

REPRESENTATION OF IDEOLOGY IN INDONESIAN ECONOMIC LEGAL POLICY

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Abstract: Law is made and developed as a product that has influences; it is in this perception that the ideology of the state should exist and be the foundation of the state. Economic legal policy is built in accordance with the concepts of Pancasila values. Ideologically and normatively, economic legal policy would prioritize the factors of “social justice”, “general welfare”, and “the greatest prosperity of the people” as the main joints of the economic system that should be implemented.

Key words: ideology, economic legal policy, general welfare

I. Introduction

By interpreting the values contained in Pancasila, the first step to reform the law is by tailoring to what the community expects. Although it is undeniable that, along with the times and the global acculturation, without being realized, the mandate contained in Pancasila as the source of all legal sources is gradually eroding, which can decrease nationalism and love of Indonesia affecting the quality system created (Rikardo Simarmata, 2007).

The agrarian and natural resource renewal policies are implemented, among others, by conducting a review of various laws and regulations on agrarian in the context of synchronizing policies between sectors and resolving the existing agrarian conflicts as well anticipating the potential conflict in the future to ensure the implementation of law enforcement based on the principles referred to above.

It is strictly mandated in the provisions of Articles 6 and 7 of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001 where the Indonesian House of Representatives and the President are tasked with immediately regulating further the implementation of agrarian reform and management of natural resources, as well as revoking, changing, and/or replacing all laws and implementing regulations that are not in line with this Decree, and immediately implementing the Decree and reporting its implementation to the Session of People's Consultative Assembly of the Republic of Indonesia.

Legal policy in the legal context plays a very strategic role. Through a legal policy approach, the law that is made will, at least, regard more to national interests. National interest should not be defined in a narrow sense; it is the starting point to enter the global world. Whether the law will function to facilitate, encourage change, or only maintain stability depends entirely on the direction of the development of people's lives in the political, economic, social, cultural, and defense and security fields.

Law, in relation to the development of national law, requires the formulation of an integrated and comprehensive legal policy as a further elaboration of the general matters as outlined in the development goals. Legal policy covers the politics of law development, politics of law formation, and politics of law enforcement and application. This politics must also include aspects of management system resources and so on. (Abdul Latif dan Hasbi Ali 2016). In the development of national law, a common understanding is needed to achieve the goals so that the legal development by various parties can work together to achieve the goals agreed on nationally. The development of national law is directed to achieve the objectives of the formation and function of the national legal system.

Economic activities as one of the human social activities also need to be regulated by the law so that economic resources, utilization, and activities can run well by considering the justice for economic actors. Economic laws or regulations that apply in each social group or a nation vary depending on the agreement that applies to the social group or nation. Therefore, a special formulation is needed in drafting the laws and the derivative regulations to be in line with the context of Pancasila as the moral basis of Indonesia's economic development and to remain competitive as a global economic activity.

By using a conceptual approach and a statute approach, the writer analyzes various aspects of the representation of Indonesia's national ideology in the legal policy of economy and the elements and values contained in Pancasila as the philosophical basis of ideology and national legal ideals.

II. Literature Review

From the Renaissance to the beginning of the 21st century, there have been ten world ideologies developed in Indonesia, including liberalism, conservatism, democratic socialism, communism, anarchism, nationalism, fascism, feminism, ecologism, and Islamic fundamentalism and its development.

Ideology is defined as a set of systemic concepts used as the principle of opinion (events) that gives direction and goals for survival. For Indonesia, state ideology in the sense of state ideals or the ideals as the basis for a theory or state system for all Indonesian people and nation is essentially a principle of spirituality, a source of derivation and motivation, a source of values and, in the state system, has a fundamental function (Kaelan, 2015).

This philosophical understanding is that the formation of laws and regulations must keep on seeing and referring to the ideal values as the philosophy of Indonesia because ideal philosophical values can keep up with the dynamics of community development despite the constantly changing society according to the level of development of the community.

In law, the values contained in the five principles of the state have constitutive and regulative functions. The constitutive function is to determine the basis of a legal system and provide meaning as law. The regulative function is as a benchmark to test whether legal norms that apply under the basis of the country are contradictory and fair (A. Hamid S. Attamimi, 1991). Based on this function, each process the formulation of the values contained in Pancasila is the reference.

