

GOVERNANCE OF ECONOMIC CONSTITUTION IN A CRITICAL ARGUMENTATION

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Abstract

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The research aims to analyze the governance of economic philosophy by analyzing the relationship between the economic constitution and the philosophical-ideological reflection of *Pancasila* in critical argumentation. Economic globalization requires countries to adapt. In practice, the adaptation process can lead to the manifestation of personal and group interests, even if it is not in accordance with the economic needs of the people (Ēernius, 2012). The anticipation is that the government will emphasize the position of *Pancasila* as the main catalyst in the economic constitution. The study was conducted using a normative juridical approach with selected sources of legal information utilized. The analysis technique was conducted using a qualitative design. The results of the study found that the economic constitution has a relationship with philosophical reflections in the form of the basic philosophy of Indonesia's economic development and conformity with the ideological reflection of *Pancasila* as the state ideology (Sinaga & Putri, 2021). Moreover, the economic constitution as a philosophical-ideological reflection of *Pancasila* is realized through the conception of an economic constitution with a religious perspective, an economic constitution reflecting the national identity, a people-based economic constitution, and an economic constitution aimed at improving welfare.

Keywords: Governance, Economy, Constitution, Legal Reflection, Indonesia

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1. INTRODUCTION

The era of globalization requires a country to adapt. Economic aspects can affect other aspects of life, even law can be economically motivated. So, the constitution should be one of the tests of the state to sort out the effects of economic globalization. Economic globalization places the World Trade Organization (WTO) as the holder of

the economic policy authority of its member countries, including the State of Indonesia. Economic globalization has become a macro force that can create a network of market power which, if not prepared and regulated in such a way, will undoubtedly be controlled by a country that is strong in capital, resources, relations, and innovation (Weishaupt, Ekardt, Garske, Stubenrauch, & Wieding, 2020; Nguyen, Ancev, & Randall, 2020;

Chand, Singh, Patel, & Jain, 2020; Camanzi, Arba, Rota, Zanasi, & Malorgio, 2018). This situation can create a dominant position that creates monopolistic practices and unfair competition. The dominant position is a situation where a business actor has no significant competitors in the relevant market with respect to the market share he controls, or a business actor has the highest position among its competitors in the relevant market with regard to financial capability, ability to access supply or sales, and the ability to adjust supply or demand for certain goods or services (Putri, 2013; Beatty, Samuelson, & Abril, 2022; O'Brien, Powers, & Wesner, 2018; Widodo, 2021; Menand & Ricks, 2021).

Economic globalization creates the phenomenon of the existence of multinational companies that can massively affect global market movements. In today's international political economy arena, the existence of multinational companies (MNCs) is a common phenomenon. It becomes extraordinary when its existence can become the main actor of change with great sources of power (Rinayuhani, 2013; Pawestri, Zaidun, Prihandono, & Rahmah, 2019; Demiryontar, 2021; Kalkan, 2020; Garfield, 2018). These sources of power can be in the form of capital, resources, innovation, networks/relationships, and even political intervention or lobbying. In practice, the adjustment process carried out by the state to be able to balance economic globalization, sometimes leads to the manifestation of personal and group interests. The task of the state, as a follow-up, is to protect the perpetrators of economic activities in Indonesia amidst the brunt of the era of economic globalization which is full of dynamics of change to adapt the structure of the world economy.

In terms of national identity, the economic constitution must reflect the cultural values of the nation as a national identity, in accordance with the character, nature, and original wisdom of the nation. The current economic policy adopts foreign economic principles as an adjustment to the dynamics of the global economy. With regard to the people's economic constitution, it must accommodate the interests of the people. The Indonesian economy must be built to achieve the goals of the general welfare, social welfare, or people's welfare. The government can look back at *Pancasila*¹ as the main catalyst for Indonesia's economic constitution. Corrective steps are needed by looking at *Pancasila* as an ideology in the sense of a system of ideas for the Indonesian people, for state administrators, so that they are positioned as a state ideology. *Pancasila* is also the source of all sources of law, basic philosophy (*Philosophische Grondslag*), and the way of life of the Indonesian people (*Weltanschauung*) (Putranto, 2016). It is necessary to give a thought stimulus regarding the importance of using the actualization of *Pancasila* in a philosophical-ideological manner to utilize the existence of economic development within the framework of the economic constitution. Therefore, this study aims to investigate the economic constitution related to the philosophical-ideological reflection of *Pancasila* as state philosophy in critical arguments.

