

# Resilience Kinship Principle in Cooperatives Quo the Pillar of the Indonesian Economy

Resa Yuniarsa Hasan<sup>1\*</sup>, Ilham Kurniawan Ardi<sup>1</sup>

<sup>1</sup>*Both are Master of Law Students, Faculty of Law Universitas Indonesia, Salemba, Jakarta 10430, Indonesia*

<sup>\*</sup>*Corresponding author, email: resahasan96@gmail.com*

## ABSTRACT

Based on Article 33 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the spirit of cooperatives is placed as the basic pillar of the Indonesian economy. The Indonesian people intend to set up a joint venture economic system based on family principles. As stated by Mohammad Hatta, what is meant by the business, is none other than the Cooperative as stated in the Elucidation of the 1945 Constitution (Original Text). Cooperatives are declared as business buildings in accordance with the economic system to be developed in Indonesia. Law Number 17 of 2012 concerning Cooperatives is said to contain the value of capitalism, which is reflected in the principles contained in and scattered in its articles by prioritizing capital and individualism which makes the main characteristic of capitalism. In this article, it will examine how the interpretation of the principle of kinship which is the main basis for the existence of cooperatives in the Constitutional Court Decree Number 28 / PUU-XI / 2013. The results of research on the application of the principle of kinship which is the main foundation of cooperatives are not in accordance with Law Number 17 of 2012 concerning Cooperatives, and are contrary to the principles of kinship and collectivism. Thus, in order to avoid the legal vacuum that can lead to uncertainty and injustice over the existence of cooperatives, then Law Number 25 of 1992 concerning Cooperatives applies temporarily.

**Keywords:** *cooperative, kinship principle, legal interpretation*

## 1. INTRODUCTION

The principle of kinship is an economic pillar in the movement and implementation of social welfare in Indonesia. The principle is closely related to democratic countries concerned with the people with the ideals of the rule of law (*rechtstaat*), constitutional democracy. The building of the Indonesian economy is based on the concept of thought of the Founders of the Nation, then developed by economists and law, which are ideal and in accordance with Article 33 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution, after the amendment), "The economy is structured as a joint effort based on the principle of kinship." The basic term economic democracy is explicitly stated in the Elucidation of the 1945 Constitution (1945 Constitution, before the changes),<sup>1</sup> reads:

*"Dalam Pasal 33 tercantum dasar demokrasi ekonomi, produksi dikerjakan oleh semua, untuk semua di bawah pimpinan atau penilikan anggota-anggota masyarakat. Kemakmuran masyarakatlah yang diutamakan bukan kemakmuran orang-seorang. Sebab itu perekonomian disusun sebagai usaha bersama berdasar atas usaha kekeluargaan. Bangun perusahaan yang sesuai dengan itu ialah koperasi."*

Departing from this, the principle of kinship and cooperatives became the basic concept in building the economy in Indonesia. In accordance with Article 33 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia and the Elucidation of Article 33 of the 1945 Constitution, these two things are the starting point in the thinking of this article. This is inseparable from the history of law in the formulation and formulation of constitutional provisions concerning the national economy with the thoughts of the figures involved in the session of the Investigation Agency for Preparation for Independence (BPUPK). In an effort to trace the thoughts that emerged in the BPUPK session,<sup>2</sup> it is interesting to do a review in order to confirm the existence of the principle of kinship and cooperatives in the current modern era. Although the Founding Nation's understanding of the choice of the national economic system after independence is a joint work, historical records show the major roles of the two main figures, namely: Soepomo and Mohammad Hatta in formulating and explaining Article 33 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia.<sup>3</sup> The role recorded in historical documents, Soepomo and Mohammad Hatta compiled and formulated the national economic system in the 1945 Constitution. As the architect of the 1945 Constitution, Soepomo, known as a

prominent legal expert and served as the Minister of Justice of the first Republic of Indonesia, compiled the Elucidation section of the 1945 Constitution.<sup>4</sup> Furthermore, Mohammad Hatta, as an economist who formed the concept of an economic system that is suitable for application in Indonesia.<sup>5</sup> On the expertise and economic concept he offered, Hatta was appointed as chairman of the financial and economic affairs in the drafting of a constitution at BPUPK.<sup>6</sup> The dominance of Hatta's role in developing the national economic system in the concept of cooperatives was seen after the Proclamation, as the only Founder of the Nation that consistently fought for the idea.<sup>7</sup>

