficiency, sustainability, environmental awareness, independence, and balance between growth and national economic unity. Among these principles, just efficiency plays a crucial role, especially in the context of Indonesian business law. This concept emphasizes that economic activities must be conducted efficiently and without wasting resources, but still prioritizing social justice for all of society. This means that economic efficiency cannot sacrifice the principle of justice, especially in terms of the distribution of economic results and protection for small businesses and the wider community. This principle also emphasizes the need for a balance between competition and cooperation in the economic world, so that profit orientation is not the only goal, but also the improvement of collective welfare. In its application, this principle serves as a basis for preventing monopolistic practices and unhealthy business competition, while guaranteeing protection for small businesses so that they can survive in the face of the dominance of large businesses.

The construction of Article 33 paragraph (4) of the 1945 Indonesian Constitution also contains deep values of the philosophy of justice and business ethics in the context of the Indonesian economy. This article emphasizes that the national economy is organized based on a democratic economy with the principles of togetherness, just efficiency, sustainability, environmental awareness, independence, and maintaining the balance of progress and national economic unity. This article places the prosperity of the people as the main goal, not just individual prosperity.<sup>37</sup> This reflects the principle of social justice, demanding an equitable and just distribution of economic benefits for all Indonesian citizens. The democratic economy in this article means that the economy is run collectively with the principles of family and mutualism, demanding social responsibility and ethics in business practices, not just the pursuit of individual profit. Article 33 paragraph (4) of the 1945 Constitution does not only regulate the technical aspects of the economy but also contains values of the philosophy of social justice and business ethics, emphasizing that the economy must be run democratically, justly, sustainably, and with environmental awareness for the greatest prosperity of the people. Thus, this article serves as a constitutional foundation for economic development that is not only productive but also ethical and socially just in Indonesia.

Constitutional provisions related to business law in Indonesia, as stated in Article 33 paragraph (4) of the 1945 Constitution, are relevant to the interpretations of the Constitutional Court as an effort to uphold the principles of business law in Indonesia. In Decision Number 36/PUU-X/2012, the Constitutional Court affirmed that resource management must provide the greatest prosperity for the people and be carried out directly or through state-owned enterprises with the principles of fair,

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<sup>37</sup> Arief Budiono Khudzaifah Dimiyati, Haedar Nashir, Elviandri, Absori, Kelik Wardiono, "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (2021): 1–8.

efficient, and transparent business competition. The Constitutional Court stated that the institutional model of BP Migas, whose role is limited, is contrary to Article 33 of the 1945 Constitution because it hinders direct state management and the principle of fair business competition. In another decision, Decision Number 16/PUU-XIV/2016, which tested the constitutionality of regulations related to Article 33 paragraph (4) of the 1945 Constitution, affirmed the importance of the principle of just efficiency in the management of the national economy. Decision Number 1/PUU-XXIII/2025 also highlighted tax aspects related to Article 33 paragraph (4) and Article 34 paragraph (1) of the 1945 Constitution, affirming that the national economy must be organized based on the principles of a democratic economy enshrined in Article 33 paragraph (4). Furthermore, Decision Number 104/PUU-XXII/2024 explains that several provisions in the Road Law contradict Article 33 paragraph (4) of the 1945 Constitution, which contains the principles of just efficiency and a democratic economy.

Regarding business competition, Decision Number 85/PUU-XIV/2016 examined Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. Part of the material review petition was granted against several articles, including Articles 22, 23, 24, 36 letters c, d, h, i, Article 41 paragraphs (1) and (2), and Article 44 paragraphs (4) and (5). The core of the decision affirms that the authority of the Business Competition Supervisory Commission (KPPU) in conducting investigations and supervision must be limited so as not to contradict the 1945 Constitution.<sup>38</sup> The Constitutional Court limited the meaning of the phrase "other parties" in Article 22 of Law No. 5/1999 to "other business actors and/or parties related to other business actors" to prevent collusion resulting in unfair business competition, such as bid-rigging. This decision is an important basis for upholding fair and transparent business competition in Indonesia. In short, Constitutional Court Decision No. 85/PUU-XIV/2016 is a key decision that regulates and affirms the principle of fair business competition and limits the authority of the KPPU to comply with the constitution in handling monopolistic practices and unfair business competition. In general, these Constitutional Court decisions affirm that Article 33 paragraph (4) of the 1945 Constitution contains the principles of a democratic economy, just efficiency, and fair and transparent business competition. The Constitutional Court rejected economic management models that do not provide the greatest prosperity for the people and contradict the principle of fair business competition.

From the above description, business law regulations in Indonesia have accommodated the dimensions of the philosophy of justice and business ethics, especially by exploring and referring to the provisions of Article 33 paragraph (4) of the 1945 Constitution regarding just efficiency. As in Indonesia, in Ghana, business law regulations are not specifically detailed in the text of the constitution, but the basic principles related to economic and business governance are reflected in the

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<sup>38</sup> Khon, Baiquni, and Waspiah, "Two Decades of Business Competition Law: How Has Indonesian Competition Law Transformed?"

constitution and supported by supplementary regulations and policies that emphasize transparency, integrity, and good corporate governance.<sup>39</sup> The Right to Information Act in Ghana encourages the private sector and businesses to apply the principles of transparency and integrity in their business operations.<sup>40</sup> This aligns with the good governance values expected by the constitution and supporting regulations, to enhance sustainable economic development and public trust in business.

