



Non-Compete Clauses in Contracts and Antitrust Law in Indonesia

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ARTICLE INFO

Keywords: Non-Compete Clause, Contract, Antitrust

Received : 01 January 2025

Revised : 20 January 2025

Accepted: 25 February 2025

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ABSTRACT

This study examines non-compete clauses (NCCs) in franchise agreements within Indonesia's legal framework, focusing on their alignment with antitrust laws and implications for market competition and entrepreneurship. By analyzing statutory provisions, judicial precedents, and doctrinal interpretations, this normative juridical research evaluates the proportionality and enforceability of NCCs under Indonesian contract and labor law. The study highlights the restrictive nature of NCCs, their potential to hinder economic mobility, and the challenges posed by the lack of regulatory clarity. Findings reveal that while NCCs safeguard franchisors' interests, overly broad clauses risk violating constitutional principles. The research underscores the need for clear regulatory guidelines to balance contractual autonomy, fair market practices, and labor mobility, promoting innovation and sustainable growth.

INTRODUCTION

The proliferation of franchising as a business model has reshaped global commerce, offering enterprises an efficient pathway to scalability while maintaining consistent brand identity (Grünhagen & Terry, 2017). In Indonesia, the franchising sector plays a pivotal role in fostering economic development, entrepreneurship, and employment. According to the Indonesian Ministry of Trade, franchising contributes significantly to the national economy, with thousands of franchise outlets operating across various sectors such as food and beverages, retail, and education (Wienanto, 2024). However, the legal and economic dimensions of certain contractual provisions within franchise agreements, particularly non-compete clauses, warrant critical scrutiny. These clauses, often justified as mechanisms to safeguard franchisors' interests, have broader implications for market competition and economic mobility (Zulkifli & Noor, 2024). This study investigates the role of non-compete clauses in contractual relationships and their intersection with Indonesia's antitrust laws, highlighting the balance between contractual freedoms and market regulation.

Non-compete clauses are contractual provisions that restrict franchisees from engaging in competing activities during or after the contractual relationship. For franchisors, these clauses serve critical functions, including protecting proprietary information, maintaining brand integrity, and ensuring the sustainability of their franchise networks (Sugiono et al., 2023). By limiting competition from former franchisees, non-compete clauses enable franchisors to preserve market share and secure their investments in human and intellectual capital. However, these clauses can impose significant constraints on franchisees, limiting their ability to pursue new business opportunities. This restrictive nature raises questions about fairness and economic freedom, particularly in contexts where power imbalances favor franchisors. Franchisees often lack the bargaining power to negotiate terms, making them susceptible to agreeing to clauses that may be overly broad or detrimental to their future entrepreneurial endeavors. The inherent tension between protecting franchisors' legitimate interests and ensuring a competitive market environment underscores the need for effective legal frameworks that balance these objectives.

Antitrust law plays a vital role in fostering competitive markets by prohibiting practices that distort competition, restrict consumer choice, or inhibit innovation. In Indonesia, Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (the Competition Law) provides the primary legal framework for regulating anti-competitive behavior (Kennedy, 2024a). This law aims to ensure market fairness and economic efficiency by addressing monopolistic practices, abuse of dominant market positions, and agreements that hinder competition. Non-compete clauses, given their restrictive nature, are subject to scrutiny under antitrust laws (Marx & Fleming, 2012). These clauses may contravene the Competition Law when they restrict market entry, facilitate abuse of dominant position, limit consumer choice, or create regional monopolies. By preventing franchisees from entering the market independently, non-compete clauses can create barriers to

competition and innovation. In industries where knowledge and experience gained during franchising are critical for success, such restrictions can severely limit entrepreneurial activity.

Franchisors with significant market power may use these clauses to maintain dominance, undermining smaller competitors and stifling fair competition (Zulkifli & Noor, 2024). Furthermore, a reduction in competitors can lead to diminished product and service diversity, ultimately harming consumers by reducing options and potentially increasing prices. Geographic restrictions within non-compete clauses may result in monopolistic practices in specific areas, leading to market segmentation and inefficiencies. When overly broad or improperly applied, non-compete clauses can stifle competition, innovation, and economic mobility (Anderson et al., 2018). By constraining franchisees' ability to leverage their expertise in new ventures, these clauses suppress entrepreneurial potential and labor market dynamism. This is particularly concerning in Indonesia, where small and medium-sized enterprises (SMEs) form the backbone of the economy (Kennedy, 2024b). Restrictive non-compete clauses can deter individuals from establishing independent businesses, thereby limiting the broader economic contributions of franchisees.

