



# Economic Development in Indonesia's Creative Economy Development

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**Abstract.** Economic development is way to meet human needs by utilizing existing resources so that they can produce effective and efficient use values. However, the use of human resources does not mean that it can be done arbitrarily and without considering the consequences. Therefore, it is very important for the rules that apply they can be a barrier and as a reference for justice in carrying out economic activities. in Indonesia which is good The approach method used to discuss the problem is normative juridical with analytical descriptive specifications. The data used is secondary data consisting of primary, secondary and tertiary legal materials. There are so many regulations related to the running of the economy in Indonesia that are not coherent with the existence of Article 33 of the 1945 Constitution of the Republic of Indonesia. Not only at the incoherent level, but even some laws and regulations are also contrary to Article 33 of the 1945 Constitution of the Republic of Indonesia. Analysis and formulation of the application of the creative economy in Indonesia that is in accordance with the economic constitution of the 1945 Constitution of the Republic of Indonesia. The preparation of laws and regulations should be able to balance in a balanced way the political constitution (the state), the economic constitution (the market), and the social constitution (civil society). The economic constitution is a bridge between the necessity of being oriented towards market mechanisms that prioritize efficiency and competition on the one hand, with the necessity of having the highest reference as a means of control and at the same time driving justice for economic progress and encouraging the development of a mutual cooperation orientation in accordance with the spirit of the Indonesian nation.

**Keywords:** economy · creative · development

## 1 Introduction

National development since the beginning of the independence of the Republic of Indonesia refers to the ideal foundation, namely Pancasila and the constitutional basis, namely the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia as a constitutional basis means that the 1945 Constitution of the Republic of Indonesia is the grand norm or the basic norm of the source of all sources of Indonesian laws and regulations. All regulations under it, starting from the Law on Government Regulations and others, must not conflict with the basic norms of the 1945 Constitution.

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Pancasila as the ideal foundation, meaning that Pancasila as stated in the Preamble to the 1945 Constitution is a *rechts idea* as the ideological foundation of the Indonesian nation as well as the basis of the Republic of Indonesia in order to achieve the ideals of the Indonesian people, namely: "then than that to form an Indonesian state government that protects all nations Indonesia and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, eternal peace and social justice".

Economics is a scientific field that will solve the problems of human life through the stimulation of all existing economic resources based on principles and theories in an economic system that is considered effective and efficient. [1] So basically the understanding of economics is ways to meet human needs by utilizing existing resources so that they can produce effective and efficient use values. However, the use of human resources does not mean that it can be done arbitrarily and without considering the consequences. Therefore, it is very important for the rules that apply so that they can be a barrier and as a reference for justice in carrying out economic activities.

All countries in the world need economic activity to ensure the implementation of development and to meet the needs of their citizens. Likewise with the State of Indonesia, there are many regulations issued by the government with the aim of regulating the implementation of economic activities or activities in Indonesia. All regulations in the form of positive law are based on the 1945 Constitution of the Republic of Indonesia which is based on Pancasila [2]. It is contained in the preamble of the 1945 Constitution of the Republic of Indonesia in the fourth paragraph, one of the goals of establishing the State of Indonesia, namely to promote public welfare and educate the nation's life. Therefore, the Indonesian government should manage the economy in accordance with what is regulated in its constitution. The crisis we are experiencing is a momentum for the Indonesian government to return to an economic system in accordance with the constitution.

The crisis related to the economy experienced by Indonesia took various forms, from upstream to downstream, from the rulers to the common people, from the richest to the poorest. They are all inseparable from economic problems, both those that cause and those who become victims.

1. How is Indonesia's economy compatible with the 1945 Constitution of the Republic of Indonesia?
2. How should the implementation of the creative economy based on the economic constitution based on the 1945 Constitution of the Republic of Indonesia be good?