The 1992 Constitution of Ghana is the supreme law that governs the basic principles of government, including economic and business aspects.<sup>41</sup> While the Ghanaian constitution doesn't explicitly detail business law, it establishes a framework for political and economic stability, crucial for business law development. Discussions in Ghana emphasize good corporate governance in the private sector, aligning with constitutional values and business ethics. Comparative studies show that despite Ghana's political stability, challenges exist in legal infrastructure and institutional capacity for effective business law enforcement, impacting justice, legal certainty, and business rights protection. Ghanaian business law draws from the constitution, national laws, English common law, and customary law, creating a pluralistic system needing harmonization for effectiveness and fairness.

Ghana's business law framework is rooted in the 1992 constitution, providing a foundation for economic and business governance, though not explicitly detailing business law. Implementation is heavily influenced by transparency, integrity, and good corporate governance principles, supported by laws like the Right to Information Act. However, challenges in legal infrastructure and enforcement hinder the creation of a fair and competitive business environment aligned with constitutional values. Unlike Indonesia, Ghanaian business law doesn't emphasize the crucial role of courts, particularly a constitutional court like Indonesia's, which interprets business law regulations.

Both Indonesia and Ghana share a foundation of constitutional values supporting good and ethical economic governance. Both emphasize justice, transparency, and integrity in business. Both countries also incorporate a business law approach focused on broader societal well-being, albeit with different forms and approaches. However, fundamental differences exist in their business law regulation and implementation. In Indonesia, business law is explicitly regulated and firmly rooted in the constitution, particularly Article 33 paragraph (4) of the 1945 Indonesian Constitution. This article emphasizes democratic economics, just

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<sup>39</sup> Christine Dowuona-Hammond, Richard Adjei Kyeremateng, and Ama F. Hammond, "Product Liability and E-Commerce in Ghana: Focusing Ghana's Regulatory Framework on Consumer Protection," *Business Law Review* 45, no. 6 (December 2024): 154–67, <https://doi.org/10.54648/BULA2024020>.

<sup>40</sup> Reginald Nii Odoi, "An Introduction to the Commercial Law of Ghana: Defining the Scope and Boundaries of Commerce and Trade Pursuits," *SSRN Electronic Journal*, 2022, <https://doi.org/10.2139/ssrn.4014667>.

<sup>41</sup> Nuhu Yidana, "Regulatory Remedies in the Enforcement of Product Quality and Safety Standards in Ghana: A Case for Reform from a Comparative Analysis," *Business Law Review* 44, no. 1 (February 2023): 2–11, <https://doi.org/10.54648/BULA2023005>.

efficiency, a balance between competition and cooperation, and protection for small businesses. The Constitutional Court in Indonesia plays a very active role in interpreting and upholding these principles through various decisions that strengthen the prohibition of monopolies, define the limits of business institution authority, and ensure an economy based on social justice and business ethics.

Conversely, in Ghana, the 1992 constitution doesn't explicitly detail business law, instead providing a basic framework for economic and government governance. Business principles like transparency, integrity, and good corporate governance are elaborated through supplementary legislation like the Right to Information Act and other policies. Ghana also adopts a legal system sourced from English common law, national laws, and customary law, making its business law system more pluralistic but less constitutionally integrated. Unlike Indonesia, Ghana lacks a judicial institution like the Constitutional Court that actively interprets business law based on the constitution. Thus, the primary differences lie in the level of business law integration with the constitution, the role of judicial institutions, and the normative approach to the principles of justice and small business protection. Indonesia has a more structured system based on constitutional interpretation through the Constitutional Court, while Ghana emphasizes strengthening governance and business ethics through sectoral regulations and general constitutional principles.

## Conclusion

The philosophy of justice in business law serves as a moral and normative foundation, ensuring that economic activities are not only technically regulated but also grounded in principles of justice such as distributive justice, commutative justice, and fairness, for the sake of achieving balance and equitable treatment for all business actors. In a national context, this philosophy is highly relevant to constitutional values, because a constitution contains not only legal norms but also reflects ethics and social justice that must be implemented in business regulations. In Indonesia, the principle of just efficiency enshrined in Article 33 paragraph (4) of the 1945 Indonesian Constitution affirms that business law must integrate economic efficiency with equitable welfare distribution, so that it is not merely a tool for market interests but also an instrument to protect and empower the people and realize social justice in ethical and sustainable business practices.

Business law regulations in Indonesia and Ghana both base their legal systems on constitutional values emphasizing the importance of good, ethical economic governance, upholding principles of justice, transparency, and integrity. However, they have different approaches to implementation. Indonesia explicitly regulates business law in its constitution, specifically through Article 33 paragraph (4) of the 1945 Indonesian Constitution, and strengthens it through the active role of the Constitutional Court in interpreting and upholding the principles of democratic



economics and just efficiency. Meanwhile, Ghana does not directly detail business law in its constitution but rather through a basic framework and supplementary regulations emphasizing good corporate governance. In addition, Ghana's business law system is pluralistic, influenced by common law, national law, and customary law, but is less constitutionally integrated. The main difference lies in the extent to which the constitution serves as a direct basis for regulating business law and the role of judicial institutions in overseeing it.

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