



The History of Indonesian Economic Law “Paving the Way of Economic Democracy”

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Abstract. This article explores a series of transformations in the Indonesian economic and legal environment. The study opens with an explanation of the state of the legal and economic order in the world. It then presents the narrative of the ever-warring ideologies that exist in the international community. The article analyses the origin of Indonesian *volksgeist* (national spirit) as mandated by Article 33 of the 1945 Constitution throughout eras. It expounds on the development of legal and economic regimes up to the present era. The paper also analyzed the origin and development of legal and economic deviations from Article 33 implementations up to the present day. In constructing a clear narration of the evolution of legal and economic growth in Indonesia, the aim of criticizing the deviating development of legal and economic policies can be completed soundly. Thus, the reflection that enforces the analysis can provide the wider public with an understanding of the challenges that are present in the Indonesian legal-economic landscape. In the end, the remaining issues to establish a good legal stratum in the nation, informing of the founders’ vision of cooperativism and collectivism and the need to realize it for the benefit of the people are also delivered.

Keywords: Legal and Economic Deviation · Traditional Law and Economy

1 Introduction

It is logical to say that the state of a country’s legal and economic life is vital to its livelihood. And it is also reasonable to state that the realization of a country’s economic policies in its activities is also important. Not only to predict and direct its economic growth but to maintain the prosperity of its people. The economic positions of a country are written down in economic regulations. In this regard, what the state perceives as beneficial for a country regarding its economic climate and characteristics can be said to be representative of what the nation as a whole also perceives.

When a nation realizes such stances with the ideal legislation, then it is easy to conclude that a new height in its people’s economy and state of being can be achieved. However, all of this is only theoretical. In reality, one can easily infer that every country has a different and complex economic climate and characteristics. And while each country’s economic problems must be solved in its own way, modern economic interdependence sometimes makes it hard for them to do so on their own.

Economic independence and democracy, as in the case of Indonesia in this article, must sometimes be compromised. This harsh reality first came into being amidst the economic awakening that overtook the world in the last centuries of the second millennium. During those recent eras, especially by the end of the 19th and the start of the 20th century, the emergence of influential houses of economic thought (capitalist and socialist, for example), polarized nations from all over the world. In recent years, it could be said that when many countries make and pass economic laws, they only take into account the views of certain ideologies and how their theories support them on a global scale, while ignoring the local knowledge of their people.

While we are not considering any kinds of popular ideologies as inherently bad or faulty for world communities, one still has to consider the input of domestic sectors in determining where the economy should head. It is good to consider the adoption of certain economic practices if they are compatible with the domestic economic state of the nation, but it can be problematic if they are not.

In the history of modern economic ideology, economic thoughts are divided into two big polarities of doctrine, with one oriented towards individualism and becoming the root of capitalism (the right) and the other towards collectivism and becoming the root of socialism (the left). The rivalry between these economic pillars was not apparent during their idealization as doctrines but became such following the changes in the world's political climate.

Throughout World War II, even though there was cooperation between both sides in facing the extremities of Nazism and Fascism of the Axis, the tension between the two began to accumulate with the end of the war and the onset of the Cold War. Each of the proponents of these political-economic stances began to rally other nations behind them to the point that such methods as proxy war were being used to further the causes of their beliefs throughout the world.

Furthering the spread of this ideological rivalry was globalization and the rise of a new web of economic interdependence, exacerbated by the Bretton-Woods system and the rise of the capitalistic market environment. Making it increasingly difficult for countries to find a clear path in the theatre of political and economic dominance.

As years go by and as history has attested, these ideologies have become the focus of many countries' economic systems, and their respective ideas are being translated into laws. This reality is factual in how during later times of crisis, several nations are willing to conform to the standard legal environment of a foreign economic regime in exchange for international help, which unfortunately also includes an example of Indonesia's leniency in the time of the 1998 financial crisis.

However, in the particular case of Indonesia, only a little justification can be given for the economic polarization that the country has experienced in the course of its life. Despite the wider development and institutionalization of economic thought, Indonesia has developed its own through reflections on its history. This was apparent when the consolidation of *Pancasila* and the 1945 Constitution came to pass. *Pancasila* (literally, "five principles") can be considered as the simplistic iteration of Indonesia's *philosophische grondslag* (philosophical foundation). It is, until modern-day, considered the most profound thought and spirit upon which Indonesia's independence is built. *Pancasila*, by popular consensus, was the philosophy that is the basis of the 1945 Constitution,

which constitutes the basis of law for the Republic of Indonesia. What socio-economic points can one infer from Pancasila? The prime answer is its fifth foundation, which is “social justice for all citizens of Indonesia.” A sentence with a meaning that can be easily inferred and interpreted.

Such a sentiment was also shared by the state’s 1945 Constitution, which can also be roughly considered as the *Pancasila*’s byproduct. Correlations between the two can be seen when one investigates the days that preceded Indonesia’s independence. It was apparent in the meetings of the Investigating Committee for Preparatory Works for Independence (BPUPKI), the council that preceded the independence of the country, where the nation’s founding fathers met to set forth the course of the state economy. In its sessions, the atmosphere that enveloped its members was primarily anti-colonialist and anti-imperialist. Such sentiments made the nation’s founding fathers see everything that smells of individualism and liberalism as being directly affiliated with colonialism and imperialism. Thus, they view these things with ingrained hatred over the years of persecution under foreign colonial powers. In its place, the thoughts and notions that oppose western colonialism and its ideas became so popular, or at least were not denounced as enemies by the principal personages of the era.