The structure of this paper is as follows. Section 1 introduces the background of why this

paper was written. Section 2 reviews the relevant literature. Section 3 analyzes the methodology that has been used to conduct the research. Section 4 describes the results obtained from the research. Section 5 concludes the research.

2. LITERATURE REVIEW

This study describes the influence of economic globalization that can affect the shift in state sovereignty. The primary source of law is Article 33 of the Constitution of the Republic of Indonesia of 1945, which is explored with historical and theoretical perspectives in finding the link between the economic constitution and the philosophical-ideological reflection of *Pancasila* in the form of critical arguments. Secondary legal materials in the form of legal doctrines including *Volkgeist* (spirit of the nation) thinking and legal ideology are used to formulate projections of the economic constitution as a philosophical-ideological reflection of *Pancasila* in the form of critical arguments.

The economic constitution aims to protect the people's economy against the effects of economic globalization. Its concrete function explores the nature of economic regulation in the provisions of Article 33 of the Constitution of the Republic of Indonesia of 1945 which is a manifestation of the direction and objectives of the Indonesian economy (Coulibaly, Erbao, & Mekongcho, 2018; Ajide, Osinubi, & Dada, 2021; Padhan, Sahu, & Dash, 2022). The economic constitution also functions as a normative guide containing the philosophical-ideological reflections of *Pancasila* as the *Grundnorm*. The founding fathers formulated the concept of the Indonesian economy in the provisions of Article 33 and Article 34 of the Constitution of the Republic of Indonesia of 1945. Yamin, Soepomo, Soekarno, and Hatta initiated the concept of a welfare state in the discussion of the Investigating Agency for Preparatory Work for Indonesian Independence or *Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan — BPUPKI* (Higgins, 1958; Zain, Yurista, & Yuniza, 2014; Nurhayati, Rakasiwi, Nur, & Anjaswati, 2021; Hermanto, Yusa, & Aryani, 2020; Bisariyadi, 2016). Article 33 substantively describes the relationship between the economy and welfare which is a direct mandate of the Preamble to the Constitution of the Republic of Indonesia of 1945. The provisions of Article 33 place the state in a strategic position to structure the economy and control important production branches as well as guarantee natural resources to be used for the greatest prosperity of the people based on economic democracy. Therefore, strengthening the national economy is one of the factors to increase people's prosperity.

The decision of the Constitutional Court on the judicial review of the Oil and Gas Law in case Number 002/PUU-I/2003, meaning "controlled by the state" includes a broad definition that originates and is derived from the concept of the sovereignty of the Indonesian people over all sources of wealth "earth, water, and land. The natural wealth contained therein" (Constitution of the Republic of Indonesia of 1945, p.17) including the public understanding by the people's collectivity of the sources of wealth in question (Salim, 2011).

¹ *Pancasila* is the official, foundational philosophical theory of Indonesia.

The people's collectivity, which is constructed by the constitution mandates the state to carry out or implement policies (*beleid*) and management actions (*bestuurdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) (Anwar, 2015). The government must utilize its power and authority over these resources to be used for the greatest prosperity of the people.

People's economy is different from neoliberalism which is packaged by ordoliberalism, in the form of an economic system built on three principles: 1) the main goal of neoliberal economics is the development of individual freedom to compete freely and perfectly in the market; 2) the private ownership of the factors of production is recognized; 3) the formation of market prices is not something natural, but the result of market control carried out by the state through the issuance of laws (Giersch, 1968). The role of the state in neoliberalism is limited as a regulator and guardian of the workings of the market mechanism. In the Washington Consensus, the role of the state in neoliberalism is to do four things: 1) implement tight budget policies, including the elimination of subsidies; 2) liberalization of the financial sector; 3) trade liberalization; 4) implementation of the privatization of state-owned enterprises or *badan usaha milik negara (BUMN)* (Stiglitz, 2002, 2021; Faudzi, 2018; Lodhi, 2018).

