

# ECONOMIC-POLITICAL DYNAMICS AS A LEGAL AMENDMENTS FACTOR

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**Abstract** - The study objective was determined the causes of amendment of Article 33 of 1945 Constitution. As a sociological law study, historic-empirical data in the form of primary and secondary data collected through literature and interviews, to be analyzed to find the legal meaning contained in the amendment. The study results were showed that the amendment of Article 33 of 1945 Constitution from 3 verses to 5 verses is a form of "middle way" between the total changing of economic system (to liberal system) and maintaining the old economic system, kinship (cooperation). Parties who want changes were argued that the old provision was considered do not in accordance with the times, especially about the property, efficiency, and state position as a regulator. While the defending party was argued that the depleted natural resources was not caused by Article 33 is not sufficient in protection or wrong, but because economic democracy has been violated or not implemented. Contextually there is an "invisible hand" who wants liberal ideology through economists, international institutions, and political parties who consider economic failure due to state involvement by the New Order. In conclusion, the dynamics of economic-politics are the decisive factors in constitutional amendment. Therefore, the constitution understanding and its amendment is not sufficient with the legal approach alone, but also the contextual approach.

**Index Terms** – *Economic Political Dynamic, Amendment's, Factor, Economic System*

## I. INTRODUCTION

The political changes were caused by the economic crisis from the New Order to the Reform Order have led to the law changes, especially the constitutional amendments. The economic crisis that began with the financial crisis with the fall of exchange rate of Bath Thailand in July 1997 is the biggest crisis since the Great Depression of 1930s. The crisis condition was exacerbated by the actions of speculators who hit the exchange rate of currencies in Southeast Asia, and even cause side effects for the banking sector, the stock

market, and all economic activity.

The crisis was occurred because since the New Order government in its economic development as seen in the budget preparation always deficit, despite used the principle of "balanced budget", as well as the payments balance deficit. These deficits occur precisely with deliberateness with the reason of the current account deficit can be covered by capital inflows in the form of foreign loans or debt (domestic and foreign) and foreign investment. On this side, the government does not take into account that the incoming funds are for short-term profit purposes, so it must be prepared with the consequence that the government will not be able to control the foreign capital traffic.

The economic crisis that hit Southeast Asia, the worst impact for Indonesia in the appeal of other countries in the form of depreciation of the rupiah to the US dollar in the period July 1997 to August 1998 reached 70 percent, above the 36 percent of Thailand and 32 percent of Malaysia [9]. Even according to a report from the Asian Development Bank of 2002 was stated that the level of Indonesian GDP in times of crisis was declined drastically by 13 percent. This means that market forces, since the 1980s, the Indonesian economy has been liberalized by the government, is not sufficient to deal with a country's financial crisis if it is not offset by a highly credible government in the face of crisis.

The end of the Suharto regime, accompanied by systematic unrest in several regions in Indonesia, has made the foreign investment sector, especially from Chinese ethnic groups, to move their capital from Indonesia (Some observers have even said the crisis not only hit the base of the economy but also its political and social order. As stated by [5][6]. Some observers have even said the crisis not only hit the base of the economy but also political and social order. This occurs, according to experts, partly due to the liberalization process of the movement of international capital flows under the currency exchange rate setting system. That is, capital will always move in the direction that always give advantage and leave the adverse region.

On the other hand, during the Suharto regime which opened the Indonesian economy through various deregulation policies, especially investment, resulted the state with open market ([7], although in Yoshihara Kunio's critics called as *Ersatz Capitalism*). This condition allows for

the freely flow of foreign investment flows accompanied with the high level of optimism from investors without the presence of an adequate risk management system to deal with the instability and crisis conditions in the country. Economic liberalization is chosen because of the fall in oil prices which is the largest share of national income and the economists' support who often called the "Barkeley Mafia".

The advent of the monetary crisis which resulted in a thorough economic crisis were caused various responses, both from the government, economists, international financial institutions, and from the country both NGOs and political figures who became opposition to the New Order. Among these opinions there are common denominators, which are namely the decline of the president who is an authoritarian symbol as well as the emergence of "jargon" of freedom and reform.

As stated by Faisal Basri that the development without producing the expansion of freedom clearly has resulted in the concentration of wealth and not the spread of prosperity with justice. As a result, the economic crisis was spread into crisis of national, state, and community life, because the existing political format is not designed to tolerate the turmoil that must be resolved democratically [3].