In the formation of laws and regulations in Indonesia as in other countries, there are two principles to be considered, a general legal principle that provides guidelines and guidance for the formation of the contents of the laws and regulations and special law that provides guidelines and guidance for the interpretation of the laws and regulations into their structure for their formation methods, processes, and procedures. Maria Farida explained that ideal statutory regulations must fulfill the ideals of Indonesian law, the principle of the state based on law, the principle of government based on the constitutional system, and other principles. Thus, the principles of the formation of Indonesian laws and regulations follow the guidelines and guidance in accordance with (1) the ideals of Indonesian law contained Pancasila (the precepts apply as ideals, which act as guiding stars), (2) the fundamental norms of the state contained Pancasila (the precepts apply as the norm), (3) the principles of the state based on the law that places the law as a unique regulatory tool within the primacy of the law (*der primat des recht*), and (4) principles of government based on a constitutional system that places laws as the basis and boundaries in the administration of government (Backy Krisnayuda, 2016).

The writer believes that the paragraph above has a consequence that the position of the legal principle as the basis for the formation of legislation, especially for the products of national legislation, is constructed as the main point of interest to be achieved.

A principle means a basis (basis of thought or opinions). It is also referred to as basic law. A principle is a thought that is formulated broadly and underlies the existence of a legal norm (Charlie Sudiya, 2013).

It can be implied that a principle should have at least three meanings, (1) basis/foundation/guidelines, (2) truth as the core or basis in giving an opinion or thinking, and (3) ideals. Having or using a principle is often interpreted as a basis for thinking. Therefore, principles are often used as the material in the formulation of the language of the law. Based on justice means using the provisions and understanding of justice as a basis for solving problems on an issue.

The highest regulation of Indonesian economic law is in the provisions of Article 33 of the 1945 Constitution of the Republic of Indonesia, in which all the provisions of the laws and regulations concerning the national economy emerge and adjust to such provisions and their underlying values.

From the provisions of Article 33, the regulations under Article 33 of the Constitution of the Republic of Indonesia should at least meet the following criteria:

- (1) Based on the principle of kinship.

- (2) State control over production branches that are vital for the state and people's lives.
- (3) Used for the greatest prosperity of the people.
- (4) The principle of togetherness, fair efficiency, sustainability, environmentally friendly, independence, and maintaining a balance between progress and unity of the national economy.

The indicators to measure the economic law in accommodating Pancasila values are as follows (Ahmad Sukardja, 1995; Kaharuddin, 2015):

- a. The regulation places the equal position of humans in the realm of law and state administration.
- b. The regulation upholds justice.
- c. The regulation does not burden the community.
- d. The regulation realizes prosperity and prevents harm.
- e. The regulation is being made through consensus agreement procedures.
- f. The content of the regulation is in accordance with or not in strict conflict with Islamic law.

The economic law accommodates Pancasila values if it contains:

- a. The regulation fulfills legal principles
- b. The regulation contains Pancasila values
- c. The regulation is in accordance with the goal of the state

2.1 Indonesian Economic Legal Policy

Infrastructure development in Indonesia is one of the main prerequisites for promoting economic growth. As a developing country, Indonesia is currently doing much physical development, especially in infrastructure, office buildings, industrial areas, and housing, oil/gas exploration/exploitation, and exploitation of forest products, etc.

Sociologically, the existence of a national legal policy has become a necessity right after Indonesia's independence because there has been a revolutionary change in the ideals and reality of Indonesian society after independence. Before independence, the ideas and structures of Indonesian people's life were based on very exploitative colonialism. After independence, these ideas and structures totally changed to an independent society.

The goal of the state as regulated in the Preamble to the 1945 Constitution of the Republic of Indonesia Fourth Amendment is:

“to protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace, and social justice.”

The state's goals as outlined in the Preamble are then elaborated in Law Number 17 of 2007 concerning the National Long-Term Development Plan of 2005-2025. The National Long-Term Development of 2005 - 2025 is a continuation of the previous development to achieve the development goals as mandated in the Preamble. The implementation of the National Long-Term Development Plan of 2005 - 2025 is divided into the stages of development planning in the periodization of the 5-year national medium-term development plan, as outlined in the NMTDP (National Medium-term Development Plan) I of 2005 - 2009, the NMRDP II of 2010 - 2014, NMTDP III of 2015 - 2019, and NMTDP IV of 2020 - 2024 (Elaboration of Law Number 17 of 2007 concerning the NLTDP/National Long-Term Development Plan of 2005 - 2025).

Regarding the state goals, the political direction of national law is needed. Legal policy is an official legal line on the law to be enforced both by making new laws and by replacing old laws to achieve the goals of the state. Legal policy can, therefore, be said as a choice of laws to be enacted as well as revoked to achieve state goals as stated in the Preamble of the 1945 Constitution (Moh. Mahfud MD, 1999).

Policy is the principles that form the basis of any action, prudence or discretion of the government or individual in the management of public or private affairs, general wisdom or dexterity, and wisdom (Grolier Webster).

Padmo Wahyono (1986) stated that national legal policy is the basic policy that determines the direction, form, and content of the law to be enforced. He added that legal policy includes values, determination, development, and giving legal form.