In the opinion of Mohammad Hatta, based on Article 33 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia along with an Elucidation of the 1945 Constitution, the definition of joint effort based on the principle of kinship in the provisions of the constitution is cooperative.<sup>8</sup> Furthermore, Hatta also explained that a national economy based on cooperatives would be the ideal of the Indonesian people.<sup>9</sup> Departing from this, explained that the cooperative referred to as the foundation of the national economy with joint efforts and the principle of kinship, but in its history experienced ups and downs and has not materialized until now.

Things that have not yet seen the value of joint ventures and family principles contained in cooperatives can be traced in the cooperative law after the reform, namely Law Number 17 of 2012 concerning Cooperatives (Cooperative Law 2012).<sup>10</sup> The existence of cooperatives with the value of togetherness based on the principle of family, in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, is generally a cornerstone of philosophy in the history of its arrangements after independence. Different things in the rule of law in the 2012 Cooperative Law emerge, some nomenclature that is closely related, even containing the value of individualism.<sup>11</sup> This was later by several cooperative groups and individually submitted a material review of the 2012 Cooperative Law on the 1945 Constitution of the Republic of Indonesia to the Constitutional Court in 2013.<sup>12</sup>

In the verdict on judicial review of the 2012 Cooperative Law in Decision of the Constitutional Court Number 28 / PUU-XI / 2013, the Constitutional Justice canceled all of these laws. The reason for the decision was based on the Opinion of the Court which stated that philosophically the existence of the 2012 Cooperative Law was not in accordance with the nature of the economic structure as a joint effort and based on the principle of kinship, which was reflected in the elaboration of the understanding in its articles.<sup>13</sup> In addition, the rights and obligations of members with oversight, capital schemes that are concerned with material capital and financing that override social capital, this negates the fundamental characteristics of cooperatives as a specific entity based on populist economic actors based on Article 33 Paragraph (1) of

the NRI Constitution In 1945, the philosophy of mutual cooperation (joint effort with the principle of kinship). The Court's opinion became interesting to explore, relating to the implementation of the economic liberalization policy at the beginning of the New Order.<sup>14</sup> At that time, Indonesia did not yet have a state institution with the function of testing the constitutional provisions in a statutory regulation.<sup>15</sup> Departing from the problems and legal events that underlie this writing.

In this paper will explain the conception of cooperatives with the values contained, namely joint efforts with the principle of kinship, which is contained in Article 33 Paragraph (1) of the 1945 NRI Constitution and Elucidation of the 1945 Constitution. Although the existence of the Elucidation of the 1945 Constitution has been removed in the fourth amendment process 2002, but as a historical fact, the concept will not be timeless and lose its meaning in the historical course of the development of Indonesian law. Opinion on the urgency of the Elucidation of the 1945 Constitution after the amendment was made by Maria Farida Indrati, Professor of faculty of law at Universitas Indonesia and Constitutional Justice (the period 2008-2013 and 2013-2018). According to Maria Farida Indrati, the article contained in the 1945 Constitution of the Republic of Indonesia which did not change in the amendment process of the 1945 Constitution, the Elucidation in the 1945 Constitution is still valid and in accordance with the meaning and formulation in the articles.<sup>16</sup> In the process of amending the 1945 Constitution, especially in Article 33 of the 1945 Constitution there was no change, only the addition of 2 paragraphs. Meanwhile, Article 33 Paragraph (1) of the 1945 Constitution has not changed. From the above view, relating to the value of togetherness and the principle of kinship remains a guideline, both philosophical and legal basis, in the regulation of every business in Indonesia after the amendment of the 1945 Constitution, in this case also applies to cooperatives. Based on these reasons and opinions, making cooperatives as an economic soul that grows and develops, as well as a guide for every form of business entity in Indonesia.