It was in such a spirit that the BPUPKI refused the notions of individualism and its counterparts. Soekarno, the country’s future first president, defined in session the *philosophische grondslag* of independent Indonesia as independent not only in politics but also in the economy through the realization of social welfare. His emphasis is on collaboration between the people and the government in the prioritization of national resources. Such ideas were present in the *Pancasila*, whose points were also introduced by Soekarno in the June 1945 closing session of the BPUPKI. However, the question of which parts of the economy can be managed by the government as a representative of the people and the private sector remains.

Mohammad Hatta, the nation’s economic think-tank, was the one that was able to draw the line between the two of them. Under his leadership, the 1945 Constitution, especially its article 33, which was the economic life and pillar of the Indonesian nation, was drafted and became law. In the article, a deeper realization of the country’s philosophical roots was successfully achieved. According to him, the state’s right to control shall persist over strategic factors with the regulation of economic activities that shall prevent the exploitation of those who are economically weak by those who are economically strong. The state is in charge of public infrastructure like electricity, water supply, sewage systems, public transportation, and other utilities that most people need to live.

At that critical point in Indonesian law-making, Hatta understood that the characteristics of Indonesian natives were centered on the principles of cooperativeness, communalism, and helping one another. And those in the Committee of Finances and Economic tasked with formulating the very beginning of what will become Article 33, under Hatta’s leadership, projected that an independent Indonesia must be economically good-naturedly based on such principles. Cooperativism has become a standard way to think about Indonesia’s economy, and Article 33 adds to this by letting the government get involved in areas that are important to the country.

Thus, the creation of Article 33 has laid out a national policy for the economic and social transformation of the country. This policy mostly talks about socio-economic

differences and socio-economic injustice in the context of and with the goal of improving social welfare.

In supporting the views of Soekarno and Hatta, it seems obvious and logical for one to consider a people's most fundamental nature in the formulation of the Constitution. Such deliberation to include the people's attributes fundamentally reflects what these personages thought was alive in the traditions and rules of Indonesia's native people as a whole. The incorporation and assimilation of the people's enduring economic behaviors into the body of laws was in fact favorable, especially considering that at the time of its independence, the Indonesian economy and politics were not in any way stable. Therefore, it was good to hear that the socio-economic ideas of the country's people were taken into account by the people who were making the laws that would become the main basis of the country's economic ideology.

The article at hand shall further expound any evidence, throughout history, that shall prove that the ideas and basic tenets stipulated by Article 33 were right and just. It will also expound any evidence that demonstrates the deviation of Article 33 and its historical context. It will also explain why Article 33 is not yet realized to its fullest in the current legal and economic landscape. Furthermore, from gathered data, it will be clear that the economic policies of the past, and, even to a great degree, the current era, do not come from the people themselves. Even now, regulations are not made with the main goal of improving social welfare, which is not what Article 33 of the 1945 Constitution says.

2 Literature Review

One of the detrimental research articles in understanding the current deviation from the body of Indonesian economic and legal reality is written by Ratih Lestarini, a lecturer at Universitas Indonesia, entitled, "*Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Dan Penerapannya Dari Masa Ke Masa Sejak Era Pemerintahan Soekarno, Soeharto, dan Pemerintahan Era Reformasi*" (Article 33 of the 1945 Constitution of the Republic of Indonesia's Constitutional Constitutional Republic of Indonesia's)). It explains the modern changes that are happening in Indonesia's legal environment and how instances of them are against the very nature of Article 33 of the 1945 Constitution. It provides a critique of the state of the legal and economic life of both the Old and New Orders and how the present situation of the reformation is still problematic. It provides an in-depth explanation of the nature of Article 33 according to Hatta and his thoughts. It also tells about the arguments that happened when the Constitution was changed in the first years of the Reformation.

Elli Ruslina conducted a previous study titled "*MAKNA PASAL 33 UNDANG-UNDANG DASAR 1945 DALAM PEMBANGUNAN HUKUM EKONOMI INDONESIA*" (The meaning of Article 33 of the 1945 Constitution in the construction of Indonesian economic law). It presents and analyzes Article 33 of the Constitution and its meaning by reflecting on the spirit in which it was made. It made comments on the state of legal development throughout eras from a constitutional perspective and critiqued the addition of the phrase "fair efficiency" to Article 33 in the 2002 Fourth Amendment of the 1945 Constitution. It also looks at the laws from the Reformation period and shows how the Constitution of 1945 has affected the way economic laws are made today.

A third relevant article was by Fadli Zon, Muhammad Iskandar, and Susanto Zuhdi in 2017 entitled “*TINJAUAN SEJARAH HUKUM PASAL 33 UUD 1945 SEBAGAI IDEOLOGI EKONOMI*” (Analysis of the history of article 33 of the 1945 Constitution as an economic ideology). It analyses the 1945 Constitution, especially article 33, through the lenses of Mohammad Hatta as its main instigator and one of its co-authors. It provides information on the concept of “*Ekonomi Rakyat*” (people’s economy), which has now become the main tenet of Indonesian economic ideology. It also deeply and extensively explained article 33’s historical interpretation and how it should be applied to Indonesian economic life. The study critiqued the modern interpretations of the article that tried to re-align its meanings to those of the modern market economy and described how a critique of the article should be done.