While politics is a way to realize the desires or ideals legal policy is politics with the law as its object to realize the legal desire from *ius constituendum* to *ius constitutum* that is needed by society (Abdoel Jamali R., 2003)

Based on the formulation of Article 1 of the 1945 Constitution, the concept of national legal policy (legislation) in Indonesia is based on at least 3 (three) fundamental principles, (1) the principle of the rule of law (welfare state), (2) the principle of a unitary state with a republican form of government, and (3) the principle of democracy (Sony Maulana Sikumbang, et al., 2015).

These definitions lead us to conclude that Indonesian legal policy is the basic policy of the state administrators (Republic of Indonesia) in the field of law that will be, is, and has been in force sourced from the values prevailing in society to achieve the aspired goals of the state. In this sense, there are five aspects emphasized as an agenda in Indonesian legal policy, namely, (1) purpose of national legal policy, (2) basic policies covering concepts and location, (3) state administrators as the former of these basic concepts, (4) legal material which includes laws that will, are, and have been applied, and (5) the process of legal formation (Sirojul Munir, 2014).

The purpose of national legal policy includes two aspects namely, first, to help the government to create the desired national legal system and, second, to achieve broader national ideals (Sirojul Munir, 2014).

2.2 Direction of Indonesian Economic Legal Policy

The legal policy implemented by the government is closely related to the national insight in law, namely the perspective of the Indonesian people regarding political policies to be realized to foster the law in Indonesia. According to Imam Syaukani (2006), Indonesian national legal policy is related to the basic policy of the state administration (Republic of Indonesia) in law that will, is, and has been in force, which is sourced from the values prevailing in society to achieve the aspired goals of the state.

Referring to the notion of national legal policy, it is aimed to realize the ideal goals of the nation and state of the Republic of Indonesia which include two interrelated aspects, namely: (Imam Syaukani and A. Ahsin Thohari, 2006)

- a. As a tool or means and steps for the government to create the desired national legal system and,
- b. With this legal system, the ideals of Indonesia that are bigger and wider will be realized.

Legal products cannot be separated from the influence of the political configurations underlying them. The configuration of democratic politics will give birth to models of legal products. As in democratic political life, the tendency for the birth of a democratic legal system is an output of the democratic system (Liky Faizal, 2017).

Each ruling regime has its own strategy or procedure in realizing the ideals and goals of the state it leads. The governance of state administration in general is a focal point in the state constitution but is regulated in detail through special rules adjusted to the level and needs (Siti Hasanah, 2018). The choosing of Pancasila as the basis of national and state life or as the basis of political life makes politics not neutral but based on ethical values. This is one task of political philosophy that is to enlighten the meaning of politics and to make explicit ethical values in politics based on Pancasila. With the determination of Pancasila as the basis of the state, political life has an ethical dimension, not something neutral. The values contained in Pancasila encourage ethical behavior to citizens in politics (Driyarkara M. Sastrapratedja, 2009).

Developments in the era of globalization affecting the world today have made global society more open and national borders in economy and law closer. These two things always go simultaneously. Therefore, all issues related to economic activities discussed in the GATT, WTO, and other international economic institutions must be taken seriously in developing Indonesia's economic law (Abdul Manan, 2014). This has an impact on the development of economic legal policy directions in each country, including Indonesia.

Some weaknesses of economic law occur when certain concepts are about to be made legal sentences due to time inadequacy, the drafters not fully understanding the basic policies or the enactment of the laws to be drafted, or inaccuracy in formulating articles. A poor understanding of the drafter is also considered to be the cause. This weakness results in the formulation of articles different from the desired legal policy (Hikmahanto Juwana, 2005).

In the constitution, it is stated that Indonesian economic development must be carried out by involving the society as seen and mandated by Article 33 Paragraph (4) of the 1945 Constitution: The national economy is based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmentally friendly, independence, and maintaining a balance between progress and unity of national economy.

Article 33 Paragraph (1) of the 1945 Constitution stipulates that "... the economy is arranged as a joint effort based on the principle of kinship ...". Joint effort is mutualism and the principle of family is brotherhood. In the context of morality and religious guidance, mutualism is congregation and brotherhood or the principle of kinship, which is *ukhuwah*. That is why, according to collectivism/communitarianism based on mutualism and brotherhood, societal interest is prioritized. Considering the meaning of economic democracy, which is the priority of the prosperity of the people, individuals, the prosperity and the position of the people are placed in a "central-substantial" position and should not be reduced to a "marginal residual" position (Sri Edi Swasono, 2008)

In Law Number 25 of 2004 concerning the National Development Planning System, it is clearly stated that national development in Indonesia is an effort of all components of the Indonesian people to achieve the goal of the state. Ideally, a country must be able to meet the various needs of its citizens without exception, so that the

paradigm of a country changes according to the concept of state welfare, where the state government regulates tasks in all aspects of life by implementing general welfare (Cucu Solihah, 2016).