Of the existing polemic about the legal basis of Cooperatives and Indonesia's economic ideology, which tends to be individualism and liberalism, and is closely related to capitalism as opposed to the principle of kinship. This paper is based on the structure of writing, including: first, a description of the introduction; secondly, describing the history of the law of the preparation of the 1945 Constitution on the principle of kinship in the BPUPK session by tracing the thoughts of the Founder of the Nation about the economic system as an economic ideology adopted in Indonesia; third, discussion in Article 33 Paragraph (1) of the 1945 Constitution, concerning the phrase "joint ventures based on the principle of kinship", as the basic value of cooperatives, as well as expert opinions, both in the economic and legal fields; fourth, a description of the economic ideology adopted in Indonesia which is

contained in the phrase joint venture based on the principle of kinship as a philosophical value; fifth, the interpretation of ideology in the economic field which is reflected in the interpretation of the Constitutional Court's law, and the nature of the judicial activism of the Constitutional Justice in PMK No. 28/PUU-XI/2013; and, sixth, the concluding notes of this scientific paper.

## 2. DISCUSSION AND ANALYSIS

### 2.1 Search for Kinship Principle in the Compilation of the 1945 Constitution

A State's economic development, legal position and role have an important role,<sup>17</sup> there is a close relationship between the democratic process and the constitution and economic growth.<sup>18</sup> In the Indonesian context, Pancasila and the 1945 Constitution require a balance in all aspects of national and state life, including a balance between individual interests and collectivity in social life. That is, the idealized balance also includes a balance between competition and cooperation and between principles which in one aspect prioritizes efficiency, in line with ensuring justice.<sup>19</sup> Therefore, economic policy in the constitution must be integrated with the principle of efficiency and justice.<sup>20</sup>

Chronologically, the first member to express a sense of kinship in government and anti-liberal ideas in the economy was Soesanto Tirtoprodjo, the economy must be arranged in an orderly and limited manner according to the needs of the community,<sup>21</sup> but does not elaborate both in economic affairs.<sup>22</sup> However, do not elaborate further, in the economy.

Furthermore, stated by Soepomo in economic affairs, it is necessary to establish a system of "state socialism" in accordance with integralism.<sup>23</sup> Furthermore, the nature of economic activity must be arranged based on familial understanding in integralism. Therefore, there must be a help-help system, and it can be implemented using a cooperative system as the basis for the country's economy.<sup>24</sup> Reflections from Soepomo's opinion, the role of the state and socialist ideas in economic affairs. However, this socialist idea is based on the principle of harmony, not based on class conflict. Cooperative is a concrete manifestation of this idea. Unlike the case with the socialist ideas of Marx and Lenin who recognize class conflict, where the idea of Soepomo resembles the values and principles of corporatism which wants to advance the interests of the common people by uniting all economic forces harmoniously.<sup>25</sup>

Soepomo added that the economy which was composed by the help-help system was very compatible with the cooperative system. So that cooperatives as one of the basic economic development of the Indonesian State, according to Soepomo. Regarding economics that help and kinship want the state and the people to be given the same important role to anticipate liberal and capitalist economic understandings. The character of "state socialism" that is accommodated in Article 32

Paragraph (1), reads "the economy is composed as a joint effort based on kinship." The Basic Law on July 13, 1945. This is based on the fact that vital economic resources are controlled by the state and used for the welfare of the people.<sup>26</sup>

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Soepomo's view of the national economy was found in his speech at the BPUPK Session on May 31, 1945, namely:

*"Dalam lapangan ekonomi, negara akan bersifat kekeluargaan juga oleh karena kekeluargaan itu sifat masyarakat Timur, yang harus kita pelihara sebaik-baiknya. Sistem tolong-menolong, sistem koperasi hendaknya dipakai sebagai salah satu dasar ekonomi Negara Indonesia."*<sup>27</sup>

Soepomo reiterated the importance of the family system in the Constitution to be drafted, namely:

*"... bahwa dengan menerimanya pembukaan ini kita menolak aliran pikiran perseorangan. Kita menerima dan menganjurkan aliran pikiran kekeluargaan. Oleh karena itu undang-undang dasar kita tidak bisa lain, harus juga mengandung sistem kekeluargaan."*<sup>28</sup>

The economic and family relations in the national economic system in Soepomo's big ideas are manifested in state and cooperative socialism.