The economic impact of these clauses extends beyond individual relationships, potentially distorting market structures and reducing overall efficiency (Fadhilah, 2019). In regions with high concentrations of franchises, overly restrictive non-compete clauses can lead to a lack of competition, resulting in higher prices and reduced service quality. In competitive markets, the free flow of labor and knowledge is essential for driving growth and fostering innovation. Thus, the application of non-compete clauses must be carefully regulated to prevent abuse and promote equitable market practices. The principle of freedom of contract is a cornerstone of private law, enabling parties to define their obligations and expectations (Sjaiful, 2015). However, this freedom is not absolute and must be balanced against the public interest, particularly in ensuring fair market competition. Indonesia's legal framework acknowledges this tension, emphasizing the need for proportionality and reasonableness in the enforcement of non-compete clauses. Factors such as geographic scope, duration, and the specific interests being protected must be considered to strike an equitable balance between contractual autonomy and competitive market integrity.

Indonesian courts have occasionally invalidated non-compete clauses deemed overly restrictive or unreasonable (Febriani & Hasmiati, 2022). Case law demonstrates that clauses must serve legitimate business interests without unnecessarily infringing on franchisees' rights or harming competition. In practice, this requires a nuanced assessment of each clause's terms, taking into account industry standards, the bargaining positions of the parties, and the potential impact on market dynamics. This study addresses two critical research questions: What are the legal standards governing non-compete clauses under Indonesian law? Are existing regulatory frameworks sufficient to prevent the abuse of non-compete clauses and ensure compliance with antitrust

principles? The objectives of this study are to contribute to the academic discourse on antitrust law and contract law by analyzing non-compete clauses within the Indonesian legal framework. This study aims to bridge theoretical insights and practical considerations, offering a comprehensive understanding of how these clauses interact with market regulation and providing actionable recommendations for businesses, policymakers, and legal practitioners. It highlights best practices for drafting, negotiating, and enforcing non-compete clauses in ways that align with legal and ethical standards, fostering both economic fairness and market competitiveness.

Non-compete clauses in franchise agreements represent a complex intersection of contract law and antitrust regulation. While these clauses serve legitimate business purposes, their restrictive nature can have far-reaching implications for competition, entrepreneurship, and economic mobility (Marx & Fleming, 2012). In Indonesia, the interplay between non-compete clauses and antitrust law underscores the need for a balanced approach that protects both contractual freedoms and market integrity. By examining the legal standards governing non-compete clauses and assessing the adequacy of existing regulatory frameworks, this study aims to contribute to a more equitable and competitive business environment. Through thoughtful policy interventions and informed legal practices, Indonesia can foster a dynamic economy that supports innovation, fairness, and sustainable growth.

LITERATURE REVIEW

Non-Compete Theory

Non-compete agreements (NCAs) are legal contracts that restrict employees from joining or starting a competing firm after leaving their employer. These agreements have garnered significant attention from academics, policymakers, and the public due to their implications for labor markets, firm behavior, and regional economies (Disyon & Gultom, 2022). The theoretical foundation of NCAs lies in their ability to protect firms' investments in human capital and proprietary knowledge. By limiting employees' ability to transfer sensitive information or specialized training to competitors, NCAs address the risk of "investment hold-up." This allows firms to commit to providing resources and training without fear of losing their returns to competitors (Hardy, 2020). However, these agreements also constrain employees, reducing their mobility and bargaining power, which can lead to labor market distortions.

For workers, NCAs can have negative consequences such as limited career opportunities, suppressed wage growth, and reduced entrepreneurial activity. Studies have shown that many employees sign non-compete clauses without fully understanding their implications, often resulting in unexpected restrictions on their professional mobility (Kennedy, 2024b). Despite these downsides, firms derive substantial benefits from NCAs. By reducing employee turnover and retaining critical talent, NCAs provide businesses with a competitive edge, particularly in industries dependent on innovation and intellectual property. These agreements also function as a mechanism to

safeguard trade secrets and prevent the unintended diffusion of strategic knowledge.

Legal and ethical concerns surrounding NCAs have also come to the forefront. Unlike other forms of intellectual property protection, NCAs impose broad restrictions on employees, encompassing geographical, temporal, and functional dimensions (Disyon & Gultom, 2022). This raises questions about their fairness, particularly when imposed on low-skilled or low-wage workers. Critics argue that NCAs disproportionately benefit employers and exploit the power imbalance in employment relationships. The use of such agreements in low-skilled industries, where trade secrets are less relevant, has been particularly controversial.

Non-compete agreements represent a complex intersection of labor law, corporate strategy, and economic policy. While they provide significant benefits to firms by protecting investments and retaining talent, they also pose challenges to worker mobility, wage growth, and entrepreneurial activity. Striking a balance between these competing interests is essential for fostering a dynamic and equitable economy. Ongoing research and thoughtful policy interventions can help ensure that the use of NCAs aligns with broader societal and economic objectives, promoting both innovation and fairness in the labor market.