## 2 Research Method

The approach method used to discuss the problem is normative juridical with analytical descriptive specifications. The data used is secondary data consisting of primary, secondary and tertiary legal materials. Primary legal materials are in the form of laws and regulations related to the development of economic law, especially in the development of the creative economy. The resulting qualitative data is then presented in the form of statements which are then concluded.

### 3 Discussion

#### 1. Regulation of the Creative Economy in Indonesia

The 1945 Constitution of the Republic of Indonesia is the constitutional basis for national development, meaning that national development includes economic development, especially investment activities referring to the 1945 Constitution of the Republic of Indonesia as the basic norm in Indonesia. That the Indonesian economy is developed together based on the family principle. In the Indonesian economy, the state controls important production branches and controls the livelihoods of many people. In the verse it is stated that the state is also given the authority to control the earth, water and natural resources contained therein as long as they are used for the prosperity of the people. The Indonesian economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity. Regarding the Indonesian economy, the 1945 Constitution of the Republic of Indonesia requires that it be regulated in law.

The founders of the Indonesian nation have established Article 33 of the 1945 Constitution of the Republic of Indonesia as the political economy of the Indonesian nation and the social politics of the Republic of Indonesia. Article 33 of the 1945 Constitution of the Republic of Indonesia philosophically and conceptually aims to secure economic wealth for the Indonesian people for the welfare of the people and prevent group interests from controlling these vital elements of the economy. The 1945 Constitution of the Republic of Indonesia is a written basic law that binds the government, state institutions, community institutions, and also binds every Indonesian citizen wherever they are and also binds every resident within the territory of the Republic of Indonesia. In the General Elucidation of the 1945 Constitution number I it is stated that: The Constitution of a country is only part of the law of that State. [3] The basic law is a written basic law, while in addition to the basic law the unwritten basic law also applies, namely the basic rules that arise and are maintained in the practice of state administration even though they are not written, namely the basic rules that arise and maintained in the practice of state administration even though it is not written down”.

The existence of a legal basis for a country certainly has an important function for the country. This also applies to the 1945 Constitution of the Republic of Indonesia. In the above discussion it has been explained that the 1945 Constitution of the Republic of Indonesia is a written basic law that binds the government, state institutions, community institutions, and also binds every Indonesian citizen. as the basic law of the Republic of Indonesia, the 1945 Constitution of the Republic of Indonesia contains the norms and rules that apply and must be obeyed and implemented by all components within the scope of the Indonesian state.

The Constitution cannot be viewed as an ordinary law, but the Constitution is a basic law, namely a written basic law. The 1945 Constitution of the Republic of Indonesia as a written basic law means that all laws made or drafted must be sourced from the 1945 Constitution. Thus, every legal product such as legislation, government regulations, presidential regulations, regional regulations, as well as every government policy or action must based on higher regulations, namely the Basic Law in the form of the

1945 Constitution. Likewise, the responsibility for each legal product is that it must be accounted for in accordance with the 1945 Constitution and will lead to Pancasila which functions as the source of all sources of law in the Republic of Indonesia.

The creative economy development in Indonesia is based on Article 33 of the 1945 Constitution of the Republic of Indonesia. The meaning of the word "controlled" by the state in Article 33 of the 1945 Constitution, the state controls in the sense of carrying out the state's function as a regulator to make rules and umpire as a referee in the state's function as administrative power regarding licensing, legislative power in regulating justice standards between different economic sectors and as a judiciary to act as an impartial arbiter, in the event of a conflict between the state sector and the private sector. In general, this is the state's authority to control the earth, water, and natural resources in it.

Control over the earth, water and natural resources contained therein is the government's constitutional responsibility for the implementation of which is derived by law. Economic activity, including investment and the establishment of various state-owned enterprises (BUMN) in charge of certain fields, are manifestations of the control function by the state.

Meanwhile, the means of production must still be in the hands of the people and run by the people, in order to secure economic facilities and wealth and prevent group interests from exercising control over vital elements of the economy for the welfare of the people.