3 Method

Qualitative research is a method for investigating and comprehending the significance that individuals or groups ascribe to a social or human problem. The process of research involves emerging questions and procedures; data typically collected in the participant’s setting; data analysis inductively building from particulars to general themes; and the researcher making interpretations of the meaning of the data. The final written report has a flexible structure. Those who engage in this form of inquiry support a way of looking at research that honors an inductive style, a focus on individual meaning, and the importance of reporting the complexity of a situation. Essentially, This method of research, in its process, hypothesis, analysis, and conclusion, among others, up to its writing, utilizes aspects that are non-numerical, descriptive-situational, and analytical. Qualitative research builds its premises on inductive rather than deductive reasoning. It is from these observational elements that pose questions that the researcher attempts to explain.

The strong correlation between the observer and the data is a marked difference from quantitative research, where the researcher is strictly outside of the phenomena being investigated. There is no beginning point of truth or any established assumptions from which the researcher can begin. Therefore, it is clear that in this mode of research, the researcher is deeply involved in the examination of sources and data. In this type of data collection and analysis, the researcher looks at all the questions and problems that the dilemma raises.

4 Results and Discussion

4.1 The Evolvement of Indonesian Legal and Economic Environment

4.1.1 The Origin of Indonesian Socio-Political and Legal Environment During the Pre-colonial Era

Indonesia’s ancient socio-legal system emerged from the societies of the Nusantara Archipelago long before the advent of its ever-evolving political units. It was ancestral and primordial and developed from the myriad of different traditions that exist within the archipelago’s hundreds of tribes. In the study of the archipelago’s history, it became

apparent that the law came from the authority of a group's leader. And from there, such an authority developed into the authority of a region and then a kingdom.

The characteristics of the law from this ancient period are traditional and open. It was traditional, meaning that it continued from ancestral tradition and leaned toward the defense of values and patterns created within the peoples' habits and environments. It was also open, meaning that it could follow and accept the growth of law and culture that happened around it.

Traditional laws during this period were unwritten and evolved from repeated habits of the people from one generation to another that, over time, were considered sacred or binding to all members of their community. Such laws usually governed the social behavior of the community, but they also contained provisions with regard to inheritance, criminal punishment, and even land ownership.

Tradition-driven law was the main facet of life in the archipelago's ancestral periods, and it governed the lives of certain local peoples throughout Indonesia until now. Legal scholars refer to the aforementioned ancestral practices as "*adat*" and the laws governing them as "*Hukum Adat*" or *Adat Recht*. "*Adat*" can be simply defined as repeated customs that have become a tradition and are practiced from generation to generation up to the present day. *On the other hand*, "*Hukum Adat*" is the unwritten law that governs these customs. It was respected by society, and if it was broken, people were punished by society.

With the development of advanced societies, these practices and laws are re-structured and several are written down. The introduction of Hindu and Buddhist cultures in the fourth century A.D. and Islam in the thirteenth century A.D., sparked such a re-formation. These outside influences resulted in the acculturation of pre-Hindu laws with living laws brought in by Hindu, Islamic, and, later, Christian cultures. For example, kingdoms such as Srivijaya, Majapahit, and Singhasari of the Hindu-Buddhist spheres, as well as later sultanates of Aceh, Demak, and Mataram, created such laws wherein social traditions intermingled with heavy religious values to govern their states and peoples (Table 1).

At the heart of this tradition-derived socio-legal system was the archipelago's diversity. Socio-legal and economic values between communities diverge along distinct geographical boundaries, historical movements, and even climate and ecology, socio-legal and economic values between communities diverge. Even with the international trade that happened due to its strategic location, societies around the archipelago developed their own unique cultures, customs, and laws—characteristics that led to distinct multiculturalism.

This logically made these tribal societies increasingly regional and primordial, each with their own strictly held norms and social values. However, a general similarity is retained between these separate identities, which can be traced back to the prehistoric era. It can be called a *volksgeist* and, indeed, a traditional norm and natural law discoverable throughout the archipelago. That was the spirit of religious and other reasons why people in the past worked together as a group and helped each other.

It became a general characteristic of peoples throughout the archipelago and is the main reason why the principles of communalism and togetherness still survive in the

Table 1. Examples of transcribed and written *Adat* laws through the years. It describes the state of legal development of historical Indonesian states.

LAW	YEAR	ABOUT
SRIVIJAYA ERA		
King Sanjaya Inscription (Kedu, Central Java)	732 A.D	Religion, Economics, Mining
King Dewasimha Inscription	760 A.D	Religion, Workmanship
King Tulodong Inscription	784 A.D	Agriculture, Irrigation
<i>Bulai Rakai Garung</i> Inscription	860 A.D	Court of Civil Cases
MATARAM ERA		
<i>Guntur</i> Inscription	907 AD	Exercise of the Court
Mpu Sindok Inscription	919 AD	A ruling of the Court regarding debts of a deceased heirless widow
Dharmawangsa Inscription	991 AD	The creation of a translation of <i>Adat</i> rules
MAJAPAHIT ERA		
Law under Hayam Wuruk, King of Majapahit, and Gajah Mada, Prime Minister of Majapahit	1334–1389 AD	The establishment of the law codes <i>Kutaramanawa</i> and <i>Syiwasyasana</i> as the basis of court procedures. There was also the <i>Adigama</i> law code which was heavily based on Hindu religious laws and influenced the administrative laws of the state.
ISLAMIC MATARAM ERA		
Law under the Sultans of the state, <i>Sultan Agung</i> and his descendants	1613–1645 AD	The creation of the <i>Qisas</i> Court. A civil court that helped the Sultan in his deliberations. It also informs of a court system of <i>Padu</i> (an integrated system) that peacefully mediates disputes between villagers and between <i>Adat</i> people.

modern era. Because of this, the archipelago has become a melting pot of different things that exist separately but also depend on each other to this day.