Competition Theory

Competition theory explores the dynamics of rivalry among businesses in a market, emphasizing the interplay between firms, consumers, and regulatory frameworks (Kennedy, 2024a). At its core, competition ensures that businesses strive to deliver better products, services, or prices, ultimately benefiting consumers and fostering economic growth. The theory is rooted in the principles of free markets economics, where competitive forces drive efficiency, innovation and resource allocation (Putri et al., 2024). Firms are incentivized to innovate and optimize their operations to gain a competitive edge, while consumers enjoy the freedom to choose products that best meet their needs (Rahmawati et al., 2024). This dynamic creates a virtuous cycle of growth, productivity, and consumer satisfaction. One fundamental aspect of competition theory is the classification of market structures, such as perfect competition, monopolistic competition, oligopoly, and monopoly. In perfect competition, numerous small firms operate in the market, producing homogenous products with no single entity wielding significant market power (Azevedo & Gottlieb, 2017). Prices are determined by supply and demand, and firms cannot influence them. On the other hand, monopolistic competition involves many firms offering differentiated products, leading to non-price competition through branding, quality, or customer service. Oligopolies, where a few dominant firms control the market, often engage in strategic interactions such as price fixing or product bundling, which can impact market efficiency. Monopolies represent the absence of competition, where a single firm dominates, often leading to inefficiencies, higher prices, and reduced innovation.

Competition theory also examines the role of antitrust laws and regulatory measures in maintaining fair competition. Governments implement these measures to prevent anti-competitive practices such as monopolistic behavior, cartels, predatory pricing strategies aim to drive competitors out of the market. Regulatory bodies such as the Federal Trade Commission (FTC) in the United State of the European Commission in the European Union monitor and incense in such practices to uphold market integrity (FTC et al., 2021). Another critical dimension of competition theory is the relationship between competition and innovation. While intense competition can drive firms to innovate as they seek to differentiate their products or improve efficiency, excessive competition may reduce profit margins, limiting resources for research and development (R&D). This creates a nuanced balance where optimal competition labels encourage innovation without undermining firms' capacity to invest in long term growth. For example, the technology industry often illustrates this dynamic, as companies constantly innovate to maintain their competitive positions, benefiting consumers with cutting edge products and services.

Market entry barriers are another vital aspect of competition theory. These barriers can take various forms, such as high startup costs, economies of scale, or legal restrictions, which prevent new firms from entering the market (Marx & Fleming, 2012). While some barriers are natural and stem from industry characteristics, others, such as exclusive agreements or excessive licensing requirements, are artificially created to stifle competition. High entry barriers often result in market concentration, where dominant firms maintain their position, reducing consumer choices and potentially leading to inefficiencies. Globalization has added complexity to competition theory, introducing cross border competition and the need for international regulatory cooperation (Sihaloho et al., 2023). Multinational Corporations (MNCs) often leverage their scale and resources to dominate local markets raising concerns about fair competition in developing economies. Additionally, differences in regulatory arbitrage. For instance, companies operating in jurisdictions with lax antitrust enforcement may engage in practices that would be prohibited elsewhere, distorting global market dynamics.

Ethical considerations in competition theory have gained prominence, particularly concerning consumer welfare and corporate responsibility (Fauzi & Soepriyadi, 2022). While competition aims to maximize consumer benefits, aggressive tactics such as false advertising, exploitation of labor, or environmental harm can undermine societal well-being (Putri et al., 2024). Therefore, competition policies must strike a balance between promoting market efficiency and addressing broader ethical concerns. Sustainable business practices, fair labor conditions, and responsible environmental stewardship are increasingly viewed as integral components of a fair competitive landscape. In digital markets, competition theory faces new challenges due to the rise of platforms-based businesses and network effects. Companies like Amazon, Google, and Facebook dominate their respective markets by leveraging user data, economies of scale and network effects, where the values of their services increase with the number of users. These dynamics crate "winner takes all"

scenarios, limiting competition and raising questions about data privacy, algorithmic transparency, and market power. Regulators are grappling with how to adapt traditional antitrust frameworks to address these unique challenges, ensuring that digital markets remain open and competitive.

Legal Certainty Theory

Legal certainty is a fundamental concept in the rule of law, emphasizing the need of laws to be clear, predictable, and consistently applied (Remaja, 2014). It ensures that individuals, organizations, and government institutions can rely on the legal system to govern their behavior and resolve disputes fairly. This principle is essential for promoting justice, equality, and trust in the legal framework, as it provides a stable foundation for decision making, governance, and accountability (Soebagjo, 1990). Legal certainty not only protects individual rights but also fosters social and economic stability by ensuring that everyone operates under the same predictable rules (Kennedy, 2023). At its core, legal certainty requires that laws are clear and understandable. Clarity in legal drafting is crucial, as ambiguous or vague laws can lead to confusion and arbitrary interpretations. When laws lack precision, they become open to misuse or selective enforcement, undermining public trust in the legal system (Prasetyo, 2021). This clarity also ensures that individuals and businesses can understand their rights and obligations, allowing them to act in compliance with the law and avoid unintended violations. In this context, legal certainty contributes to the accessibility of justice, as it empowers people to navigate the legal system with confidence.