In legal development in Indonesia, Pancasila is always used as a frame of the legal system, a unique legal system of Indonesia different from those of other countries. Satjipto Rahardjo said that the law of Pancasila reflects the uniqueness of Indonesia, which is full of kinship and mutual cooperation making it different from any other legal system (Moh. Mahfud MD, 2007).

The Pancasila economic system is actually the history of the Republic of Indonesia. The Pancasila economy in Indonesia was born at the heart of the nation through Pancasila and the 1945 Constitution (and its interpretation). Therefore, the Pancasila economic system is sourced from Pancasila, especially the fifth precept (social justice for the whole of the people of Indonesia) and the mandate of Article 27 Paragraph (2), Article 33, and Article 34 of the 1945 Constitution of the State of the Republic of Indonesia 4th Amendment.

This fifth precept explains that all national, state, political, economic, legal, social, and cultural orientations are imbued with a spirit of overall justice and for all Indonesian people, especially in economy as reinforced in Article 27 Paragraph (2) and Article 33 of the 1945 Constitution of the Republic of Indonesia (Zulfi Diane Zaini, 2015).

Based on the changes in economic politics, especially those concerning the role and position of the state in economic activities, there are three economic-political concepts carried out (Abdul Latif and Hasbi Ali, 2016):

a. Economy that leads to economic etatism (a concept that prioritizes the state before the people). The state is the actor in almost all economic sectors. Constitutional restrictions as regulated in the provisions of Article 33 of the 1945 Constitution, such as efforts to control the lives of many people, are no longer considered. The state also influences the economic activities carried out by the people through various forms of control authority which is often excessive.

b. Economic politics that leads to a market economic system. This system requires the society as the main actor in economic activities. The role of the state in encouraging and providing facilities for economic activities must be limited. Trends that cause criticism of, for example, the Agrarian law, regulations in licensing, regulations in investment, and so forth, are seen as not giving solutions for the convenience of the existing economic system.

c. Economic politics aimed to create a balance between the tendency of etatism and the market economy is seen as a form of economic politics that is constitutionally desired by the 1945 Constitution. Ideologically and normatively, economic legal policy would prioritize the factors of “social justice”, “general welfare”, and “the greatest prosperity of the people” as the main joints of the economic system that should be implemented.

Every country needs a philosophical basis for the nation and state. Based on this philosophical basis, the vision, mission, and goals of the state are formulated. The philosophical basis of Indonesia is Pancasila. Therefore, Pancasila must be seen as a whole as national guidance, standards, norms, and principles which also contain human rights and responsibility, which, on the other hand, are also useful as a margin of appreciation (Muladi, 2006) to be implemented in Indonesian economic law. Furthermore, Indonesian economic law in the form of margin of appreciation is used as a benchmark for justification of the legal norms imposed. In this case, the main values of Pancasila as the nation's ideology are realized in togetherness with an ideal form. The togetherness of societal life by prioritizing kinship in the economy is realized through a welfare state.

It is not easy to create legal instruments that truly guarantee the balance of the roles of the state and society as various conflicts of interest may turn up, which give rise to problems regarding the development of cooperatives, small and medium enterprises, and so on. The balance in the making of these rules must be maintained to ensure the dynamics of a healthy economy without leaving the interests of other parties.

Article 33 of the 1945 Constitution has a moral and cultural message in the constitution of the Republic of Indonesia regarding national economic life. This article not only provides instructions on the composition of the economy and the authority of the state in regulating economic activity but also reflects the ideals, a belief held firmly, and consistently fought for by government leaders in stipulating policies and as the direction of their legal policy.

III. Conclusion

There is no other choice in the formation of law but to retrace the values and norms of Indonesian law which had previously been made through an indigenous legal system and the Indonesian legal system patterned on the ideology of Pancasila and the 1945 Constitution of the Republic of Indonesia. This is ideal and emphasizes social justice for all Indonesian people.

It is demanded that the actualization of the values of Pancasila be renewed. The nature of renewal is an improvement from within and through the existing system. In other words, renewal presupposes the existence of internal dynamics through concepts built through Pancasila. Every law and legislation at all levels basically as the actualization of the values of the Pancasila (thematic-imperative transformation) must be open to review and assessment or study of the relationship with the fundamental values of Pancasila.

The national economic legal policy developed is a conception of national law which is interpreted as a law or legislation that is made and implemented to achieve the goals, basis, and ideals of a country's law, in this case, a legal entity or legislation that is constructed to achieve the state's goals based on the Preamble and Articles of the 1945 Constitution to create a national legal system that reflects the joints of state ideals.

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