The rationale for this idea, also has something in common with Hatta, who delivered one of the five verses in the formulation of social welfare, written:

*"3. Perekonomian disusun sebagai usaha bersama, menurut dasar kolektif."*<sup>29</sup>

Hatta's idea was almost similar to the written document at the session on July 16, 1945, the Indonesian economy must be based on the principle of help and joint effort, which is carried out through a cooperative container. Hatta's experience as a member of the Indonesian Association directly adds to his opinions which have seen and studied the strength of cooperative practices in various countries in the European Continent.<sup>30</sup>

The basic idea of the national economy in a cooperative vehicle which was preached by the Formulators of the 1945 Constitution has emerged since the colonial era. Cooperatives are seen as the best way to gradually build up a weak Indonesian economy.<sup>31</sup> The view of the superiority of cooperatives in order to change and improve the structure of the economy during

colonialism because cooperative alliance is an alliance of families that raises mutual accountability, all the implementation of joint needs based on the principle of kinship. The idea of economic democracy in a cooperative vehicle can easily grow and develop. Economic democracy is centered on economic participation and emancipation. In the absence of economic democracy there will be a concentration of economic power in just one or a few groups.<sup>32</sup>

The spirit of economic democracy becomes the economic and social transformation of the colonial economic system towards a new economic system, as initiated in the discussion of the 1945 Constitution and Elucidation. Judging from Article 33 of the 1945 Constitution, the economic system aspired is a cooperative economic system, there is a cooperative system to become a pillar of the national economy.<sup>33</sup>

The cooperative economic system as the Indonesian economic system is in line with the Pancasila economic ideology.<sup>34</sup> The selection of a cooperative system as the basis of the economic system in the 1945 Constitution, not only in the economic sector, but also social life, which involves values, soul or spirit based on a sense of brotherhood, kinship, togetherness, and mutual cooperation, namely soul, spirit or cooperative life fairies.<sup>35</sup>

This becomes clear, where Soepomo and Hatta are positioned in the collective value which is constitutive.<sup>36</sup> The drafters of the constitution generally agree with ideas and economic systems that are not liberal and individualistic. They also agreed that each economic potential is basically owned and used collectively. The importance of the state's role in managing the economy.

## ***2.2 Maintaining the Pancasila Economy, Cooperatives***

In the Fourth Amendment to the 1945 Constitution, articles of the economy were formulated in Chapter XIV, originally "Social Welfare" was changed to "National Economy and Social Welfare". The formulations of Article 33 and Article 34 differ from the original formulation of the 1945 Constitution which was ratified on August 18, 1945 as re-enacted by Presidential Decree July 5, 1959. The addition of two verses and without changing the original three verses is the legacy of the Founders of the Nation in Article 33 of the 1945 Constitution of the Republic of Indonesia, it means that the economic ideology in the understanding of economic democracy that has been formulated will still be used as a guideline with the necessary additions to achieve and improve general welfare as envisioned in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia. constitutes an economic constitution. As the highest position in the national economic policy system, all economic policies as outlined in the law must be subject to and must not conflict with the constitution as an economic constitution.

In view of the changes to the 1945 Constitution, it is necessary to know the discussion of important material in the preparation of the 1945 Constitution by the Founders of the Nation, namely the discussion of the national economic system. There is almost no difference and debate among BPUPK session members in discussing the economic system. Between the views of Soepomo and Hatta, there is no difference in views in economic affairs, because they want a collective economy, as well as anti-liberalism and capitalism.<sup>37</sup>

As explained in the search, Mohammad Hatta's consistency in developing cooperatives as a basis for national economic development and the realization of social welfare, in accordance with Article 33 Paragraph (1) of the 1945 Constitution and its Elucidations. In a constitutional democracy, the Basic Law as a written basic law (*droit constitutionnel*) and contains basic values and norms of the people is included in the practice of state administration.<sup>38</sup> This linkage is very important so that all aspects of state life are in harmony with the basic outlook on life and state philosophy.<sup>39</sup>

The Indonesian people have high ideals and goals on the basis of life, after decades of struggling to free themselves from imperialism and colonialism, to prosper and prosper from the miseries of life. This is stated in "The economy is structured as a joint effort based on the kinship principle."<sup>40</sup>

The principle of kinship that is the core of Article 33 of the 1945 Constitution, said Hatta, is rooted in the customs that live in society. Cooperative understanding in Indonesia creates a collective society, rooted in the original customs of Indonesian life, namely mutual cooperation and deliberation, but grown at a higher level, appropriate and able to adapt to the demands of the times that continue to grow. On the other hand, the ideals of Indonesian cooperatives are fundamentally against individualism and capitalism, according to Hatta.<sup>41</sup> Hatta's explanation illustrates that joint ventures and family principles are part of the basic values of the conception of building a cooperative company, as well as the soul in the national economy.