Another key aspect of legal certainty is predictability. This means that laws should remain stable over time, allowing individuals to foresee the legal consequences of their actions. Predictability is vital for planning and decision making, particularly in the business and economic sectors (Soebagjo, 1990). When laws are frequently changed or applied inconsistently, it creates uncertainty and discourages lawful behavior or long-term investments. For example, businesses rely on predictable tax laws and regulatory frameworks to make informed financial decisions. Sudden changes or inconsistent enforcement in these areas can disrupt economic activity and erode trust in the government. Legal certainty also encompasses the principle of non-retroactivity. This principle prohibits laws from being applied to actions that occurred before the laws were enacted (Prasetyo & Barkatullah, 2020). Retroactive legislation is considered inherently unfair because it penalizes individuals for behavior that was lawful at the time it was undertaken. By upholding the principle of non-retroactivity, legal certainty ensures fairness and protects individuals from arbitrary or punitive legal actions. This is especially important in criminal law, where retroactive application of legal rules could violate fundamental rights and principle of justice.

Consistency in the application and interpretation of laws is another critical element of legal certainty. Courts and administrative bodies must interpret and enforce laws uniformly to ensure equal treatment under the law. Inconsistent judgments or selective enforcement create inequality and undermine public

confidence in the legal system. Legal certainty requires that similar cases be treated alike, fostering trust in the impartiality and integrity of the judiciary (Andrianto, 2020). Additionally, legal processes should be transparent and follow established procedures, ensuring that outcomes are fair and predictable. Accessibility of laws is equally important for ensuring legal certainty. Laws must be publicly available, written in clear and comprehensible language, and easily accessible to all members of society. Without accessibility, individuals cannot effectively understand or comply with the law, which weakens the rule of law and undermines the justice system. Transparency in the legislative process and the publication of laws contribute to public awareness and accountability, reinforcing the principle of legal certainty.

Legal certainty is indispensable for protecting individual rights and freedoms. It provides a framework within which people can exercise their rights without fear of arbitrary interference (Rondonuwu, 2023). In the absence of legal certainty, individuals would be vulnerable to unpredictable and discriminatory actions by authorities. For instance, clear and predictable laws ensure that governments cannot arbitrarily limit freedom of speech, confiscate property, or impose penalties. By providing a stable legal framework, legal certainty strengthens the rule of law and safeguards democratic principles. In the economic sphere, legal certainty supports growth and development by creating a stable environment for businesses and investors (Mulkan, 2021). Predictable laws and regulations enable businesses to make long-term plans, allocate resources efficiently, and foster innovation. Uncertainty in legal rules, on the other hand, increases risks and discourages investment. This is why legal certainty is often seen as a key factor in promoting economic stability and attracting foreign investment. Countries with strong legal certainty are typically more attractive to investors, as they offer a reliable and predictable business environment.

METHODOLOGY

This journal employs a juridical normative research methodology, which is centered on the study and analysis of legal norms, principles, and frameworks as they are embodied in statutes, regulations, case law, and authoritative legal doctrines (Sonata, 2015). This approach focuses on examining legal texts and their interpretations to gain a comprehensive understanding of the rules and principles that govern specific legal issues (Soekanto & Mamudji, 2024). The methodology emphasizes a systematic and structured evaluation of legal provisions to identify their scope, implications, and coherence within the broader legal framework. By concentrating on legal materials as the primary source of analysis, this research approach ensures a focused and in-depth exploration of normative aspects of the law.

Data sources include statutory frameworks, such as national laws, regulations, and constitutional provisions, which form the foundation for understanding legal principles (Budianto, 2022). Judicial precedents are another critical component, offering interpretations and applications of laws in specific cases. Scholarly literature, including legal commentaries, journals, and

academic research, provides theoretical insights and critiques of existing frameworks. Additionally, international legal instruments and comparative law analyses are used to contextualize findings within broader global standards. These sources collectively ensure a structured evaluation of legal norms and principles.

In applying this methodology, the journal adopts a doctrinal approach, relying on critical examination of existing legal sources rather than engaging in empirical research or fieldwork (Sunggono, 2019). The analysis aims to clarify legal principles, resolve ambiguities, and address gaps in the law by interpreting and synthesizing authoritative legal texts. This approach contributes to both legal theory and practical application by providing insights into how legal norms function and interact within their specific contexts. As a result, the journal serves as a valuable platform for advancing scholarly discourse and enhancing the understanding of juridical frameworks.