4.1.2 Development During Colonialism

Colonialism in Indonesia began with the arrival of western powers, especially the Dutch, and later the Portuguese and the Spanish, who in search of these islands, known to be the source of spices, had launched the Age of Discovery. Early European presence in the archipelago suggested the European desire to join in on the Asian spice trade, although this expanded to successive market monopolies and later military conquest. In the wake of

this early European imperialism, the Dutch VOC (Dutch East India Company) emerged as the archipelago's most successful economic partner and, later, colonizer. Throughout its time as a growing presence in the region, the VOC has realized the definitive pluralism that was apparent throughout the archipelago, and despite attempts at uniforming the administrative and legal regulations regarding the diverse territories that it has, over time, assumed control over, it continued to support, or at least recognize, the existence of ancestral laws and customs for the sake of the bureaucratic simplicity that the company favored.

The presence of the VOC in Indonesia was purely economic for the sake of benefit, and therefore, the VOC preferred to preside over a pluralist legal system, in which administration was left as extensively as possible in the hands of local communities. The reality of the ongoing rule of ancestral law, thus Adat law, in VOC was enforced by the fact that VOC depended largely on indigenous rulers and, although there was armed conquest, hegemony was based on treaties with said rulers who made concessions to the interests of the company. Therefore, it was clear that the company didn't want to get involved in the social and legal lives of the people in the archipelago.

The dissolution of the VOC in 1800 did little to the massive legal pluralism that was left in the hands of the Dutch government, and an issued charter in 1804 legalised the usage of the people's laws and customs (Adat) in the practice of courts. This must be so that the ideals of traditional laws and values of the people were retained past the age of flourishing native kingdoms, but there was also a reality that with the arrival of private western enterprise, the traditional village society was sharply affected by the outside world. The increasing pressure of a money economy, new welfare programs and surveys, production for export, education, and administrative reform all brought the villagers within the orbit of Western influence. Under this devastating attack, communalism weakened.

The later codification of several law codes in the middle of the 19th century did not help the state of plurality in the region, with the criminal code still retaining the vast range of arbitrary local arrangements that differentiate punishments for European and indigenous criminals and the civil code implementing different laws for three different categories of people. Even so, the fact of the existence of hard-pressed legal pluralism in the archipelago will be further used for later nationalistic causes as it can be argued that the colonial system of ethnic classifications, crudely dividing the population into Europeans, *Inlanders* (Natives), and *Vreemde Oosterlingen* (Foreign Orientals), created the basis for an Indonesian identity arising out of the *Inlander* category. This development will therefore lead to the creation of nationalism imbued by anti-imperialist and traditionalist values that grew out of political and economic segregation.

The succeeding 1942 Japanese occupation was short-lived and its military government adopted the legal structure left by the Dutch, with changes only occurring in the structure of courts and the implementation of heavier punishments for criminal offences. Thus, with the surrender of the Japanese in 1945 and the proclamation of a new state of Indonesia soon after on August 17, 1945, a new basic legal entity soon went into force in the newly independent nation. The Pancasila is the country's official philosophy, and the 1945 Constitution is the basis for its laws. Article 33 of the 1945 Constitution is the basis for the country's economy. Article 33 of the 1945 Constitution can be called

the modern economic foundation of Indonesia as its proposer, Muhammad Hatta, has acknowledged that it resulted from a long historical experience of the nation. In his speech called “Problems of Economic Politics for Indonesia,” he said that Article 33 of the 1945 Constitution was written because of the political and economic situation at the time.

Hatta concluded that Indonesia’s social structure suffered as a result of Dutch colonization. During the time before colonialism, Indonesia was a strong nation, and after it became cool, the popular prosperity that had been achieved prior to colonialism under the dynamics of agricultural traditional states imbued with ancestral ideas has gone along with the arrival of western powers and their economic monopoly. He said that because the Dutch used the colonial capitalism system, which was based on liberal ideas, the social structure of Indonesia before the Second World War looked like this:

- a. The top layer is the colonizers, white people, especially the Dutch. They control the greater economy, which is related to production (plantations, industry), land and sea transportation, exports and imports, and banking.
- b. The second layer is those who act as intermediaries in the relationship between the first layer and the Indonesian people. In sociological terms, 90% of this layer is occupied by Chinese and other Asians, and the remaining 10% is filled by Indonesians, who occupy the second lower layer (in sociological terms, called middle-lower). They can enter this layer because, primarily, they have capital.
- c. The third layer is occupied by most of the Indonesian people who control a small-scale economy, such as small agriculture, small carpentry industry, including workers, coolies, laborers, and petty employees, along with small-scale traders.

This historical condition led him to construct an economic system that is both beneficial and based on the very nature of the Indonesian people: the village lifestyle, which is based on collectivism. A general and universal economic system that is realised through cooperation, that is, mutual assistance, A system that reflects Indonesia’s ancestral and historical philosophy and ideals Hatta suggested the idea of *ekonomia rakyat* (people’s economy). An economic, but also social, structure where the ideals of sovereignty in an economic aspect that truly empowers the people emerged. Hatta’s system primarily aims to give the absolute best to the common people and to dismantle the character of Western democracy, which was based on individualism.

He, along with others, believed that big corporations and companies that, in such a way, control the livelihoods of a great number of people must be put under the government’s overseeing authority and power. Thus, the well-being of corporations, logically, cannot be regulated by several private individuals alone as it will be more geared towards profits. And the reality of profits was, in Hatta’s view, far from the ideal future of the Indonesian national economic structure. An ideal future must conform to the traditional nature of Indonesia. And these natures were cooperativism, mutual assistance, and other similar social concepts.