Furthermore, according to Wilopo, the term "based on the principle of kinship" indicates that there is a foundation for shared responsibility aimed at achieving joint ventures that will guarantee progress for each member involved. From the nature of the cooperative system, the nature of collectivism, which distinguishes between economic systems based on the principle of individualism. Economic activity no longer contains the motive for personal gain, but rather to serve the community for the common good. Wilopo emphasized that the economic patterns shown in joint ventures must be accepted for all laws and regulations in the economic field and be recognized as the political economy of the national economy.

Unlike Wilopo, Widjojo Nitisastro was known as the main architect of the economy during the New Order. Understanding the principle of kinship as an economic system based on the joint efforts of the whole

community. With the aim of achieving higher income with equitable distribution, with the active role of the state in controlling and implementing national economic development. Equitable distribution of income against distribution with the greatest degree of equality that does not impede the production process, by encouraging optimal production.<sup>42</sup>

Furthermore, Sri Edi Swasono stated that the provisions of Article 33 Paragraph (1) of the 1945 Constitution cannot be separated from the effects on Paragraph (2) and Paragraph (3), because Paragraph (1) is the soul of the provisions of the laws and regulations concerning the economy.<sup>43</sup> There are several forms of companies, one of which is cooperative, and must be based on the spirit of cooperatives and cooperative spirit, and is built based on the Indonesian paradigm, namely: togetherness and kinship. Prioritizing the spirit and spirit of cooperatives can be done through legal reform towards a paradigm of togetherness and kinship.<sup>44</sup>

Article II Transitional Rules of the 1945 Constitution are the basis for the enactment of economic and social transformation carried out by grounding Article 33 of all corporate buildings that were born and regulated previously by colonial rules. Furthermore, the realization of the spirit and spirit of cooperatives in the cooperative system, is not a passive or dependency togetherness, but a progressive togetherness aimed at realizing shared interests, so that a joint relationship is created.

Padmo Wahjono's legal opinion began with the provision of Article II of the Transitional Rules of the 1945 Constitution which still recognized the existence of all state bodies and colonial regulations as long as there were no new replacements.<sup>45</sup> Furthermore, Wahjono is a company subject to Western law and sourced from the Napoleon Code which in this case *Wetboek van Koophandel (W.v.K)* is liberal, is a joint venture based on individual principles. Meanwhile, those who are subject to customary law, namely indigenous groups, can be called as joint business embryos based on the principle of kinship. Cooperatives that are appropriate and based on the national economy are cooperatives, in the Elucidation of the 1945 Constitution. Padmo Wahjono's argument provides guidance on legal intellectuals in an effort to strengthen cooperatives in accordance with the mandate of the constitution.

Potan Arif Harahap, basing cooperatives on legal interpretation methods. Affirmation Harahap, so far there has been an inaccurate interpretation of the Elucidation of Article 33 of the 1945 Constitution, which should be interpreted as a company structure, not a form of company related to the arrangement, rather to the inner nature of the family principle of the cooperative itself.<sup>46</sup>

Jimly Asshiddiqie argued, Article 33 which was formulated by Soepomo and Hatta as the basis of economic politics in the context of sustainable development.<sup>47</sup> Considering that liberal capitalism

gradually disappears and tends to develop more and more remote from individualism, and vice versa is getting closer to collectivism based on the principle of shared prosperity. Hatta said that:

*“memang kolektivismelah yang sesuai dengan cita-cita hidup Indonesia -seperti juga dengan masyarakat Asia lainnya- berdasar kepada kolektivisme itu yang terkenal sebagai dasar tolong-menolong (gotong-royong).”<sup>48</sup>*

So, the antinomy of individualism and collectivism, which need not be disputed as static ideological choices. Both understandings were further developed in practice as political ideologies and economic ideologies. This relationship is known as the understanding of liberalism, authoritarianism, and totalitarianism as a political ideology and the thighs of capitalism, socialism, and communism as economic ideologies. Each base itself on one of individualism and collectivism. Thus, the will to place the public interest (collective) as more important than the interests that are individualistic based on liberalism. Thus, the interests and activities of the economy must be based on collective interests, without having to negate individual welfare, even those contained in cooperatives.