RESEARCH RESULT

Non-compete clauses (NCCs) are provisions in employment agreements that prevent employees from engaging in competitive activities with their former employers after the termination of their contracts (Hardy, 2020). These clauses are common in many jurisdictions and serve to protect businesses' intellectual property, trade secrets, and investments in employee training (Sugiono et al., 2023). However, in Indonesia, the legal framework surrounding NCCs remains ambiguous. This research examines the status of non-compete clauses in Indonesia, judicial precedents, practical implementation, market impacts, anti-competition concerns, and international comparisons to provide a comprehensive overview of the subject. The Indonesian legal system does not explicitly regulate NCC. The general principles of contract law, as outlined in Article 1337 and 1338 of the Indonesian Civil Code, allow parties to include any lawful provision in their agreements. However, these clauses must not violate public order, mandatory legal norms, or principles of fairness. Violations that disregard Indonesian values should be terminated especially when it is not according to Indonesian Ideologi (Pancasila) (Kennedy & Wartoyo, 2024). In practice, the enforceability of NCCs is subject to judicial interpretation, and courts often evaluate their reasonableness on a case-by-case basis, considering factors such as duration, geographical scope, and the specific business interests being protected.

Furthermore, certain constitutional and statutory provisions directly challenge the validity of restrictive NCCs. Article 27(2) of the 1945 Constitution of Indonesia guarantees the right of every citizen to work and earn a decent livelihood, a principle that aligns with international labor standards. Additionally, Law No. 13 of 2003 on Employment, particularly Article 31 and 32, emphasizes the freedom of employees to choose and obtain employment without unjustified limitations. In conjunction with Law No. 39 of 1999 on Human Rights, which ensures individuals the right to freely select their occupation (Article 38), these provisions can be interpreted as a legal basis for invalidating NCCs that are overly restrictive or detrimental to workers' rights

(Nelson et al., 2024). This legal landscape suggests that while non-compete clauses may be included in employment contracts in Indonesia, their enforceability is highly dependent on their alignment with constitutional principles and labor laws, as well as their reasonableness when assessed by the judiciary.

Judicial decisions regarding NCC in Indonesia are relatively limited, but they offer insight into how courts approach these agreements (Kartini, 2016). Indonesian courts primarily assess the proportionality and necessity of NCCs by considering factors such as the duration, geographical scope, the nature of the employee's role, and the specific interests the employer seeks to protect. The assessment often revolves around whether the restrictions imposed are essential to safeguard legitimate business interests, such as protecting trade secrets, preserving customer relationships, or maintaining a competitive edge (Sugiono et al., 2023). Courts tend to be more inclined to enforce NCCs for employees in high-ranking positions, such as executives or directors, or those who have direct access to sensitive business information, strategic plans, or confidential client data (Aziz, 2021). In such cases, the clauses are viewed as reasonable safeguards to prevent unfair competition or misuse of privileged information. Conversely, non-compete clauses imposed on lower-level employees who do not have access to trade secrets, strategic information, or significant client relationships are often deemed unreasonable and unenforceable. For instance, an NCC that restricts a junior administrative staff member or a general worker from working in a related industry for several years would likely be invalidated as disproportionate and contrary to public policy.

In one notable case involving a multinational company, the Indonesian court invalidated a non-compete agreement due to its excessive restrictions on the employee's freedom to work. The court determined that the clause, which prohibited the employee from working in the same industry for five years across the entire Southeast Asian region, was excessively broad and imposed an unnecessary burden on the employee. The ruling emphasized that such a restriction violated Article 27 of the 1945 Constitution, which guarantees every citizen the right to work and earn a livelihood, and contravened Law No. 13 of 2003 on Employment. The court further noted that the employer failed to demonstrate a compelling reason why such broad restrictions were necessary to protect their business interests. This decision underscores the judiciary's cautious approach in balancing business interests with employees' fundamental rights. It highlights the principle that while businesses may include NCCs to safeguard their operations, such clauses must be narrowly tailored and proportionate to the role and access level of the employee. Courts are likely to reject clauses that unduly limit an individual's right to work, especially when less restrictive alternatives could achieve the same protective objectives. The case also serves as a reminder to employers to draft NCCs with care, ensuring they comply with legal principles and withstand judicial scrutiny.