In the midst of the crisis of national, state, and community life, especially the political and economic turmoil, emerge the reformation word with their respective perspectives. The one party's means reformation is changes towards the better because there are anomalous deviations from normal patterns or universal values or natural laws. The other means, interpreted as a renewal because the existing system cannot longer respond to problems that arise as a result of changes in internal and external environment.

Based on the meaning of the reformation word, it raises a re-understanding of various historical events about the constitution, that is the 1945 Constitution. For example, the state founders have explicitly stated that the 1945 Constitution is a temporary constitution. This statement was contained in the provisions of the Additional Rules clause (2) which reads "Within six months after the People's Consultative Assembly was established, this Council convenes to establish the Constitution". While in paragraph (1) "In the six months following the end of the Great East Asia war, the President of Indonesia should have administered and implemented all matters stipulated in this Constitution". Provisions of Additional Rules paragraph (1) confirms that this Constitution could only be applicable if stipulated by state institutions as stated in this Constitution, namely the People's Consultative Assembly as provided in Article 3 of the Constitution that the "People's Consultative Assembly Stipulated Constitution and Broad Outline of Nation's Direction (GBHN)". Even Sukarno himself as Chairman of PPKI (Committee for Indonesian Independence) called *revolutiegrondwet* [1]. The other drawback is very flexibility of the meaning that can be translated in accordance with the wishes of authorities so caught up in the ambiguous constitutional design so do not

open space to implement checks and balances or accountability horizontally in creating good governance.

According to Jimly Asshiddiqie as a member of the Ad Hoc Committee of MPR Working Body as well as directly involved in the Constitution amendment of the 1998-2002 was stated:

Some and even most economists claim that the two chapters (33 & 34) were judged incompatible with the demands of the times. First, the economy is no longer based on family principles, because in the modern business world cannot be avoided private ownership system as human rights are also protected by the constitution. The familial attributes of a business establishment are only relevant if associated with a cooperative

as one form of economic organization. While the forms of the company's business, which in effect is the principle of "one share one vote" with a very high appreciation of property rights, which is the same height with respect to freedom. This was reflected in the view of modern people highly exalts the principle of "liberty" and "property" [9].

Based on the views of economists as stated by Jimly Asshiddiqie mentioned above, it was shown that the formulation in the 1945 Constitution is inconsistent with modern economic principles which prioritize "liberty" and "property". The further of economists' criticism to the provisions of the Constitution was related to the formulation of the next verse.

Second, the "branches of production that are important and dominate the life of the people had to be controlled by the state", but the definition of controlled were intended to have. On the other hand, the modern economy demands high efficiency, so allowing state-owned enterprises to exist so far is the same as allowing inefficiencies in the management of economic resources to the detriment of the state and people [4].

Based on this, it was demonstrated that the desire to change the constitution is not only expressed by the opposition, but also experts especially economy, law, and politics. This was supported by the wisdom of international institutions such as IMF, ABD, and IBRD as well as political parties. For political parties, at that time conditions were encouraged to follow the public stream in order to "sell-well" in the election so as to get as many constituents. Finally, almost all parties and groups or factions in the MPR support it except the armed faction which is still "half" to support because basically with this change will harm the military.

## II. DISCUSSION

The understanding of Indonesian economic system certainly cannot be separated from the ideology embraced or the basic principles of the establishment of the state as stated in the constitution. Although there is the possibility of economic life practice that is run or there is incompatibility with the provisions contained in the constitution.

The preamble of the 1945 Constitution was stated emphatically that one of the national aims is promoted the general welfare or in terms of the main idea contained in the preamble of the 1945 Constitution is the state intended realize social justice for all Indonesian people. The purpose of social justice as the fifth principle of Pancasila according to Zulkarnain Djamin stated that: "Social justice requires the existence of wealth equally among all the people, not evenly distributed static, but a dynamic and rising evenly. This means that the entire natural wealth of Indonesia, the entire potential of the nation, processed together according to the ability and their respective fields, and then be used for the greatest happiness for all the people. Social justice means to protect the weak party. This does not mean that the weak people do not work and just demand protection, but instead should work according to their ability and field [10]. The protection provided is to prevent arbitrariness from the strong party, to ensure justice. Implementation of social justice was enjoyed by all the people. This means, that all forms of social lameness and lameness in the distribution of our national wealth must be abolished.

An understanding of the social justice above contained two important meanings, namely: First, the principles of economic growth and fair distribution of incomes. Second is the principle of economic democracy. Therefore it can be concluded that there are three principles underlying the Indonesian economic system (before the Constitution of Change), namely humanitarian, fraternal, and mutual cooperation.

