

ECONOMIC JUSTICE PERSPECTIVE ARTICLE 33 OF THE CONSTITUTION OF THE REPUBLIC OF INDONESIA IN 1945 AS THE ORIGINAL REPRESENTATION OF THE INDONESIAN ECONOMY

Riski Febria Nurita^{1*}, Supriadi², I Gusti Ngurah Adnyana³, Darmawati⁴

^{1*}Lecturer at Faculty of Law, Merdeka University of Malang

²Lecturer at Faculty Of Economics, Education, Social Humanities, Cipta Wacana Christian University

³Lecturer at Faculty of Law, Merdeka University of Malang

^{3*}Student at Faculty of Law, Cipta Wacana Christian University

Abstract

Article 33 of the 1945 Indonesian constitution amendment consisting of 5 paragraphs is a basic norm that makes economic policy the cornerstone of the direction of National Economic Policy. Article 33 of the 1945 Indonesian constitution which is then translated into laws and other legislation as a legal policy in terms of a more operational economy. Article 33 of the 1945 Indonesian constitution is a constitutional legal norm that is absolute and must not be violated by economic policy makers. Economic policy should refer to and should not be contrary to the Constitution so that economic policy makers should not make economic policies that are contrary to Article 33 of the 1945 Indonesian constitution

Keywords: Economic, Justice, Indonesia

Introduction

The economy in Indonesia today is much controlled by foreigners can be justified for the moment that the ‘ economy of Indonesia colonized America , Europe and Asia. Indonesia is a country that is actually very rich in various natural products. Starting from mining, forest products, Water Resources, geometric, wind resources, beautiful natural scenery and so on. This is an invaluable gift of the Almighty for the state of jamrut equator. But sad when we look at what is happening in this country now, the number of people who are below the poverty line is booming, debt continues to bubble.

Actually, the main problem faced by this nation is corruption and mismanagement of the economic system. On the one hand we mention that Indonesia is a country that adheres to the pancasila economic system or people's economy but in practice it looks more towards capitalism. The evidence is clearly visible GAP between the income of the upper class and middle class society down. This is due to the excessive exaltation of private ownership so that what happens is the creation of castes in the Indonesian economy. In addition, the system of freedom of business (free enterprise) which is more directed to the world free market applied in Indonesia, actually, it is not very suitable with the current condition of Indonesia because in such a system, business skills that are juxtaposed with the quality and creativity of products and marketing methods are very necessary while in Indonesia itself it is still very rare so that if this is still allowed to apply, it is almost certain that the Indonesian economy will be very dependent on imported products and the development of local products will be very hampered.

In a news story in the Daily the political discussed capitalism behind the creation of policy (public policy), with the headline that “many laws and government regulations made Pro Foreign”. From the case in the news it is clear that public policy intended for the people is in fact intended for capital owners, especially in the economy in Indonesia today which is dominated by foreigners. It can be justified at this time that the Indonesian economy is colonized by America, Europe and countries in Asia themselves.

For example, the case of Freeport mining, which has the highest economic element in Indonesia, is controlled by the United States until it ends in 2020 in accordance with the contents of the contract of work between PT Freeport and the government of Indonesia. The existence of large-scale mining that dredges all the wealth in

the Land of Papua by the PT has an effect on the people in Papua themselves, the huge profits obtained by Freeport do not change the people of Papua, in this case there is no improvement for the people of Papua.

The above reality makes Papuans even more disappointed and eventually acts of anarchy such as raising the Morning Star flag, shooting at Freeport employees because they feel colonized by the policies of their own country, they feel that only their natural resources are taken without providing any benefit to the lives of the Papuan people themselves.

In addition, in the banking sector, foreigners are free to invest their capital in banking because there is a policy in Government Regulation No. 29 of 1999 which allows individuals/institutions both local and foreign to have a bank in Indonesia up to 99% ownership of shares/capital. In the field of animal husbandry or poultry is also almost the same because since the enactment of Law No. 18 of 2009, the national poultry business is getting worse marked by the people's livestock business that went out of business permanently. While foreign investment controls 60% of the livestock market share in Indonesia.