It is hoped that by synchronizing society’s values, the *volksgeist* (the spirit of the nation), with the national economy through the usage of reliable legal tenets, the aim of social prosperity can be achieved, especially the common prosperity of the people

envisioned in ideas of cooperativism and mutual assistance. This was the principal system that Indonesia was founded on.

4.1.3 Post-colonialism: Under the Old and New Orders

To understand the reality of the application of Indonesian economic ideology in the modern era, the polaristic nature of both old and new orders must be deeply elaborated, especially with regard to economic regulations. In this way, it will be clear how the economic and legal strata in Indonesia evolve.

The reality of the Old Order began with the proclamation of the independence of the Republic of Indonesia on August 17, 1945. However, the struggle to maintain it was not over in light of Dutch military aggression and internal political instability. A little bit of national peace may have ensured the start of Indonesian parliamentary democracy, but the superstructure of its democratic process strikes one as being of uncertain construction. It should also be remembered that the political system, first of all, is reflected in a plethora of various political groupings and ideological hues. This was also apparent in the economic regulations of the time, as despite the foundation laid out in the constitution, what really went on during the economic climate of the time can be described as fluctuating at times. The Hatta Cabinet that was formed in the wake of parliamentary democracy, although led by a professional economist, was narrow in its focus and its view was restricted very much to the short run. The primary concern of this brief cabinet was political unification. Few policies were put in place to help the public economy, and the war effort got a lot of attention.

However, several economic endeavors were undertaken under the succeeding Natsir Cabinet. In the spirit of protecting the national economy and the underlying ideology of Article 33, and in the midst of strong export demand during the Korean boom, a policy was adopted to liberalize imports. This was done as a means of keeping domestic prices down, raising standards of consumption, and encouraging the development of indigenous enterprise. Credit was tight for the foreign-owned firms that dominated the economy, though easy for the burgeoning national firms. There was also an Economic Urgency Program, which was an attempt to diminish the nation's dependence on foreign economic interests in several ways: by developing small, national (i. e., indigenous) industry to produce import substitutes in the hope of reducing dependence on foreign trade; by means of capital assistance to indigenous enterprises; and by restricting certain markets to indigenous sellers. This program was called the *Kebijakan Ekonomi Banteng* (Banteng Policy).

The only major contribution of the succeeding Sukiman cabinet was the nationalization of the Java Bank, while the Wilopo Cabinet contributed to the paring down of the country's realized deficit from Rp. 4 billion to Rp. 3 billion through ingenious gadgeteering, mainly with the taxes and exchange regulations in the foreign trade sector, with some effort at austerity in government expenditure made as well. Immediately succeeding the Wilopo, the First Ali Sastroamidjojo Cabinet was criticized for its fiscal failures on the one hand and its perversion of the benteng policy on the other. Even though a draft bill on rules for foreign investment was made while this cabinet was in power, the government at the time was anything but friendly to foreign business.

The next Harahap Cabinet was deemed largely successful in its economic regulations. The confusing import certificate system was swept away, along with all special import taxes, and a relatively simple system of tax categories took their place, which was made according to the nation's need for more thorough taxation of imported commodities. The licensing system was depersonalized to eliminate corruption, and a new Foreign Exchange Board (BDP) was created. Screening of national importers was improved, and an attempt was made to give the same privileges to all businessmen who were citizens of Indonesia, regardless of ethnic origin. On the return of the Ali Cabinet in late March 1956, several important economic matters that had been long pending came to a head. One was the foreign investment bill, which was finally formally submitted to the parliament. However, this can only be called a limited accomplishment since the bill was not actually passed until three years later. The second was getting rid of the debt to Holland. This meant that the economic agreement that had been the basis for the transfer of sovereignty was no longer valid.

However, as the last of all cabinets during the Indonesian parliamentary democracy, the Juanda Cabinet had very little opportunity to formulate new economic measures. Its most significant economic response was a new version of the exchange certificate system that required importers to present sufficient certificates of par value to cover any foreign exchange request. The effect, however, was a *de facto* devaluation. The cabinet also lost a battle against the minister of finance, Sutikno Slamet, wherein a halt was ordered on further government personnel hiring and an attempt was made to increase general taxation. The result for the year, however, was a deficit of Rs. 5.55 billion. That was about 22% of total governmental expenditures. The end of such economic instability was the regime of guided democracy that was instituted by Soekarno, which based its economic system on socialism.

Soekarno's Guided Democracy under Soekarno did not see any implementation of significant economic measures through the usage of regulations, as it was apparent that Soekarno himself had remarked that "one cannot make a revolution with lawyers". He more or less abandoned any legal steps necessary to establish a working economic order and instead tried to gather all economic initiatives under his total leadership. He thought it was necessary to make Indonesia's economy work and become independent, which was what he wanted.

What he envisioned as a "working" economy is different to the groundwork instituted in the Constitution. Soekarno, at that time, envisioned and championed his version of Indonesian socialism. An economic system that "would benefit Indonesia the most in order to create a just and prosperous society" and which is grounded in the socialist values of European as well as East Asian economists and politicians. This he attempted to achieve through his almost complete control over the government. At this time in Soekarno's administration, the president has become the center of power and, at the same time, the center of thought and state policy making. Under his rule, actions that were imbued with eastern socialism dominated the rest of the Old Order. The policies under this guided democracy became highly socialist and even quasi-communist when one considers the reality of cooperation between the Soviet Union and Indonesia during these years up until Soekarno's impeachment. Hostile policies began to be enacted throughout the nation during these last years of the old order, including the abrupt nationalization that

was put on by the government through the 1957 Dutch, 1963 English, and Malaysian, and 1965 American companies' expropriation. Later, uncontrolled development programs resulted in very high inflation and the accumulation of national debts that reached US\$ 2.400 million. Soekarno reinterpreted Article 33, which was the basis of Hatta's plan for a cooperative economy in Indonesia, as Indonesian socialism, which he said was marked by orders from the top, in the socialist style.