### **2.3 Legal Interpretation of the Principle of Kinship for the Sake of Cooperative Sustainability**

After exploring the formulation of the principle of kinship in the preparation of the 1945 Constitution and its content in the economic ideology prevailing in Indonesia, as well as the views of various experts, the journey of cooperatives experiences ups and downs in facing global economic challenges, even so is the legal basis. Since 1945, the transformation of the legal basis of cooperatives has changed.<sup>49</sup>

The latest development of the current legal basis for cooperatives is based on PMK No. 28/PUU-XI/2013, which states that Law Number 17 of 2012 concerning Cooperatives is declared contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, and enacts Law Number 25 of 1992 concerning Cooperatives for a time until the formation of a new law. This shows that the Constitutional Court as Negative Legislator and Positive Legislator, as well.<sup>50</sup> Legal interpretation conducted by Constitutional Justice in PMK No. 28/PUU-XI/2013, departing from a constitutional historical perspective, relating to the economic system related to the values that are born, grow, develop and apply in society. Togetherness that forms the determination of the struggle for independence, then with the aim of advancing public welfare by realizing social justice, in accordance with the Opening of the 1945 Constitution of the Republic of Indonesia. This is the essence of social capital as a value that must be maintained and upheld. Then from that value compiled with an economic system that originates in Article 33 Paragraph (1) of the 1945 Constitution of

the Republic of Indonesia. The principle of kinship, with its application of mutual assistance, which is specifically called mutual cooperation, as a principle for advancing general welfare by realizing social justice for all people of Indonesia.

Legal interpretation conducted by Constitutional Justice in PMK No. 28 / PUU-XI / 2013 can be said as an interpretation of the Pancasila ideology in the fields of economics and social welfare. This illustrates that the Constitutional Justice in examining the legal basis of cooperatives against the 1945 Constitution of the Republic of Indonesia carried out the practice of judicial activism to maintain the ideology of Pancasila values reflected in the Preamble and the body of the 1945 Constitution of the Republic of Indonesia, as well as the law. Generally, judicial activism is always placed in the context of judges making law (judges makes law) through its decisions. Judicial activism is the influence or control of the judiciary on political and administrative institutions. In addition, in the Black's Law Dictionary, judicial activism is interpreted as:

*A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent.*<sup>51</sup>

Meanwhile, the development of the practice of judicial activism stems from negative meanings and is limited only to the misuse of the authority of judges, nowadays sometimes understanding and towards a better direction.<sup>52</sup> Critics of the practice of judicial activism have been linked to the interference of judicial institutions which are seen as degrading and undermining the system of representative democracy through judicial autocracy. Testing the legal basis of the cooperative can be categorized into threats to the functioning of democracy that come from judicial activism,<sup>53</sup> including:

- a. Counter-Majoritarian Activism, the reluctance of the court to submit to decisions of other democratically elected branches of power;
- b. Originalist Activism, the failure of the court to submit to original ideas and still maintain the applicable values; and
- c. Jurisdictional Activism, the failure of the court to obey the limits of the jurisdiction of its own power.

Others, criticism of the application of judicial activism to judges, usually called activist judges, is judged to have carried out its judicial discretion that is contrary to general principles, such as judges only carry out the function of applying the laws established by legislators. The judge's tendency in placing himself as a judge can give consideration and opinions to political, social and economic policies.<sup>54</sup>

On the contrary, from a positive perspective, judicial activism comes from human rights activists and pro-democracy by reviewing it as a legal adaptation to social

change by developing principles taken from existing constitutions and decisions in order to apply the values contained in the constitution as an ideology. country progressively.<sup>55</sup>

The concept of judicial activism is not monolithic,<sup>56</sup> so that in testing the legal basis of this cooperative included in the general structure of the judicial activism,<sup>57</sup> namely:

- a. Majoritarianism: policies that have been adopted and adopted based on the democratic process are in fact negated by the judicial process;
- b. Substance / Democratic Process Distinction: court decisions have made substantive policies compared to safeguarding the outcome of a democratic political process;
- c. Specificity of Policy: court decisions form their own policies that are contrary to the principle of discretion held by other institutions or individuals; and
- d. Availability of an Alternate Policymaker: the consideration of a court decision replaces the quite important consideration made by other government agencies.