Law No. 30 of 2007 on Energy also states that the mining sector may be controlled by foreigners up to 95%. According to economic intelligence Observer Marwan Batubara, in the plantation sector is now also controlled by capitalising from Asia, the fact is that so many oil palm plantations in Indonesia are controlled by Malaysia and Singapore. On the contrary, why don't our SOEs go to be united and given the opportunity to get wider land with the help of capital. It is quite difficult for us to distinguish and at the same time trace the temperament of policymakers on the one hand and capitalism on the other. Meanwhile, the current public policy must be straightened out and enforced from all forms of capitalism and not violate economic principles in order to ensure the continuity of investment and the acceleration of social change, towards the realization of an essential social justice system.

Theoretical studies and hypotheses

Pancasila Economic Theory

Pancasila economic theory is a typical Indonesian economic theory whose "model" and its application are always multidisciplinary and transdisciplinary at the same time. Pancasila economic theory does not use *ceteris paribus* assumptions, but includes all the variables that really should be considered. If Pancasila contains 5 principles, then all the precepts of Pancasila, namely (1) ethics, (2) humanity, (3) nationalism, (4) citizenship/democracy, and (5) social justice, must be considered in the economic model compiled. In addition to Pancasila also always mentioned the principle of family and community as contained in Article 33 of the 1945 Constitution, then it becomes a complete "model" of Pancasila economy, namely the "holistic" economic model that does not separate economic problems from social problems, cultural problems, moral/ethical problems, etc. What is there is a problem, faced by Indonesian people, does not need to be decomposed into very separate problems, which are required to analyze each of their own disciplines.

Pancasila economics actually refers to the original teachings of Economics Adam Smith (1723-1790), namely economics that is not separated from the relationship of ethical and moral factors. Smith in his first book in 1759 (*The Theory of Moral Sentiments*) stated that man is *homo socius* and *homo ethicus*. Only in the second book is called that man is *homo economicus*.

Smith did not try to develop a science of economics free of moral judgements or ethical considerations, but his science of political economy was not a moralistic science: he tried to bring about improvement not through preaching but through designing institutions which would strengthen the incentive to act in a socially beneficial manner.

If today's conventional economists describe Adam Smith's teachings as "liberal" and "individualistic", the reason is because his institutional teachings developed in TMS (1959) are ignored, and those quoted from Adam Smith's writings actually emphasize excessive human self-love. It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interests.

Thus, Pancasila economics is institutional economics that upholds the institutional values of Pancasila as a state ideology, the 5 silanya, as a whole or individually, a reference for every Indonesian economic actor.

Research Methods

The research methods used are qualitative research methods, which are descriptive research and tend to use analysis. Process and meaning (subject perspective) are more prominent in qualitative research. The theoretical basis is used as a guide to focus research in accordance with the facts in the field. In addition, this theoretical basis is also useful to provide a general overview of the background of the study and as a discussion of research results. There is a fundamental difference between the role of the theoretical basis in quantitative research with quantitative research. In quantitative research, research departs from theory to data, and ends in acceptance or rejection of the theory used; while in Qualitative Research researchers depart from the data, utilizing existing theories as explanatory material, and ends with a "theory".

Data analysis and discussion

A. Pancasila Character of Economic Justice is a Contribution of Professor Mubyarto's Thought

Pancasila economy is an economic system, or economic system but different from the capitalist economic system or communist economic system. Pancasila economic system is an economy that is imbued with the ideology of Pancasila, namely an economic system that is a joint effort based on family and national cooperation. National cooperation, not just Cooperation in the countryside, in the pillars of the village, but cooperation at the national level. Prof.Mubyarto also gave his thoughts on what is the moral economy of Pancasila? can be defined as the unity of measures, or norms that regulate the pattern of thinking and acting patterns of economic actors in the Pancasila economic system.

Discussions about the Pancasila economy began to warm up in mid-May 1981. One of the highlights is aimed at the five characteristics of the Pancasila economic system, namely:

- 1.The economic wheel is driven by economic,social and moral stimuli;
- 2.Strong will of the whole society towards a state of social equality (egalitarianism), in accordance with the principles of humanity;
- 3.The priority of economic policy is the creation of a resilient national economy which means nationalism animates every economic policy;
- 4.Cooperative is soko guru economy and is the most concrete form of joint venture;
- 5.There is a clear and firm balance between planning at the national level and decentralization in the implementation of economic activities to ensure economic and social justice.