Upon the rise of the New Order under Soeharto after the 1966 Soekarno fall, and exacerbated by the trauma of economic failures of socialist tendencies of the late old order, the realization of the same Article 33 of the 1945 Constitution became excessively different. When, during Soekarno's guided democracy, eastern socialism was championed. Then, during the new order, liberalist policies were implemented at the national level.

The new realization involved the opening of the flow of liberalization as a foundation for promoting the nation's economic growth. This brought great surprise to the foreign community as the regimes that followed the New Order's rise were so distinctive from those that preceded it. This was most apparent with Law Number 1 of 1967 about Foreign Investment and Law Number 8 of 1968 about Domestic Investment, which facilitated the liberalization process to run ever so smoothly. The ever-developing effects of these new economic regimes were massive, and the resulting entrance of foreign investments into Indonesia ranged from US\$ 210.6 billion in 1967 up to US\$ 33,788.8 billion in 1997, and the development of domestic investments ranged from Rp 38.6 billion in 1968 up to Rp 119,877.2 trillion in 1997.

Society became increasingly capitalistic as further liberal regulations were introduced, but a problem managed to creep into the increasingly industrialized country. From 1979 to 1983, many people became dissatisfied with the state's liberal economic policies, realizing that they did not always result in economic equality. The growth that the country has experienced was limited to only a fraction of the population, the capital-wielding ones. The political economy that was oriented towards economic growth with the support of foreign capital, either through external debt or domestic and foreign direct investment, indeed demonstrates an increase in the Indonesian economy, with an average rate of growth of 6.5% per year. But that great economic growth was not followed by the so-called "trickle down effect" that promised economic well-being to people of all economic strata.

The resulting social and economic conditions mentioned above make economists and other social scientists believe it is important to pay more attention to the aspects of equality and social justice in national economic policies. This brought many to question the kind of economic system that Indonesia actually adopted. It was therefore apparent that the crystallization of Article 33 of the 1945 Constitution as the basis of Indonesian economic ideology, a fundamentally social and economic idea of collectivism and cooperation, was not reflected. The fact remains that even in the seemingly successful economic policies of the New Order, the aim of the Constitution was not reached. Many during the late new order believed that economic welfare was not equally represented in the general body of the nation's population and that cooperation of all was not realized.

This state of inequality persisted until the fall of the new order in 1998. A fall that ironically happened because of the late 1990s financial crisis, some may argue, happened because of excessive economic interdependence.

4.1.4 Development Throughout the Early Reformation Era

The reformation era that replaced the troubled New Order in 1999, as its name suggested, was to bring the transformation and “reformation” of the country into a more sensible state, not really pictured in the political and economic climate of the past regime. While it can be ascertained that, during this period, the state turned better in a political sense, how it transformed the reality of national economic life is still to be questioned. Indonesia experienced four amendments to its national constitution in a span of four years (1999–2002), which not only included changes to its articles but also their interpretation. This reality was also the case with Article 33 of the 1945 Constitution. In its amendment process, those in the state parliament questioned the original meaning and aim of Article 33. Even the additions of paragraphs to it, including the inclusion of economic “efficiency”, beg an inquiry into their philosophical nature and whether they are made in accordance with the spirit and thoughts of the fathers of the constitution. It should be clear, then, that at this point in Indonesian economic history, legislators were unsure how Article 33 should be interpreted as the foundation of national economic policies and attempted to clarify the nature of the national economy based on the most recent understanding gained during the New Order. To pinpoint this oddity, one must be directed to paragraph 4 of Article 33, which was the result of the 4th amendment.

The mentioned paragraph included the phrase “fair efficiency” (*Efisiensi Berkeadilan*), which according to a critic, has introduced an inherently neo-liberalist thought to the structure of national economic ideology. However, such an opinionated consideration of that notion can be understandable. Logically, it can be said that with the inclusion of such a paragraph in the Constitution, state economic regulation actions will result and be oriented towards maximum gain and maximum satisfaction. The implication is that it will unleash a free market (*laissez-faire*) that will undermine the constitutionally mandated concepts of economic independence and cooperation. In seeing this, it shall be questioned whether the Indonesian reformation has, through legal means, transformed the state of the Indonesian legal-economical environment to those envisioned by the state’s founders.

As evident in future legal products from this point onwards, divergence from the original intent of Article 33 continues to be found. This fact alone leads us to the conclusion that general deviations in economic ideology are prevalent in Indonesian economic and legal fields. Among the legal examples of this unfortunate circumstance are Law Number 22 of 2001, Law Number 7 of 2004, Law Number 30 of 2009, and Law Number 25 of 2007, among others, with the newest being concerns raised towards Law Number 11 of 2020 (Omnibus Law). All of this was considered or will be considered in the future by the Constitutional Court because of its substances that are said to be against the very nature of Article 33. The very fact that such cases were and are continuing to be presented before legal authorities implies that, in the legal atmosphere of the state, the general public is concerned that what the Constitution wants to achieve has yet to come to any good fruition.