In addition, economic democracy as regulated in the 1945 Constitution of the Republic of Indonesia is a form of joint effort based on the principle of kinship, so that the founders of the Republic of Indonesia thought that the ideal business platform was cooperatives or at least self-management. For this reason, if applied in a concrete situation in the oil and gas sector, the right form is a production sharing contract because the control of natural products will remain in the hands of the Indonesian side as the owner of natural resources, and is free to determine what to do with his property and is free to decide what to do with his property. The price, management is in the hands of the Indonesian people. This is very different from.

The 1945 Constitution of the Republic of Indonesia must be understood as the highest economic policy that must be used as a reference and reference in developing every national economic development policy. The intended economic policies, in order to be binding and enforceable in a coercive manner, are always stated in the form of laws and their implementing regulations. All these regulations must not conflict with higher regulations. The law must not conflict with the Basic Law.

Regarding the creative economy, the World Intellectual Property Organization (WIPO) explains the definition of the creative economy in English as: "*An evolving concept based on creative assets potentially generating economic growth and development*". The application of the creative economy in Indonesia contains the following elements:

- a) Encouraging income generation, job creation, and export earnings while promoting social awareness, cultural diversity, and human development.
- b) Include social, cultural, and economic aspects in the development of technology, Intellectual Property Rights, and tourism.

- c) A collection of knowledge-based economic activities with dimensions of development and cross-sectoral connectivity at the overall micro and macro economic level.
- d) A choice of development strategy that requires innovative and multidisciplinary cross-ministerial action and policy.
- e) At the heart of the Creative Economy is the Creative Industry.

In developing the creative economy in Indonesia, it is based on: Law no. 20 of 2008 concerning Micro, Small, and Medium Enterprises; UU no. 33 of 2009 concerning Film – encouraging the development of the film industry; UU no. 3 of 2014 concerning Industry – encouraging the development of the National creative industry; Law No. 28 of 2014 concerning Copyright – provides intellectual property protection for creative works; Law No. 7 of 2014 concerning Trade – Encouraging trade in products based on the creative economy; Law No. 25 of 2007 concerning Investment.

In general, the creative economy is an industry that utilizes individual creativity, talent, and ability to create wealth and jobs. This industry exploits the work of someone. To date, the Government of Indonesia itself has identified the scope of the creative industry covering 15 sub-sectors, including: (1) Advertising; (2) Architecture; (3) Art market; (4) Crafts; (5) Design; (6) Fashion; (7) Video, Film and Photography; (8) Interactive Games; (9) Music; (10) Performing Arts (showbiz); (11) Publishing and Printing; (12) Computer Services and Software or Information Technology; (13) Television & Radio (broadcasting); (14) Research and Development; and (15) Culinary.

The economy in Indonesia covers a large area so it must be protected by regulations in order to realize a sustainable economy in the context of realizing an independent, advanced and prosperous Indonesia. Starting from the highest regulations, namely the 1945 Constitution, laws and regulations, to the level of regional regulations. Indeed, the formulation of regulations at each level is carried out by individuals with different levels of understanding and experience in economic and legal aspects, but it does not release the main principle in the role of laws and regulations that a statutory regulation must not conflict with the regulations above it. Not only should they not contradict, but the incoherence of regulations vertically and horizontally is something that should be considered taboo in the Indonesian state which has the character of *Rechtsstaat*.

In terms of the creative economy, Indonesia has a basic principle that has been regulated in writing and clearly in Article 33 of the 1945 Constitution of the Republic of Indonesia. To develop the creative economy, the government has a strategy by implementing integrated development between the community, the private sector and the government. The reality is that there are many regulations related to the running of the economy in Indonesia that are not coherent with the existence of Article 33 of the 1945 Constitution of the Republic of Indonesia. Not only at the incoherent level, even some laws and regulations are contrary to Article 33 of the 1945 Constitution of the Republic of Indonesia so that they do not spur growth. Creative economy.