Constitutional provision of economic life were contained in Article 33 and 34 of the 1945 Constitution (Before Amendment) and often referred to as the basic principles of Indonesian economic democracy.

Article 33 was established three things, including of Paragraph (1) The economy was constituted as a joint effort on the kinship principle; Paragraph (2) Production branches that are important to the state and which affect the livelihood of the public were controlled by the state; Paragraph (3) The earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Article 34 was provided that the poor and neglected children are kept by the state.

Article 33 of the 1945 Constitution on the amendment result added to paragraph (4) The national economy shall be organized on the basis of economic democracy with the principles of togetherness, efficiency, fairness, sustainability, environmental insight, independence and by maintaining a balance of progress and unity of national economic; Paragraph (5) Further provisions concerning the implementation of this article shall be governed by law.

Paragraph (4) and paragraph (5) of Article 33 of the amended Constitution is a "compromise" of the opinion of the Economic Expert Team which was divided into two opinions, namely Mubyarto and Dawam Rahardjo's opinion that the original Article 33 need not be changed and is still highly relevant to the spirit democratic economy that has been the milestone of Indonesian national economy (The

differences of opinion among members of the Economic Expert Team that led to the resignation statement of Mubyarto and Dawam Rahardjo from the Committee of MPR Experts Team Membership) (Comprehensive Script Development Team, Result and Process of [2] ; and the opinion of the other Expert Team (Syahrir, Bambang Sudibyo, Didiek J. Rachbini, Sri Mulyani and Sri Adiningsih) opposite with their opinion (Comprehensive Script Development Team, Result and Process of [2]):

Paragraph (1): "The economy was arranged and organized as a joint enterprise based on the principle of humanity, social morality. Didiek's addition: justice, benefit, and sustainability and consumer protection and support for small and medium enterprises and economic democracy through an efficient, open and healthy competitive market system to realize the greatest prosperity of the people".

Paragraph (2): "The land, sea, including the seabed, and the subsoil, the air above it, and the entire environment and wealth contained within the territory of sovereignty and the authority of Indonesia shall be governed by the state and used for the greatest prosperity of the people governed by law".

Paragraph (3): "The arrangement and regulation of the national economy shall always maintain and improve the harmonious environmental order, observe and respect the rights of the region and ensure the balance of progress of all regions of the country".

Finally, the formula of changes about the national economy and social welfare Attached in MPR Decree Number XI/MPR/2001 on Amendment to MPR Decree Number IX/MPR/2001 on Assignment of BP MPR RI to Prepare the Amendment of the 1945 Constitution of the Republic of Indonesia. Formulation of the work of PAH I that was ratified by BP MPR as stated in the second Amendment Draft of 1945 Constitution did not change in the Third Amendment Draft of the 1945 Constitution, that is (Comprehensive Script Development Team, Result and Process of [2]:

### III. CHAPTER XIV

(1) The economy was arranged and developed as a collective effort of all people in a sustainable manner based on the principles of justice, efficiency and economic democracy to bring wealthy, prosperity and social justice for all people.

(2) Production branches that are important to the state and which affect the livelihood of the public are controlled and/or regulated by the state on the basis of justice and efficiency principles regulated bylaw.

The trial result as the PAH I Report at the 4th Meeting of BP MPR, July 25, 2002, led by Chairman of MPR/Chairman of BP MPR, M. Amien Rais produced a more specific formula. PAH I have agreed on the articles 33 and 34 unanimously without any alternative choice. The formulas are asfollows:

Paragraphs (1), (2) and (3) remain Paragraph (4), National Economy was organized based on economic democracy with

the principles of justice, togetherness, efficiency, sustainability, environmental insight, independence, and by maintaining the balance, progress, and unity of the national economy.

Paragraph (5), Further provisions on this Article shall be governed by law (Comprehensive Script Development Team, Result and Process of Amendment 1945 Constitution, 2008: 468). The formulation result is further validated as the formulation of BP MPR. To be submitted in the 2002 MPR Annual Session for discussion and decision.

The 3rd Plenary Session of the 2002 MPR Annual Session of August 2, 2002, chaired by MPR Chairman of M. Amien Rais, although not explicitly stated, the MPR factions in principle agreed on the formulation of Article 33.