While the people's economy in the provisions of Article 33 of the Constitution of the Republic of Indonesia of 1945 is an economic system to realize people's sovereignty in the economic field. The three basic principles of a people's economy are 1) the economy is structured as a joint effort based on the principle of kinship; 2) production branches that are important to the state and which affect the livelihood of the people are controlled by the state; 3) earth, water, and all the wealth contained therein shall be controlled by the state and used for the greatest prosperity of the people. The pillars of the Indonesian economy are built on the foundations of economic democracy, the people's economy, and the cooperative concept which is known as the *Soko Guru* of the people's economy. This is considered to be an appropriate and appropriate solution to be applied in Indonesia, which relies on *Pancasila*. Philosophical-ideological reflection plays a role in empowering the principle of a populist economy based on the reflection of the precepts of social justice, mutual cooperation, and the principle of kinship with the concept of state control in the form of economic policy.

Philosophical reflection is related to the ideological aspects of *Pancasila*. Philosophy is derived from *Pancasila* as an open ideology that contains a basic orientation, so its translation into socio-political goals and norms can always be questioned and adapted to the values and moral principles that develop in society (Asshidiqie, 2005; Dagger & Geer, 1998; Kelso, Boswell, & Ryan, 2016; Flacks, 2019). Operational goals that are achieved cannot be determined priorly but must be agreed upon democratically. Therefore, open ideology is inclusive, not totalitarian, and cannot be used to legitimize the power of a group of people. Open ideology only exists and appears in a democratic system. Open ideology is not only justified, but it is

also necessary. In all political systems that are not ideological, in the sense of being closed ideologies, one can find state administration based on certain basic views and values. The normative basis is not formulated explicitly, but sometimes the constitution of some countries also contains a section that formulates the normative basis. The normative basis is often referred to as the philosophical basis of the state (Kaelan, 2002). Its embodiment and existence are mutually agreed upon based on the basic values and ideals of society.

Ideological reflection, the Indonesian economy must be in accordance with *Pancasila* as the state ideology, this is because: first, the *Pancasila* ideology is appropriate and rooted in the noble cultural values of the nation itself, excavated from the lives of the people who have existed for centuries since Indonesia was still called Nusantara (Ramage, 1995; Schwarz, 2018; van Dijk, 2021; Astuti & Putranti, 2018). Second, *Pancasila* is proven to be able to unite all ethnic, group, religious, and linguistic diversity in the life of the Indonesian nation. Third, in a multidimensional crisis, the implementation of the *Pancasila* ideology has helped in overcoming all crises through various solutions. Fourth, by implementing the *Pancasila* ideology, the degree and dignity of the Indonesian nation have been raised during the life of the world nation as well as for the life of the nation itself. Fifth, the ideology of *Pancasila* is a shield and a bulwark against the threat of a national identity crisis.

3. RESEARCH METHODOLOGY

The study was conducted using a normative juridical approach with selected sources of legal information utilized. The analysis technique was conducted using a qualitative design. This paper includes library research with deductive thinking patterns. This paper uses and analyzes the nature and function of *Pancasila* in economic development as a form of its consequences as *Staatsfundamental* norms. This study uses a statutory approach to examine the outlines of the Indonesian economy in the constitution, a case approach to classify various current critical arguments for economic development. A conceptual approach is also used to formulate the economic constitution as a philosophical-ideological reflection of *Pancasila* in critical argumentation.

4. RESULTS

The economic constitution based on *Pancasila* as the body of philosophical-ideological reflection is actually essential, abstract, general, universal, fixed, and unchanging (Notonagoro, 1974). The economic constitution is expected to be the embodiment of the philosophy of *Pancasila* through a rational, systematic, deepest, and comprehensive system of thought about the nature and values of the nation (Kaelan, 2002). The economic constitution as a philosophical-ideological reflection of *Pancasila* is realized in some ways.