Based on the theory of legal effectiveness in the view of Anthony Allot alluded to in his book entitled *The Limit of Law*, Butterworths. The book explains that the background of the discussion on legal effectiveness as discussed in the book is as follows:

- a. The law has a limit in its effectiveness (degree of compliance);

- b. There is a general tendency in various countries to make laws and regulations without conducting research on whether these legal products can achieve their objectives;
- c. It is difficult to measure the effectiveness of the law.

As one of the study materials for the occurrence of inconsistencies, namely Law no. 25 of 2007 concerning Investment. He found weaknesses in Law no. 25 of 2007 concerning Investment. The basic problem, in Law no. 25 of 2007 concerning Investment, Indonesia as the host country of investment destination (host country) does not mention at all how Indonesia's positioning, especially in responding to foreign investment. Although Indonesia must comply with the commitments of Law no. 7 of 1994 concerning Ratification of the Agreement on Establishing the World Trade Organization, but at least there is a clear attitude through the establishment of investment principles related to the protection of national interests.

The unclear positioning of Indonesia is reflected in the principles regulated in Article 3 No. 25 of 2007 concerning Investment, namely:

- a) "principle of legal certainty" is the principle of the State in law which lays down the laws and provisions of laws and regulations as the basis for every policy and action in the field of investment;
- b) "principle of openness" is the principle that is open to the public's right to obtain correct, honest and non-discriminatory information regarding investment activities;
- c) "accountability principle" is the principle that determines that every activity and the final result of the implementation of investment must be accountable to the community or the people as the holder of the highest sovereignty of the State in accordance with the provisions of the legislation;
- d) "the principle of equal treatment and no distinction of country of origin" is the principle of non-discriminatory service treatment based on the provisions of laws and regulations, both between investors from one foreign country and investors from another foreign country;
  - i. "the principle of togetherness" is the principle that encourages the role of all investors together in their activities to realize the welfare of the people;
  - ii. "the principle of just efficiency" is the principle that underlies the implementation of investment by prioritizing fair efficiency in an effort to create a fair, conducive, and competitive business climate;
  - iii. "the principle of the balance of progress and national economic unity" is the principle that seeks to maintain the balance of regional economic progress within the national economic unity. [4]

Based on the principles above, it is clear that it is very detrimental to the interests of the creative economy, detrimental to the national interest. By placing it on a par with foreign capital, foreign investors will be increasingly dominant over Indonesia. Prioritizing the existence of Pancasila as an ideal foundation in economic development, in particular, investment activities. The position of Pancasila as the ideal foundation means that Pancasila as stated in the Preamble to the 1945 Constitution is a *recht* idea in fostering the Indonesian economic system and must always be reflected in every economic policy. The potential economic power, which by the grace of God Almighty,

is abundant throughout the country, which has not been processed to become a real economic power, is also caused, among other things, by the lack of experience and technology.

Economic development means processing potential economic power into real economic power through investment, technology investment, knowledge addition, skill improvement, organizational and management capacity addition. Overcoming the economic downturn and further development of economic potential must be based on the capabilities and abilities of the Indonesian people themselves. At the same time, the principle of basing one's own abilities and abilities should not create reluctance to utilize the potentials of technological capital and skills available from abroad, as long as everything is truly devoted to the economic interests of the people without causing dependence on foreign countries. This means that investment is believed to be a means of economic growth, complementary to development financing, but without sacrificing national interests, especially not to pawn the sovereignty of the state. Investment activities must be truly aimed at the welfare and prosperity of the people.

In addition, the philosophy of life/ideology of Pancasila, which is at the same time the grundnorm or basic rule for the Indonesian legal system. Usually the legal system and the economic system are closely related to the ideology adopted by a country. The elaboration of the five precepts in Pancasila is contained in the preamble to the 1945 Constitution, and is contained in the articles and body of the 1945 Constitution, so that all laws and regulations in the Republic of Indonesia (including in the economic field) may not conflict with the 1945 Constitution and Pancasila.