In common, Judicial activism must be based on legal principles and not be released to court discretion. Plus, the judicial activism that occurs in the case of testing the legal basis of the cooperative can obtain justification that contains the principle in deciding the case, called the virtue jurisprudence, namely:<sup>58</sup>

- a. Principled Implicationism, in a constitution there are rights of citizens who are technically unwritten. This principle provides a broader view of the constitution which provides further protection from constitutional rights that are explicitly or implicitly referred to by constitutional formers, but which have been predicted wisely by them;
- b. Principled Minoritarianism: Although not intended to always support minorities, this principle pays special attention to minority groups when they receive negative impacts from the majority-based democratic process, especially when there is a violation of the principle of equal protection. This principle is also interpreted as an intervention against the failure of a representative system that can lead to the making of laws that are discriminatory against minority groups; and
- c. Principled Remedialism: This principle is in contact with the principle of justice in efforts to restore rights, where the court has discretion to restore the rights of individuals or groups that are considered unfair. The policy regarding affirmative action falls into this category.<sup>59</sup>

Thus, the interpretation of the law carried out by the Constitutional Justice in the Court Opinion of the PMK No. 28/PUU-IX/2013 concerning testing the basis of cooperative law is in harmony with virtue jurisprudence, and can be said to be an interpretation of the ideology contained in Pancasila.

There are several methods in interpreting the Constitution, in terms of testing the legal basis of cooperatives, the method used is called the broad and purposive approach, namely the Intentions of those who are drafted, voted to propose, or voted to ratify the provision in question, in this case what is seen in interpreting the constitution is the purpose of the constitution and the views of the constitution drafting. So, it is necessary to understand the history of the formation of a constitution, in what situations the constitution is formed and what views or ideologies held by the constitution draftsmen.<sup>60</sup>

Interpretation of the constitution has differences in interpretation of the law,<sup>61</sup> although it has the same interpretation method, namely, historical interpretation (original intent), textual and teleological.<sup>62</sup> Thus, the interpretation of the law carried out by the Constitutional Justice in carrying out the interpretation of the ideology of the principle of kinship in cooperatives.

Departing from Article 33 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which was not changed at the time of the amendment to the 1945 Constitution, the court made a historical interpretation of the philosophical understanding of the principle of kinship. With the understanding given in the Elucidation of the 1945 Constitution which is seen as an important document by the court. Collective values and characters are the structure of the national economy, antithesis of individualistic values not embraced by the 1945 Constitution of the Republic of Indonesia. Cooperatives as part of the economic structure in Indonesia, are not structures which are left to market mechanisms. So that the national economic system has the character and value that is held in high esteem as a joint effort based on the principle of kinship. That is, social values are held in high esteem by the Indonesian people, and are implemented and formulated into an economic democracy that is based on the basis of joint efforts and family principles. Thus, the notion of cooperatives contains individualism, according to the court.

Furthermore, the systematic interpretation of the court that cooperatives as actors in the composition of the national economy are based on economic democracy. This prevents and negates the rights of cooperative members to express opinions, vote, and be elected (vide Article 29 paragraph (2) letters a and c), as well as the principles of kinship, responsibility, democracy, and equality which form the basis of cooperatives (Article 5 paragraph (2)). Furthermore, the value of openness and responsibility is believed by cooperative members to be a derivation of economic democracy. The development of more professional cooperatives should instead be built by members of cooperatives, with the aim of becoming professionals, so there is no need to recruit non-members to become managers.

The interpretation based on Article 28 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia, the court interpreted grammatically in the capital of

cooperatives, as a form of arbitrary deprivation of private property rights which also contradicted the nature of joint ventures based on family principles. Revitalization of cooperatives is not in accordance with the principles of cooperatives as joint ventures controlled by their members.