If we reflect correctly on the precepts of Pancasila as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia,we will feel that the establishment of an independent state of Indonesia from the occupation of foreign nations, in addition to protecting the entire nation, promoting its welfare, which is very important to realize social justice for all its people.

The economic system as a subsystem of the socio-political system of national culture, must be able to accommodate programs of economic activities and policies that lead to the realization of social justice. Social justice can be defined as follows:

"Social justice is a state of community life in which every citizen feels safe and secure, born and died, because the principles of justice are considered valid and approved by the community concerned, recognized and implemented in an orderly manner by all members of society".

There are basically three basic guidelines, how society regulates the distribution of sustenance according to the principle of Justice. First, the principle of rights and obligations is that justice will be maintained if every right attached to a person or institution is protected, either by regulations made by the community itself or by the government. Second, the habit or tradition of retaliating is that in a society that is still simple, people will feel themselves doing no justice if they do not repay the virtues they have received from others.At the government level every meritorious person will be rewarded according to his merits this is justice. Third, is that in the exercise of justice is the effort of the state or community organization to provide each of its members with what they need. According to this understanding, a society and even a country can be likened to a large family, where the needs of everyone are not the same. In implementing the principle of justice, the state is given the right to regulate who gets what , so that each member of society has their needs met both in consumption and production. Thus the relationship between social justice and economic justice is closely related to the economic systems adopted by a society.

If in Western economic theory (Smithian) and Eastern Economic Theory (Marxian), the nature of man is egoistic or collective, then in Pancasila man seeks a balance between life as a person and life as a member of society, between material life and spiritual life. Pancasila man who air-God Almighty, in addition to homo-economicus, also homo mewtafisikus and homo mysticus, this means that the Pancasila economy, man is not seen only from one aspect, namely his economic instinct, but as a round man, a whole man. If the morality of Smith's economic theory is freedom (liberalism) and the morality of Marx's economic theory is the dictatorship of the majority (by the proletariat), then the economic morality of Pancasila includes the teachings of divinity, humanity, unity, populism, and Social Justice.

Another characteristic of the Pancasila economy is the spirit of social solidarity to achieve a socially just society, which is the fifth precept of Pancasila. Pancasila society with social justice is a socialistic society, where the fate of those who are "left behind" gets great attention. This is what is mentioned in Article 34 of the Constitution of the Republic of Indonesia in 1945, that:

"The poor and abandoned children are kept by the state". Even what is stated in Article 33, which has always been considered as the basic guidelines for managing the Indonesian economy, is included in the social welfare chapter. An independent, united, sovereign, just and prosperous Indonesian society, is the goal of the struggle for Indonesian Independence, the goal of realizing a social justice for all Indonesian people.

Social justice is an issue that has long been of concern to thinkers, especially philosophers. The Indonesian nation lists social justice for all people as the ultimate goal which is described as a just and prosperous society, the gemah ripah karta raharja, a just and prosperous society because it is the final form of the intended nation's society, clearly intended as a society that contains the properties of justice and complete prosperity, which includes legal, economic, political, socio-cultural, and moral justice.

In brief, the objective of a just and prosperous society is a just and prosperous society based on Pancasila, which is a dream society that is completely and completely based on: the Supreme Godhead, just and civilized humanity, Indonesian unity, and Democracy led by wisdom in representative deliberation, and by realizing social justice for all Indonesian people. Social justice for all the people of Indonesia is realized through the realization of the principle of justice in every aspect of justice, namely as previously mentioned, namely legal, economic, political, socio-cultural and moral which are all closely related. However, Economics in its history has contributed more to the analysis that resulted in aspects of political economy (political economy).

B. Economics and Justice as challenges to social well-being, from the perspective of John Rawls and Francis Fukuyama

Justice is the main policy in social institutions, as is truth in systems of thought. A theory, however elegant and economical, must be rejected or revised if it is incorrect. Thus laws and institutions, no matter how efficient and neat they may be, must be reformed or abolished if they are unjust. Justice is not subject to political bargaining or the calculation of social interests. The only thing that allows us to accept the wrong system is that there is no better system. Analogically, injustice can be tolerated only when it is necessary to avoid greater injustice.