In practice, NCCs are frequently incorporated into employment contracts, particularly in industries where maintaining a competitive edge relies heavily on protecting innovation, intellectual property, trade secrets, and key client

relationships. Industries such as technology, finance, pharmaceuticals, and legal services are prominent examples where employers perceive NCCs as vital safeguards to prevent employees from leveraging sensitive information or proprietary knowledge for the benefit of competitors. These industries often deal with valuable intangible assets—such as proprietary algorithms, market strategies, confidential financial data, and customer lists—that, if misused, could provide rival companies with significant advantages. As such, employers in these sectors draft NCCs as precautionary measures to prevent the unlawful use of trade secrets or to prevent former employees from taking business relationships and confidential information to direct competitors. The agreements are not just limited to protecting confidential information but also aim to maintain the company's market share and relationships with high-value clients. The main intent behind these NCCs is to ensure that employees do not take advantage of knowledge gained during their employment to directly compete with their former employer or to transfer that knowledge to a competing company. In industries such as law, where relationships with clients and case knowledge are central to a business's success, such clauses are especially critical in maintaining stability. For example, a lawyer leaving a firm could take sensitive case information or established client relationships to a competitor, which could significantly harm the firm's reputation and client base. Similarly, in technology companies where proprietary software and innovation drive business growth, former employees can easily apply their acquired knowledge to a new employer, leading to the loss of a company's competitive advantage.

Employers often draft these clauses broadly to encompass extensive durations, wide geographical areas, and comprehensive restrictions on competitive activities, believing that maximizing their scope will provide the highest level of protection. For example, an employer might include a non-compete clause prohibiting the employee from working in the same industry or with any competitor for several years after leaving the company, covering not only their home country but also several other regions where the company operates. The intention is to ensure that employees cannot undermine the company's position in the market. However, this approach can be counterproductive. Courts in Indonesia, like those in many other jurisdictions, tend to scrutinize the reasonableness and proportionality of NCCs. Overly broad or restrictive provisions are more likely to be challenged and invalidated, particularly if they impose undue hardship on employees and limit their fundamental right to work and earn a livelihood.

Indonesian courts have been known to strike down NCCs that exceed what is necessary to protect an employer's legitimate business interests (Nelson et al., 2024). Courts will assess whether the restrictions on the employee's ability to seek future employment are proportional to the harm that could potentially result to the employer. For example, a non-compete clause that prohibits an employee from working in any capacity within the entire Southeast Asia region for five years may be deemed unreasonable if the employee's role did not involve access to sensitive information or trade secrets. In this context, courts

will consider the duration, geographical scope, and specific nature of the employee's role in determining whether the restriction is reasonable (Aziz, 2021). If the restrictions are found to be excessive, the court may invalidate the NCC or reduce its scope to a more reasonable and enforceable level. Furthermore, the enforcement of NCCs in Indonesia presents significant challenges due to the lack of specific regulatory guidance. Unlike jurisdictions with explicit laws governing non-compete agreements, Indonesia relies on general principles of contract law and judicial interpretation to determine the validity and enforceability of NCCs. This creates uncertainty for employers, as each case is treated individually, and there is no clear legal framework outlining the exact conditions under which an NCC will be upheld. As a result, employers may face the risk of unpredictable judicial outcomes.

To address potential breaches of NCCs, employers often include provisions for contractual remedies, such as requiring employers to pay compensation for damages or stipulating liquidated damages as a deterrent. Liquidated damages clauses are designed to specify an amount that the employee must pay in the event of a breach, providing a clear monetary remedy for the employer. However, these remedies are still subject to judicial scrutiny, and Indonesian courts may modify or nullify these penalties if they are deemed excessive or disproportionate (Aziz, 2021). The reasoning behind this is to ensure that non-compete clauses do not impose financial burdens that go beyond what is necessary to compensate the employer for any loss suffered due to the breach. Despite the inclusion of these contractual remedies, pursuing legal action to enforce NCCs is relatively rare in Indonesia. The main reason for this reluctance is the high cost, time, and uncertainty associated with litigation. Legal disputes can take years to resolve, and there is no guarantee of a favorable outcome for the employer (Santoso, 2023). Additionally, companies may be wary of the potential damage to their reputation if the case is publicized, especially if sensitive business practices or trade secrets are involved. As a result, many companies prefer to settle disputes outside the courtroom, using alternative approaches to enforce non-compete obligations.

One common alternative strategy is for employers to offer severance packages that include a waiver of non-compete obligations, or they may incentivize employees to refrain from joining competitors for a specified period. Companies may also opt for non-disclosure agreements (NDAs) to protect confidential information, which are easier to enforce and less likely to be contested than non-compete clauses. These alternatives allow employers to secure their interests without engaging in lengthy and costly litigation (Nelson et al., 2024). Additionally, fostering employee loyalty through positive work culture, career development opportunities, and financial incentives is another way companies reduce the likelihood of employees leaving to join competitors. This reluctance to engage in litigation underscores the practical complexities of implementing and enforcing NCCs in Indonesia. While these clauses are seen as important tools to protect business interests, their enforceability is subject to judicial interpretation, and employers must exercise caution in drafting them to ensure they are reasonable, proportionate, and compliant with legal principles.