The formulation of Indonesian economic nationalism absolutely requires a restructuring of the Indonesian economy from the colonial economic structure to the economic structure of an independent nation with the majority of the nation as the actors and the backbone. As contained in Article 33 Paragraphs (1), (2), (3), (4), and (5) of the 1945 Constitution, Indonesia's economic system is an economic democracy or a people's economy, in other words it can be called a people's economic democracy.

Impartiality in the seven principles above can be seen in the provisions of Article 3 paragraph (1) letter d of the Capital Investment Law above, reinforced by the provisions of Article 6 of the LoGA, which states "The government provides equal treatment to all investors originating from other countries. Who ever conducts investment activities in Indonesia in accordance with the provisions of the law". By implying equal treatment of foreign investors and domestic investors, it should be emphasized that the same treatment only applies to domestic investors, so that domestic investors get top priority. Equal treatment of foreign investors and domestic investors of course opens up great opportunities for foreign investors to obtain investment opportunities in all fields. The principle of equality and not distinguishing between foreign investors and domestic investors has violated the constitutional mandate regarding the management of the national economy because it leads to economic liberalization. Worse yet, this article invites Indonesia to submit to the power of multinational companies and put aside national interests.

By basing it on economics, the constitution regulates from the question of control and ownership of natural resource wealth, individual property rights, to the role of the state and state enterprises (BUMN) in business activities that lead to "shared prosperity,"

so that with the constitutional economy the prosperity of the people is prioritized instead of people.

Article 33 of the 1945 Constitution of the Republic of Indonesia, in fact the 1945 Constitution of the Republic of Indonesia is an economic constitution. The principle of the people's economy is a people's economic system, meaning that sovereignty in the economic field is in the hands of the people. Therefore, the people's economy is related to the idea of a constitutional economy which is nothing but the understanding of togetherness and the principle of kinship. "The principle of people's economy" is the main reference in every state, community and business activity. All Indonesian economic policies as outlined in the law must not conflict with the 1945 Constitution of the Republic of Indonesia.

The Indonesian economic system has a clear reference, namely the 1945 Constitution of the Republic of Indonesia, namely the Pancasila economic system, which contains economic democracy. In this economic democracy involves the government, private entrepreneurs, and all the people, so that in its implementation there must be cooperation between the government, the people and the private sector. The Indonesian economic system is regulated in Article 33 of the 1945 Constitution of the Republic of Indonesia. Based on the sound of three paragraphs of Article 33 of the 1945 Constitution of the Republic of Indonesia, the government plays a very important role in supporting an economic system based on people's economic activities. To develop the creative economy, the government has a strategy by implementing integrated development between the community, the private sector and the government, not vice versa, the strategy is more dominant with foreign investors by providing facilities/facilities with various strategies.

Based on the data obtained by the author, the judicial review of the Constitutional Court on Law no. 25 of 2007 concerning Investment which is contrary to the 1945 Constitution, the Constitutional Court granted only part, namely regarding the provisions stipulated in Article 22 paragraph (1), (2), and paragraph (4).

## 2. The Implementation of the Creative Economy Based on the Economic Constitution Based on the 1945 Constitution of the Republic of Indonesia is Good

Prof. Dr. Jimly Asshiddiqie, S.H. In his book on the economic constitution, he describes the new trias politica between the state, the market, and civil society. Thus, the idea of a constitution must also develop. To balance the political constitution (state), economic constitution (market), and social constitution (civil society). The 1945 Constitution which contains rules regarding politics, economy and society must be implemented within the framework of the state, business, and society. This means that the democracy to be pursued is not just political democracy, but also economic democracy and social democracy so that it can be fair and equitable so that the creative industries that support the creative economy in Indonesia can develop further.

Such a concept should be the basis of thought and consideration for law makers. Considerations in the formulation of laws and regulations related to the national economy must make the political constitution, economic constitution, and social constitution the axis and the people's welfare as the main goal. It is not the reason that the ownership of Natural Resources is in the state to be the supremacy for the state to regulate and manage them without paying attention to the welfare of the people. Between individual



interests and the supremacy of the state has long been bridged by Emile Durkheim's idea of the class of works. He then defined it as a secondary group that mediates between the individual and the state, but unfortunately the concept of a group of works gradually in the course of Indonesian history is increasingly being led into political interests.