From the perspective of religious insight, *Pancasila* upholds Godhead and together with the principles of just and civilized humanity becomes the moral foundation of the nation (based morality of the nation). Ethics together with

the prophetic mission of religion must be brought into public life, which will make a major contribution to the creation of democratic culture and the advancement of the nation's revival and independence (Latif, 2012; Rachman, Nurgiansyah, & Kabatiah, 2021). According to Kusumaatmaja (2006), *Pancasila* contained the existence of the divine principle which mandated that there should be no national legal product that contradicts religion which is rejecting or hostile to religion. The Indonesian economy must be organized according to the principles of God and morality towards an economic constitution with a religious perspective. The morality of *Pancasila* must be a differentiator as a guide for human behavior (*summum bonum*). In contrast to Hobbes' morality which rejects the possibility of citizens appealing against the will of the state based on justice or moral demands. What is fair in state life is determined by the state. Justice is what is according to the law, however bad (Wiharma, Hasanudin, Megawati, & Koswara, 2018; Kalin, 2000; Nugroho, 2017; Mujiwati, 2022; Sinaga & Putri, 2021). The nation's religious values from an economic perspective must be a reference as the basis for the morality of the nation (based morality of the nation). The strengthening of the values of God and humanity has implications for the Indonesian economic order which preserves the nature of helping, respecting other humans, being fair (fairness, equity, equality), and upholding honesty.

In terms of national identity, the economic constitution must reflect the cultural values of the nation as a national identity, according to the original character, nature, and wisdom of the nation. Today's economic policy adopts the principle of a foreign economy as an adjustment to the dynamics of the global economy (Welkinson, 2014). Its relevance is questioned in the Indonesian legal system which is guarded by *Pancasila* as the nation's philosophy. The philosophy of the nation is identical to the desire, the character of the nation, it is impossible to take the philosophy of another country to be the philosophy of the nation because all aspects of the life of the nation must be in accordance with its philosophy (Huda, 2005; Chemerinsky, 2019; Loveland, 2018; Cooter & Gilbert, 2019; Cooter & Ulen, 2019). Thoughts from Savigny, regarding the *Volkgeist*, construct an organic relationship between law and the character or character of the nation (Tanya, Simanjuntak, & Hage, 2006). True law is not made but is found in the soul of the people/nation (*Volkgeist*). Therefore, the problem of managing the law is not artificially forming principles and doctrines, but finding principles and doctrines in living legal values by exploring the core of the soul of the people. Cotterrell defines ideology as an idea that influences action or behavior. Legal ideology can be thought of, then, not as legal doctrine itself but as forms of social consciousness system's values and cognitive assumptions reflected in and expressed through legal doctrine (Silbey, 1991). The legal ideology of *Pancasila* is a system of values, and ideals that must be translated into Indonesian legal products (Atmadja, 2013). The above has empirical implications by making *Pancasila* the ideals of Indonesian law. Therefore, the activities of law-making institutions must lead to the values of

Pancasila as a common platform that is full of culture, values that live in society, or local wisdom in it (Nugroho, 2013).

Regarding the people-based economic constitution, the constitution of a people-based economy must accommodate the interests of the people. In making it happen, the state is faced with disintegration, liberalism, and neoliberalism. The constitution of a people-based economy creates a sense of unity through *gotong royong* (mutual assistance). The minutes of the trial of the Investigating Agency for Preparatory Work for Indonesian Independence or *Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan (BPUPKI)* noted that an independent Indonesian economy would be based on the ideals of mutual help and joint efforts, which would be held gradually by developing cooperatives (Bahar, Kusuma, & Hudawati, 1995). The idea of *gotong royong* is embodied in maximizing the business potential of the people and the manifestation of the principle of kinship as a frame guarding the outline of the implementation of the Indonesian economy. The people-based economic constitution is expected to uphold the spirit of unity and integrity, and mutual cooperation, within the framework of family-friendly implementation in the Indonesian economy. *Bhinneka Tunggal Ika* expresses the ideals of unity and unity in question. The spirit of *gotong royong*, splice, mountain fall, and so on expresses the ideals of democracy, togetherness, and social solidarity (Kaelan, 2002).