Many of these laws are being reviewed by the aforementioned court because of their nature, which, in many petitioners' arguments, do not represent people's sovereignty and values as implied by Article 33. The fact that the Constitutional Court agrees that certain legal products are in fact in violation of Article 33 reveals the unfortunate state of Indonesian economic and legal life. Thus, it can be seen simply that deviation from the 'correct path' as being envisioned by those that conceptualized and wrote the Constitution in 1945 does in fact exist. It continues to be present in the current dynamics of legal and economic thought in the nation and poses a problem for the nation at large.

4.2 Reflection, Most Recent Development, and Challenges

In reflecting on the deviation mentioned above, one must consider the importance of a state constitution as a whole. It is factual to say that the Constitution is, essentially, a set of a nation's most fundamental laws that are primarily based on the ideas of its makers and originate from their philosophical stances and thoughts. It contained a general consensus of all the people regarding the basic matters which are related to the basic principles of life and administration of a country as well as its organizational structure. Therefore, the Constitution exists as the main guideline and measuring unit for all future legal products. And all legislation must clearly reflect the fundamental ideas in it.

The proof of these words, that a popular consensus exists in a constitution, can naturally be found in the 1945 Constitution of the Indonesian Republic. The fact is, not only does the Indonesian Constitution incorporate certain philosophical stances of its makers, but it also includes the very nature and characteristics of the people. Moreover, as has been stated at the beginning of the article, there are not only one but two principal foundations that regulate the state's livelihood. One being the Constitution and the other being *Pancasila*. Both were very important in the legal and social life of the state. Both contained Indonesia's *philosophische grondslag*. The Constitution has a more physical legal basis, and the *Pancasila* is the nation's state philosophical stance and the prime embodiment of Indonesia's original philosophy.

The uniqueness of Indonesia, which formulated its own distinctive ideology (in the *Pancasila*) and incorporated it into its constitution, is what made it possible for one to critique any divergent thought that may have infiltrated the state's whole environment. Indeed, it is logical to state that neither the Constitution nor any derivatives thereof shall deviate from the *Pancasila*. The Constitution is placed as the most basic source of law in Law Number 12 of 2012 and therefore commands the greatest amount of respect from legislators that shall promulgate new laws in the present day.

To deny the Constitution the power to restrain any new laws that are created because of material or quasi-capitalistic gain is to deny the nation's founders the capability to achieve what they originally wanted. The data gathered in this article proves that up to the present day, polemics surrounding certain laws indicate that the state dynamics have not, in any case, conformed to the nation's ancestral ideals. At best, laws can still be broken, and any attempts in the past to bring prosperity through foreign ideas were, at best, flawed.

To further put the deviation into the spotlight, let us reconsider the origin of the Constitution and especially its Article 33. Throughout the article, we can infer that what was originally championed by the drafters of the Constitution was economic independence.

An independence that is centered on cooperativism and mutual assistance. They strongly suggest that such ideas are the most suitable to be implemented throughout the nation. Ideas that are inherent in its native inhabitants.

What Hatta has chiefly envisioned since the first formulation of the article was also the same. He envisioned that in the daily life of the state and the commencement of the economy, the people must become its chief instigators and actors. Popular participation must be championed and respected. Thus, it was right in such a view that the Constitution should grant the common people mandates that wholly protected their economic independence.

Soekarno's and Hatta's understanding, as well as what we have seen throughout Indonesia's history, is that political and economic democracy will be successful when participation, not particular but popular and universal, is included in it. The definitive ideal of Article 33 was to give the limelight to Indonesian society through the effective use of kinship, cooperation, and togetherness. All of this was clear when the history behind the 1945 Constitution was looked at.

The constitution appeals to the traditional conduct of Indonesian society and its values. When translated into the modern context, what Hatta, in this article, proposed was obvious: that the state should be involved in the regulation and overseeing of all vital economic sectors. As stated before in the article, great corporations that are important for the well-being of the public at large should be under the state's care. With the principle of cooperation kept alive in these vital sectors, they can then further grow with the state's capital providence. Thus, in the end, under the state's purview, their growth does not stop to profit private individuals only but also a great number of citizens. A realization that the public life of the country depends on its economy in a good-natured way.

Such implementations, or any attempt to implement them, during the old order, as has been noted before, were largely inefficient. The main causes were unstable political and socio-economic conditions. And this was also exacerbated by fluctuating bureaucratic changes inside the nation. Despite Soekarno's contribution to the philosophizing of the current independent Indonesia, his policies were not socialistically Indonesian. Instead, he appealed to eastern socialism and quasi-communist tendencies. During the time that parliamentarianism was in place in Indonesia, there were a number of projects that were nationalist in nature and gave priority to domestic actors in economic sectors. However, big problems at the end of the regime seemed to cancel out any economic progress for the country.

Even more troublesome was the new order. Its liberalist and capitalistic approach to the economy was an attempt to rectify the old order's troubles. It may have seemed promising at the start, but at the end, it was not in line with the most basic foundations of the nation. The proof of its success was limited at most. The 32 years of New Order development were solely focused on efforts to increase macroeconomic growth. It stopped caring about the economy of the average person and focused on ideas from the West without any wisdom.

Even though it proclaimed the growth that would be brought by the open market system, it ultimately failed to achieve the prosperity of all. It principally failed to achieve prosperity by the means of mutual assistance. A failure to carry out a plan that the people who made the Constitution and the traditions of the country had in mind.