DISCUSSION

NCC represent a contentious area of employment law and antitrust regulation in Indonesia. These clauses, included in employment agreements, are designed to restrict employees from engaging in competitive activities with their former employers after the termination of their contracts (Kennedy, 2024b). While they serve to protect business interests such as trade secrets, intellectual property, and client relationships, their enforceability and alignment with broader legal and constitutional principles remain under scrutiny (Kennedy et al., 2024). In Indonesia, the legal framework governing NCCs is ambiguous, relying on general principles of contract law, labor laws, and constitutional provisions.

The Indonesian Civil Code, through Articles 1337 and 1338, permits parties to include lawful provisions in contracts, provided they do not contravene public policy or principles of fairness (Miru, 2018). This framework implicitly allows for the inclusion of NCCs in employment agreements. However, the constitutional guarantee of every citizen's right to work, as outlined in Article 27 of the 1945 Constitution, often comes into conflict with the restrictive nature of these clauses. Furthermore, Law No. 13 of 2003 on Employment emphasizes the freedom of employees to seek employment without unjustified limitations, reinforcing the constitutional principle. Law No. 39 of 1999 on Human Rights also enshrines the right to freely select an occupation, creating a legal basis for invalidating overly restrictive NCCs.

In practice, the enforceability of NCCs is subject to judicial interpretation, with courts typically assessing their reasonableness on a case-by-case basis. Factors such as duration, geographical scope, and the specific business interests being protected are considered. Courts are more likely to uphold NCCs for high-ranking employees with access to sensitive business information, strategic plans, or client data, viewing them as necessary safeguards (Febriani & Hasmiati, 2022). Conversely, NCCs imposed on lower-level employees without access to trade secrets or significant business assets are often deemed unreasonable and unenforceable. For example, a restriction preventing a junior employee from working in the same industry for several years across a broad geographical area would likely be invalidated as disproportionate and contrary to public policy.

The principle of proportionality in restricting competition is evident in broader antitrust cases in Indonesia. For instance, on Indonesia Competition Commission (KPPU) ruling number 11/KPPU-I/2005 for the Semen Gresik case highlighted the judiciary's role in ensuring fair competition while addressing restrictive agreements. The case centered on allegations of price-fixing and monopolistic practices, where a consortium of distributors was accused of limiting market access to cement supplies. While this case did not directly involve NCCs, it underscored the judiciary's cautious approach to any contractual or business arrangement that disproportionately restricts competition. Similarly, the JICT case on KPPU ruling number 04/KPPU-I/2003 illustrated the importance of fair market access in agreements. Here, exclusivity provisions in terminal management agreements were scrutinized for their

potential to create monopolistic advantages, reinforcing the principle that restrictions must not unduly limit opportunities for others.

Industries such as technology, pharmaceuticals, finance, and legal services are particularly reliant on NCCs to protect sensitive information and client relationships (Marx & Fleming, 2012). These sectors often deal with proprietary knowledge, trade secrets, and valuable intangible assets that, if misused, could harm a company's competitive edge. For example, a technology firm might draft an NCC to prevent former employees from using proprietary algorithms or software designs in competing ventures. Similarly, law firms may use NCCs to protect client relationships and case strategies (Loukil, 2020). However, overly broad NCCs aiming to maximize protection often invite judicial scrutiny and risk invalidation.

The Arta Boga Cemerlang case serves as a pertinent example of how restrictive agreements or contracts can intersect with anti-competition concerns. In KPPU ruling number 06/KPPU-L/2004, the company's program to limit the sale of competitors' products through exclusive agreements with retailers was challenged under antitrust laws. Although the focus was on restrictive trade practices rather than NCCs, the parallels are evident: both involve limitations that can distort market dynamics and restrict opportunities. The court's decision emphasized that agreements must be reasonable and not excessively burden competition or individual freedoms.

Indonesia's lack of specific regulatory guidance on NCCs presents significant challenges for businesses and employees alike. Unlike jurisdictions with explicit laws governing NCCs, such as the United States or EU member states, Indonesia relies on general principles of contract law and judicial interpretation (FTC et al., 2021). This reliance creates uncertainty, as each case is treated individually, and outcomes can vary. Employers drafting NCCs face the risk of unpredictable judicial decisions, while employees may be deterred from pursuing opportunities due to unclear legal protections.

Practical complexities further complicate the enforcement of NCCs in Indonesia. High litigation costs, lengthy legal processes, and uncertain outcomes discourage employers from pursuing legal action to enforce these clauses (Rondonuwu, 2023). Many companies opt for alternative strategies, such as offering severance packages that include non-compete waivers or relying on non-disclosure agreements (NDAs) to protect confidential information. These approaches provide a practical means of safeguarding business interests without engaging in contentious and costly litigation.

The Asuransi Jiwa Bringin Sejahtera case (KPPU ruling number 10/KPPU-L/2001) highlights the broader implications of restrictive agreements in the context of competition law. Here, tying agreements between a bank and insurance companies limited consumer choice and impeded fair competition. While this case dealt with product tying rather than employment agreements, the principles are analogous. Both involve restrictions that must be carefully justified to avoid violating legal and ethical standards. The case underscores the judiciary's role in balancing the protection of business interests with the preservation of market fairness and individual rights.