In terms of people's welfare, the Indonesian economy must be built to achieve the goals of the general welfare, social welfare, or people's welfare. The idea of welfare is realized with the essence of maintaining a good relationship between rights and obligations. Social justice as a guarding value, based on the ideals of the people who are as well as the teachings of millenarism and messianism which say that a just and prosperous society will be realized with the arrival of Ratu Adil, can prove the existence of these ideals of social justice. The value of social justice mandates that all citizens have equal rights before the law (Kusumaatmaja, 2006). The role of the principle of social justice is manifested through the fulfillment of human rights in the economic field, which are called economic rights (Rachbini, 2019). The constitution encourages the use of existing economic resources to function exclusively for the greatest prosperity of the people. Human rights in the economic field include the right to economic activity, labor, the right to get a job, earn wages, and the right to join labor unions. The economic constitution which aims to create people's welfare must also maintain the sovereignty of the Indonesian economy. Foreign influence can come through political intervention, how the 1997-1998 monetary crises had implications for the International Monetary Fund's (IMF) tug of war and the government. The IMF did not help wholeheartedly and continued to delay the disbursement of the promised aid funds because the government did not implement the 50 points of the agreement properly. Friendly countries that promised to help Indonesia also delayed disbursing aid and waited for orders from the IMF, even though Indonesia's economy was getting worse and worse. The IMF is considered by many to have failed to

implement its reform program in Indonesia and instead exacerbated and prolong the crisis (Tarmidi, 1998). Hadiz and Robison (2013) stated that “Indonesian governments had been forced to agree to the demands of the IMF (International Monetary Fund) and other global organizations for widespread reforms in finance and banking, in public and corporate governance, and in the judiciary, especially in the commercial courts” (p. 35).

Economic sovereignty is also the sovereign right of the people, so that right is not allowed to be disturbed or reduced. The government must retain the intervention of foreign funding institutions, for example by expanding the concept of state financing so that it will include public and private finance (Ėrnius, 2012). This process is important because the broad authority of the state in the context of sustainable financing can be a distinct factor of excellence during an economic recession. In addition, it can increase the capability of the state in laying down the principles of a people’s economy by mobilizing public and private finances by combining them in the form of micro to macroeconomic policies (Giriūnienė, Černius, Giriūnas, & Jakunskienė, 2019; Rybacki, 2016).

5. CONCLUSION

The results of the study found that the economic constitution has a relationship with philosophical reflections in the form of the basic philosophy of Indonesia’s economic development and conformity with the ideological reflection of *Pancasila* as the state ideology. Moreover, the economic constitution as a philosophical-ideological reflection

of *Pancasila* is realized through the conception of an economic constitution with a religious perspective, an economic constitution reflecting the nation’s national identity, a people-based economic constitution, and an economic constitution aimed at improving welfare. The relationship between the economic constitution and the philosophical-ideological reflection of *Pancasila* is theoretically proven in several ways, including in this study which was conducted using a normative juridical approach by using selected legal sources of information. As national philosophy, *Pancasila* places as the basic philosophy of Indonesia’s economic development including the pillars of the Indonesian economy which was built through the foundations of economic democracy, populist economy, and the concept of cooperatives which was later referred to as *Soko Guru*. In terms of ideological reflection, the Indonesian economy must be in accordance with *Pancasila* as the state ideology. Moreover, the economic constitution as a philosophical-ideological reflection of *Pancasila* can be realized by an economic constitution with a religious perspective. The economic constitution reflects the national identity, a people-based economic constitution; and functions as an economic constitution aimed at welfare. This research is important for the future, where the era of globalization will require a country to adapt. Economic aspects can affect other aspects of life, even law can be motivated economically. Therefore, the constitution should be one of the state tests to sort out the impact of economic globalization in order to improve people’s welfare.

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