The formulation of a good application of the creative economy in Indonesia in accordance with the economic constitution based on the 1945 Constitution of the Republic of Indonesia focuses on the existence of the sovereignty of the Indonesian State. In this case, Sovereignty is the full power and right of a regulatory body to regulate itself without any interference from resources outside the agency. State sovereignty is usually associated with the legal principle of self-determination as proposed by Liechtenstein: sovereignty and self-determination refer to issues of identity boundaries, multiple autonomy, self-determination government, a potential devolution of self-determination and divisiveness and the emerging version of self-determination. One's own destiny as "defining one's own destiny". Self-determination and the definition of "self" are gaining new relevance in a globalized world and the real time interdependence and high role of non-state actors.

Based on the provisions of Law No. 25 of 2004 concerning the National Development Planning System, the objectives to be achieved by the stipulation of the 2005–2025 National Long-Term Development Plan are to:

- a. Supporting coordination among development actors in achieving national goals;
- b. Ensure the creation of integration, synchronization and synergy between regions, between spaces, across time, between government functions as well as between the center and the regions;
- c. Ensure linkages and consistency between planning, budgeting, implementation, and monitoring;
- d. Ensuring the achievement of efficient, effective, fair and sustainable use of resources; and
- e. Optimizing community participation.

Referring to optimizing community participation letter e above (RPJP) National, positioning the people in participating in National development. Returning to the constitution, as the highest law in the economic field, a static constitution must find its correspondence with a dynamic market mechanism. It is time to develop ideas about the constitution of the economy and the creative economy. The economic constitution is a bridge between the necessity of being oriented to market mechanisms that prioritize efficiency and competition on the one hand, with the necessity of having the highest reference as a means of control and at the same time driving the progress of a creative economy that is just and encourages the development of a mutual cooperation orientation that is in accordance with the spirit of the Indonesian nation. However, the constitution should not only be interpreted rigidly so that it is merely noble values on paper or even articles which later die and are not revived in economic activities.

## 4 Conclusion

1. Analysis of the compatibility of Indonesia's creative economy with the 1945 Constitution of the Republic of Indonesia. There are many regulations related to the running

of the economy in Indonesia that are not coherent with the existence of Article 33 of the 1945 Constitution of the Republic of Indonesia. Not only at an incoherent level, even some laws and regulations are contrary to Article 33 of the 1945 Constitution of the Republic of Indonesia.

2. A good analysis and formulation of the application of the creative economy in Indonesia in accordance with the economic constitution of the 1945 Constitution of the Republic of Indonesia. The preparation of laws and regulations should be able to balance in a balanced way between the political constitution (state), economic constitution (market), and social constitution (civil society). The economic constitution is a bridge between the necessity of being oriented towards market mechanisms that prioritize efficiency and competition on the one hand, with the necessity of having the highest reference as a means of control and at the same time driving justice for economic progress and encouraging the development of a mutual cooperation orientation in accordance with the spirit of the Indonesian nation.

## 5 Suggestions

1. It is hoped that the legislators will pay attention to the concept of *trias politica* proposed by Prof. Dr. Jimly Asshiddiqie, S.H. namely the three main constitutions (political constitution, economic constitution, and social constitution) in the economic field in Indonesia.
2. The provisions of Article 33 of the 1945 Constitution describe the economic structure in terms of business ownership, which is regulated fairly based on the constitution. The state represented by State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD) are the main players managing vital sectors in the economy. Indirectly, it is necessary to strengthen state institutions in managing natural wealth, so as not to depend on foreign capital owners.
3. In the context of regional autonomy by increasing investment in the regions, a transparent control mechanism is needed so that there is no wrong composition in the economic structure of the State of Indonesia.

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