In the principles of welfare economics, it is often defined in the same way. Welfare implies that the moral conception therein is utilitarian. A doctrine of political economy must include an interpretation of the public good based on a conception of Justice. It also guides citizens' reflections as they consider questions of economic and social policy. It will take the perspective of a constitutional convention or legislative stage and ascertain how the principles of justice are applied. Justice as fairness is applied to the basic structure of society.

The economic system must focus its attention on the public sector and the proper form of the background institutions that regulate economic activity, with taxation and land rights, market structure and so on. An economic system regulates what goods are produced and by what means, who receives them and as a result for what donations, and how much of the social resources are provided to save and equip the good of society.

Therefore, according to John Rawls, the creation of justice in social aspects, whether political, legal or economic aspects, must be based on rights, and not on benefits. And if that benefit is used as the basis in the creation of justice then it will ignore the fair procedure. The creation of justice based on the principle of rights will give birth to a fair procedure because it is based on individual rights that should not be violated at all. The arrangement of a good and correct social system is designed not only to promote good values for its citizens, but the arrangement of the social system must also be arranged effectively in order to be fair. Because a new social system is considered fair if it meets two conditions, namely:

1. Each person or society is able to accept and know that others also accept the same principles of Justice.
2. Social institutions are basically satisfied and known by the principles of Justice.

The creation of institutions of contract and trade law is an important prerequisite for the emergence of a modern industrial economy today. This is intended so that then there is certainty in the implementation and economic activities of the community. In today's modern economic context no one would argue that belief and moral duty alone can take place in a modern economy. In modern business as it is today, reliance on social and cultural habits are always often taken for granted. Modern institutions are important, but they are not a sufficient condition for creating modern welfare and social well-being. They must be combined with certain traditional ethical social habits if they are to work quickly. The United States of America as the world's leading industrial power, it is because America has a gift of spontaneous sociability in the form of social capital. Liberal societies such as the United States have a tendency towards individualism and social atomization that potentially weakens the state. Today the United States is experiencing a decline in the beliefs and social habits that have underpinned its greatness as a modern industrial power for more than half a century.

In reality it would be very difficult to understand economic life in the absence of a minimum informal level of trust. In the words of an economist and Nobel poet, Nenneth Arrow, now belief has a very important pragmatic value. Trust is an important lubricant for the smooth work of a social system. Trust creates efficiency. Trust saves a lot of trouble to have a fair degree of reliability on the words of others. Unfortunately trust is not a commodity that can be bought very easily. If you have to buy it, it means that you still have certain doubts about what you are buying.

State acquisition of various industries in certain key strategic sectors is a good thing. This is intended so that there is no monopoly of the economy by a certain few people, besides that the acquisition is also believed to be the state more familiar with the market where the best long-term benefits will be obtained.

The worldwide convergence of the fundamental institutions surrounding liberal democracy and market economies forces us to ask whether we have reached the "end of history", where the vast process of human historical evolution culminates not, like Marxists, in socialism, but rather in Hegel's vision of a bourgeois liberal democratic society. There is no doubt that modern economies arise from the interaction of rational individuals who maximize usefulness in markets. However, the maximization of usefulness is not enough to fully and satisfactorily explain why the economies of certain countries manage to prosper, while others stagnate and degenerate.

Liberal democracy works well as a political system when its individualism is moderated by the public spirit, just as capitalism works well when its individualism is balanced by a readiness for association. If democracy and capitalism work best when combined with cultural traditions that emerge from non-Liberal sources, it should be clear that modernity and tradition can exist together in a stable equilibrium for a very long period of time. The process of economic rationalization and development is a very powerful social force that forces societies to modernize according to certain uniform lines. For example, certain societies can save substantially on transaction costs because economic agents trust each other in their socioeconomic interactions. It can therefore be more efficient than low-trust societies, which require detailed contracts and coercive mechanisms. This belief is not a consequence of rational calculation, it arises from sources such as religion or ethical customs that have nothing to do with modernity.

C. Article 33 of the Constitution of the Republic of Indonesia in 1945 as The Original Representation of The Economy of The Republic of Indonesia

The position of the Constitution moves dynamically in accordance with the course of a country, especially during the transition from a feudal monarchy or oligarchy with absolute power of the ruler to a national Democratic state. Before the transition period, state hegemony appeared with absolute power and / or authoritarian with a constitution as a tool of the ruler to maintain his power accompanied by illegal permissos the Constitution was changed.