In conclusion, Non-Compete Clauses in Indonesia exist within a complex and evolving legal landscape shaped by constitutional principles, labor laws, and judicial interpretation. While NCCs serve legitimate purposes in protecting business interests, their enforceability hinges on their alignment with fairness, proportionality, and public policy. Judicial precedents, such as those seen in the *Semen Gresik*, *JICT*, *Arta Boga Cemerlang*, and *Asuransi Jiwa Bringin Sejahtera* cases, highlight the careful balance courts must strike between safeguarding competition and respecting individual rights. As Indonesia continues to develop its legal framework, clearer regulatory guidance on NCCs would provide much-needed certainty for businesses and employees, ensuring a fair and competitive labor market.

CONCLUSIONS AND RECOMMENDATIONS

NCC play a vital role in protecting businesses' interests by safeguarding trade secrets, intellectual property, and client relationships. However, their restrictive nature raises significant concerns about fairness, labor mobility, and market competition, especially within Indonesia's legal framework. While Indonesian law permits NCCs under the principles of contract law, constitutional guarantees, and labor rights emphasize a balanced approach to their enforceability. Courts have consistently underscored the importance of proportionality and reasonableness, invalidating clauses deemed overly broad or burdensome that infringe on workers' rights or distort market competition. However, the lack of explicit regulatory guidance leaves employers and employees navigating a landscape of uncertainty, where outcomes rely heavily on judicial interpretation.

The current legal framework reveals the challenges of balancing business needs with labor mobility and market fairness. Industries that depend on innovation and intellectual property, such as technology, finance, and pharmaceuticals, have a legitimate need for NCCs. However, overly restrictive clauses can hinder entrepreneurship and competition, violating antitrust principles and undermining broader economic objectives. Furthermore, practical difficulties, including high litigation costs and lengthy legal processes, discourage the effective enforcement of NCCs, prompting businesses to explore alternative strategies to safeguard their interests.

To address these challenges, Indonesia must develop clear regulatory frameworks to govern the use of non-compete clauses. These regulations should define permissible scope, duration, and geographical reach, reducing reliance on inconsistent judicial interpretations and providing certainty for employers and employees alike. Proportionality and reasonableness should guide the drafting of NCCs, ensuring that restrictions are specific, narrowly tailored, and limited to protecting legitimate business interests such as trade secrets or high-value client relationships. Employers should prioritize alternative safeguards, such as non-disclosure agreements (NDAs) and intellectual property protections, to reduce reliance on restrictive clauses. These alternatives are often easier to enforce and less likely to infringe on employees' rights.

Judicial consistency is crucial in resolving disputes over NCCs. Judges should receive specialized training to align their decisions with international best practices, ensuring fairness and predictability in outcomes. Employers should also engage in transparent negotiations with employees regarding NCCs, providing clarity on their purpose and implications. Such collaboration fosters trust and reduces the potential for disputes. Vulnerable workers, including those in low-wage or low-skilled roles, should be explicitly protected from overly restrictive NCCs. Guidelines should prohibit the use of these clauses where they are unnecessary, aligning with constitutional guarantees of the right to work and promoting equity in the labor market.

In addition, businesses should focus on creating supportive workplace environments to reduce employee turnover and the need for restrictive NCCs. By investing in positive work cultures, career development opportunities, and financial incentives, employers can build loyalty and retain talent without resorting to excessive contractual restrictions. Regulatory authorities must also ensure compliance with antitrust laws, monitoring and addressing any misuse of NCCs that harm competition or consumer choice. Excessive restrictions that hinder entrepreneurship or innovation should be identified and penalized.

By implementing these recommendations, Indonesia can strike a balance between protecting legitimate business interests and fostering a dynamic, competitive economy. Clear regulatory guidance, fair enforcement mechanisms, and thoughtful policy interventions would support innovation, labor mobility, and sustainable growth. Through such measures, Indonesia can establish a legal environment that ensures fairness, promotes economic opportunity, and strengthens confidence in the business ecosystem.

ADVANCED RESEARCH

This study analyzes non-compete clauses (NCCs) in Indonesia's franchising sector, focusing on legal and economic dimensions. However, its juridical-normative methodology, reliant on legal texts and precedents, lacks empirical validation through stakeholder insights. Limited judicial decisions on NCCs in Indonesia restrict the ability to generalize trends, and the focus on franchising overlooks broader industry implications. Additionally, the evolving nature of competition law and global trends may render findings outdated. Expanding research to include empirical data, diverse industries, and interdisciplinary perspectives is recommended to address these gaps and provide a more comprehensive understanding of NCCs in Indonesia's legal framework.

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