In the final years of the New Order, it became undeniable that the developmental process that was being carried out was not accompanied by efforts to improve the quality of state human development. It was also not accompanied by efforts to build and broadly strengthen institutions, both public and private. A failure to accommodate factors which have an important role in smoothing the running of a good economic system. As a result, when the monetary crisis infected the Indonesian economy in 1997, it quickly developed into a multidimensional crisis. An economic, political, social, and legal crisis that quickly spiraled out of hand, resulting in the breakdown of social and political order. It seems obvious that in both eras, the implementation of the Indonesian native economy was not successful. And the adoption of a characteristically Indonesian third way was not achieved.

As a lesson from the past, is it not right then to question whether, in the consideration of creating and adopting any relevant economic regulations, a country should first and foremost consider their compatibility with the country as a whole and its people? Why not relate such laws to the country's national spirit as a prerequisite? Why not consider any approval for the creation of a law based on how the nation's ideology fits into them? Why not let the state be careful in the implementation of impacting economic regulations instead of passing one or another piece of legislation without any deep judgment beforehand? It may be beneficial to use such a question as food for thought for countries, but it must primarily be presented and answered by Indonesia and its government. The Indonesian government will realize that the country's legal system in the past was, at best, a mess, and it will try to change and fix it now.

How about the most recent legal developments in today's legal climate? Let us also now consider the reality of one recent Indonesian legal product: Law Number 11 of 2020, also known as the Job Creation Act. This recent piece of legislation has had an impact on the state of the Indonesian economy considering that a wide range of economic sectors are being regulated by it. One may conjecture that despite the deviations that have been retained since the start of the Reformation Era in the early 2000s, the legal structure in Indonesia has become much better and more refined. But it was not necessarily the case. In light of the aforementioned piece of legislation, it was found that the role of the people is still so miniscule and restricted. They are limited to being one of the instruments of production. Its role is placed at the level of human resources, with restrictions that are aimed primarily to promote business activities. They are not the most important people in economic action, and they are only seen as a way to make macroeconomic progress.

The proof of this being in certain provisions of the Act, such as articles 79, 81, and 82, among others, the rights of the people, especially workers, are being marginalized. Provisions such as reduced leave time, increased working time, and the abolishment of district/city sectoral minimum wages are being promoted without the consultation of local wisdom. Such provisions are proof that the idea of cooperativism at all levels of governmental and economic life is not ideally represented and realized. In Indonesian society, many have noted that recent legal products have failed to contain the ideology of the Indonesian economy within them. They realize that traditional economic ideals are not advocated and put into action. Even the important and wide-ranging laws mentioned above, like the 2020 Job Creation Act, haven't taken into account the fact that the economic rules in the 1945 Constitution are based on ideology and the law.

Thus, deviation from the legal norms of the Constitution still persists even in the most recent body of laws in Indonesia, and the historical context has not prevailed over the recurring problems that the Indonesian legal and economic climate have experienced. The current and clear challenge for everyone, and especially for the government, is to think about the full return of the native Indonesian ideas that the founding fathers had in mind.

Modern legislators must not be trapped in the rules and philosophy set by polarizing ideologies. They must be sensitive to the traditional determinants of the economy. Certain determinants can provide a higher bargaining position for the people than what has been mandated by the Constitution. All economic regulations must be based on the idea that each country should be able to run its own economy. Without a full understanding of this, economic law will only focus on one macroeconomic paradigm after another, which is not effective.

Now the questions become: If any attempts to do the above things are being made, is it successful? Or if any were being considered, did they really subscribe to the original notions of the Constitution? It is now undeniable to state that the ever-present challenge in the Indonesian legal landscape up to the present day is to recover and erase all constitutional deviations. Not only the ones that exist in the written body of law but also the state's legal and economic life. It must be clear to the state that the historical notion that supports cooperativeness and similar notions of Article 33 must be included in every economic policy. The government must realize that a careful but urgent legal reformation is needed. All of this is done to bring back the Indonesian people's historical prosperity and the social and economic structures that are required by the constitution.

5 Conclusion

In tracing back the evolution of Indonesia's legal and economic reality, it is found that the principles of cooperativeness and collectivism, later defined by Article 33 of the 1945 Constitution, are soundly evident throughout many ages. It enforces the fact that what the Constitution meant is historically and philosophically right and that it lived as a *volksgeist* of the people of the archipelago throughout all eras. The article also found that throughout the colonial and post-colonial times, divergence from this *volksgeist* and its embodiment in the Constitution found its way into the common legal atmosphere of the country. It resulted in a stark and bleak contrast to what the founders had promulgated and envisioned. The deviations that were born in modern times were factual and oftentimes problematic. It should also be noted that the instances when other ideologies attempted to replace Indonesian native economic stances were only met with limited or questionable success. As a result, it is possible to conclude that post-colonial legal and economic development was at best problematic.

In the recent history of the nation, the problematic reality of the legal-economic climate still persists. It invites critique and challenges from the people to the government. The original meanings of the Constitution and the nation's basic tenets are still often ignored, and the concepts of cooperativeness, mutual assistance, and togetherness are not seriously considered by lawmakers. This proves that, in the greater scheme of things, the nation still has several constitutional objectives to fulfill and legal products to amend.

The current and pertinent legal challenge now is to encourage the government to reflect upon history. It must come to its senses and support the return of the primordial philosophy of the people. The return of a legal and economic paradigm that is most aligned with Indonesia's national spirit. The deviation that is present must be minimized. Radically speaking, all deviations must be erased and replaced. New legal products completely based on the Constitution and its Article 33 must be made for the benefit of all people. That way, the nation's economic and legal history can find its closure and new beginning in the fulfillment of the founding father's original visions and hopes.

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