At the time of the development of the modern constitution as it is today, the principle of constitutionalism has provided a framework for the concept of a constitutional state with the characteristics of the Constitution as the highest legal norm. In line with the opinion of Francois Venter that the basic characteristic of a modern constitutional state is the existence of a written constitution that has a high legal value. In practice, the Constitution as the highest legal norm becomes an important means to protect the interests of society amid the corruption and potential authoritarianism faced by a leader in a country.

The Constitution is idealized to be a bridge between the people and the state. One of them as contained in Article 33 of the 1945 Constitution which reads:

1. The economy is structured as a joint venture based on the principle of kinship.
2. The branches of production which are important to the state and which control the livelihood of the people are controlled by the state.
3. Earth water and Natural Resources contained therein are controlled by the state and used for the greatest prosperity of the people.
4. The national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining the balance of progress and National Economic Unity.
5. Further provisions regarding the implementation of this article are provided for in the law.

Article 33 of the 1945 Indonesian constitution amendment consisting of 5 paragraphs is a basic norm that makes economic policy the cornerstone of the direction of National Economic Policy. Article 33 of the 1945 Indonesian constitution which is then translated into laws and other legislation as a legal policy in terms of a more operational economy. Article 33 of the 1945 Indonesian constitution is a constitutional legal norm that is absolute and must not be violated by economic policy makers. Economic policy should refer to and should not be contrary to the Constitution so that economic policy makers should not make economic policies that are contrary to Article 33 of the 1945 Constitution.

By occupying the law as the highest law, it must subordinate Article 33 of the 1945 Indonesian constitution which regulates the national economy as the highest norm whose spirit must ground the basic principles of the economy. The Spirit of the Constitution, especially concerning Article 33 of the 1945 Constitution, will be elaborated with a political-legal approach in the historical context at the time of the establishment of Article 33 of the 1945 Constitution. Legal politics is the direction of legal policy applied when drafting a legal product. According to Mahfud MD, legal politics is understood as legal policies that will or have been implemented nationally by the government. In this case, the politics of law is a legal policy applied to the choice of law in order to achieve a certain goal. That is, legal discretion is determined in the preparation of laws as a form of legal engineering to achieve certain legal goals as aspired to in the Constitution. In this case, the legal policy should be directed to explore the ideals of the founding fathers in forming Article 33 of the 1945 Indonesian constitution

Pancasila the fifth precept "social justice for all Indonesian people" is the philosophical soul of Article 33 of the 1945 Indonesian constitution. There is a strong principle carried by the fifth precept of Pancasila related to the concept of justice in realizing prosperity for all Indonesian people. According to Yudi Latif, the authenticity of the fifth precept is shown by the seriousness of the state in protecting the entire nation and all Indonesian blood spilled based on unity as a real effort to realize social justice. At the time of delivering a speech at the BPUPK meeting on June 1, 1945, Sukarno initiated the existence of a concept of "Social Welfare" which is intended for the state to provide welfare and government guarantees to all people.

But when viewed in practice, the reality of Article 33 of the 1945 Indonesian constitution experienced dynamics. During the reign of President Soekarno, as a result of the physical revolution and post-war infrastructure recovery, production orientation was directed to exports considering that industrial sectors such as mining, banking, and commercial agriculture were still controlled by foreign companies. In the New Order era, President Suharto took policies related to state power over natural resources manifested in the form of the establishment of state-owned enterprises.

Conclusions and suggestions

Conclusion

Philosophical from Article 33 of the 1945 NRI Constitution. There is a strong principle carried by the fifth precept of Pancasila related to the concept of justice in realizing prosperity for all Indonesian people. According to Yudi Latif, the authenticity of the fifth precept is shown by the seriousness of the state in protecting the entire nation and the whole of Indonesia based on unity as a real effort to realize social justice

Suggestion

The government should in forming a regulation that regulates the nation's economy refers to the constitutional frame contained in Article 33 of the Constitution of the Republic of Indonesia with the embodiment of the spirit of the people'S economy based on Pancasila

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