In connection with the principal deposit (Article 67 paragraph (1)) there is an element of compulsion to remain or remain a member of a cooperative that is contrary to the cooperative principle that is voluntary and open, which is a derivation of the kinship principle.

In the case of purchasing cooperative capital certificates (Articles 68 and 69) it is not in accordance with the cooperative principle that is voluntary and open which is a derivation of the principle of kinship. Material capital becomes the main thing in cooperating. The cooperative orientation has shifted toward a pool of capital and has denied its identity as a collection of people with joint effort as its main model. Material and financial capital are important capital, but the concept of cooperative capital must be linked to meaningful social capital and the main goal of achieving social welfare. The concept of social capital has become a cooperative identity that has a mutual cooperation tradition. The difference in capital ownership will result in differences in power and influence in the management of cooperatives, so this is contrary to the principle of membership based on togetherness and volunteerism.

When a cooperative member ceases or leaves his membership, the cooperative capital certificate cannot be withdrawn and can only be sold to fellow members or prospective members or bailed out almost the same as the principal deposit (Articles 66 and 67), the court interprets this contrary to the basic principle of the cooperative as a business together based on the principle of kinship. In terms of strengthening cooperatives, it must improve the ability of the community to manage cooperatives without ignoring the basic philosophy of cooperatives. Then, it is also the absence of legal certainty and justice in Article 28D of the 1945 Constitution of the Republic of Indonesia or the Guarantee of the private property of cooperative members in Article 28H Paragraph (1) and Paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

Equity capital (Article 75), according to the court in cooperatives as a group of people is no different from a Limited Liability Company as a collection of capital, even as a publicly listed Limited Public Company that raises as much capital as possible with no limit to the risk of opening intervention from outside the cooperative.

### **3. CONCLUSION**

Thus, it can be seen that the interpretation of the law used by the Constitutional Justice in the Constitutional Court Decree Number 28 / PUU-XI / 2013, is also used to interpret the ideology of the principle of kinship in

the national economy for social welfare that exists and applies in Indonesia. Starting from the understanding of cooperatives, philosophically it has turned out to be incompatible with the nature of the composition of the economy as a joint effort and based on the principle of kinship, as contained in Article 33 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which has not changed from the beginning of the preparation of the 1945 Constitution. elaborated in other articles in Law Number 17 of 2012 concerning Cooperatives, so that on one hand negating or even eliminating the rights and obligations of members by making supervisory authority too broad, and capital schemes that prioritize material and financial capital that override social capital which is precisely the fundamental characteristic of cooperatives as a typical entity of economic actors based on the Pancasila economic democracy as embraced in the Preamble and the 1945 Constitution of the Republic of Indonesia. Erosion of loses the spirit of the family and constitutional principles as a social economic entity typical for a nation that has a philosophy of mutual cooperation. Thus, the spirit of cooperatives with the kinship principle that becomes the spirit and heart in cooperative law no longer functions.

Of all the legal reasons used and stated in the Court Opinion in the PMK No. 28/PUU-XI/2013 which decided to null and void Law Number 17 of 2012 concerning Cooperatives. In order to avoid a legal vacuum in the field of cooperatives that can cause uncertainty and injustice, for the time being, before the formation of a new legal basis, then for the sake of fair legal certainty the Constitutional Court re-enacted Law Number 25 of 1992 concerning Cooperatives. Thus, the constitutional court in this decision acts as a negative legislator, by canceling the cooperative legal basis in 2012, as well as being a positive legislator, by re-enacting Law Number 25 of 1992 concerning Cooperatives.

Constitutional testing based on cooperative law on the 1945 Constitution of the Republic of Indonesia by the Constitutional Justice reflects the nature of the judicial activism, which aims at virtue jurisprudence. Deconstruction is carried out with the original intent approach in the preparation of the 1945 Constitution. In addition, the interpretation of law can be said to be an ideological interpretation, which uses historical (original intent), textual or teleological interpretation. The ideological interpretation of the economy adopted in Indonesia, makes the principle of kinship in cooperatives as the main reference in interpreting the law by Constitutional Justices in PMK No. 28 / PUU-XI / 2013.

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