On the basis of the agreement, the next discussion was carried out by Commission A of the People's Consultative Assembly which was held at the 3rd meeting of Commission A on August 6, 2002 led by I Ketut Astawa in the form of exposure of the MPR factions to express the argumentation and reinforcement opinions related to the substance of Article 33. Important opinion was noted including from the Golkar Party Faction that "the formulation of paragraph (4) is a political formulation and may be a compromise, but it should still have the economic problem" (Comprehensive Script Development Team, Result and Process of [2]: 470). Furthermore, it is said that the national economy which is organized on economic democracy with principles such as "togetherness", "efficiency", "sustainable", "environmentally friendly", then the sentence collides with each other.

Different language proposed by the National Unity Faction, that the principles of economic democracy is too long (it should be enough with economic democracy – pen). Does economic democracy does not contain that principle? Is it possible to formulate the indicator of principle compliance, so that can be found its size? While the Reform Faction stated that paragraph (4) is not clear focus, so the focus is an independent economy for the realization of justice welfare for all people.

#### IV. CHAPTER XIV

In contrast to the opinion of the MPR fractions mentioned above that approved the formulation of Article 33, Sri Edi Swasono from the Election Faction Fraction tends to retain the chapter title in the original text of the Constitution, because with such changes will cause distortion. Sri Edi Swasono (Comprehensive Script Development Team, Result and Process of [2]) also noted with regard to Paragraph (4), that is:

"...regarding Article 33 the title has been altered from the original, it will actually cause very far distortion; there will be a very distant disorientation. Quite the old chapter title, "Social Welfare" means that the economy is derogates from the purposes of people welfare. Thus, the main purpose is the welfare of the people and the economy must support and must be a reference, and should be a derogated of social welfare. So, if reversed, then there is unclearly a subject

matter in the economic life by increasing social welfare. So this is a very basic change that may be unintentional".

Second, regarding Article 4, with my respect to the I Ad Hoc Committee, I think it means to be complete. I mean Verse (4) that means still goods, in order to be complete, to be complete. But in formulation like this it creates a kind of contradiction and inconsistency and may even lead to a vague interpretation.

"... an example of efficiency, this efficiency in what scope? Because, if only efficiency, the economy pursued with efficiency will occur the structure of the production process is greatly transformed into intensive capital and will at all let the unemployment occur. Thus, the pursuit of efficiency can change the production structure into intensive capital and ignore the labor intensive on capital. Thus, people will have a reason to lay off workers, reduce the use of labor for efficiency and this can also be contrary to the purpose of independence. For the sake of independence, then sometimes we have to sacrifice short-term efficiency, for the sake of independence we do not import. For the sake of independence, we do not import cheap rice that efficiently according to economist. In other words, there must be a word of stands efficiency, fair efficiency, and so on.

Based on the opinion of each member of Commission A then continued with the final opinion of each faction in the 4th Commission A Meeting on August 8, 2001 has produced the Fourth [2] Constitution from results of Commission A discussion but preceded by forming Lobby Team and Formulation Team which results are the addition of two new verses in Article 33. The draft verse is:

#### V. CHAPTER XIV

Paragraph (4), the National Economy shall be organized on the basis of economic democracy with the principle of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and unity of national economic.

Paragraph (5), Further provisions regarding the implementation of this article shall be governed by law.

Sixth Plenary Session of 2002 MPR Annual Meeting on August 10, 2002, all the factions agreed on the Commission A's formula and approved the ratification of the formulation of the article.



TABLE I  
OF COMPARISON OF ARTICLE 33 FORMULAS

Before Changes	After Change
Chapter XIV National Economy	Chapter XIV National Economy and Social Welfare
<b>Article 33</b> (1) The economy was structured as joint efforts based on the principle of kinship. (2) Production branches important for the state and the people's lives are controlled by the state. (3) Earth and water and natural resources contained therein are controlled by state and used for the greatest prosperity of the people.	<b>Article 33</b> (1) The economy was structured as a joint effort based on the principle of kinship. (2) Production branches important for the state and the livelihood people are controlled by the state. (3) Earth and water and natural wealth contained therein was controlled by state and used for the greatest prosperity of the people. (4) The national economy held on the basis of democracy economy with the principle of togetherness, fairness, sustainable, environment insight, independence, and maintaining the balance of progress and unity of national economic. (5) Further provisions concerning the implementation of this article were regulated in law.

## VI. CONCLUSION

Based on the above discussion were shown that the amendment of constitution article is not purely based on legal considerations alone, but outside law factors are very influential, especially the economy-politics dynamics.

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