

COMPETITIVENESS POLICY FOR MICRO, SMALL AND MEDIUM ENTERPRISES IN INDONESIA

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ABSTRACT

Indonesia's economic development so far has relied on market mechanisms. The concept of development is not going well as evidenced by the economic crisis that hit Indonesia in 1998, where the big companies are not able to withstand crises. On the other hand, micro, small and medium enterprises proved able to cope with the economic turmoil. Based on these experiences, then came the idea to compose the economic development policy-oriented market mechanism to economic development-oriented mikro, small and medium enterprises. Economic policy-oriented micro, small and medium enterprises from the side of the law should have the support and protection in the form of legislation. Formation of this legislation as a form of political implementation of the law in economics. This paper will describe the politics of the government law in giving attention to small and medium enterprises as a form of application forms of economic democracy as stipulated in Article 33 of the Constitution of the Republic of Indonesia 1945. However, the results of this study indicate that the political laws that give the government a greater share of attention to the micro, small and medium enterprises, was not supported by the prevailing legal culture among small, micro and medium enterprises.

Keywords: Political, Legal, Economic Democracy, Legal Culture, Micro, Small and Medium Enterprises

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INTRODUCTION

Indonesia's economic development strategy which was more focused on achieving economic growth had resulted in the government prioritizing the development of large companies with the aim of gaining foreign exchange as much as possible. The implementation of this development strategy was done with the assumption that the economic growth would proceed by itself, which eventually resulted in welfare distribution among the people, in accordance with the theory of "trickle down effect".

This policy, which prioritizes the interest of large companies, might weaken the characteristics of the business owners in a way that they would not put their biggest effort to produce better quality products to compete with foreign products. Another negative impact of the implementation of this development strategy was the tendency of the business owner to develop instantly and rapidly without going through a natural process. They tended to gain benefit from many facilities that the government provided, resulting in unhealthy business behaviors. There were many problems in the implementation of that development strategy. It could be said that the error was a fundamental one. As a result, when a global economy crisis happened in 1997, Indonesia's economy foundation collapsed.

Based on that experience, there was an idea to review the policy and the economy strategy used by the new order (*Orde baru*). The failure of this market mechanism based development strategy was caused by many factors, including the market failure, inappropriate government intervention, ineffective market mechanism, and other external influences during the new order period which resulted in failure. Therefore, the government had to make a policy to shift its preferences to small and medium enterprises. Based on the experiences we had during the economy crisis in 1997, the micro, small, and medium enterprises had proven to survive.

Based on the observation, we can get an impression that the government's policy to give extra attention to micro, small, and medium enterprises has still become a mere slogan. Moreover, it is still become a debating issue in our politic. The selection of the economy development policy focusing more on micro, small, and medium enterprises cannot be separated from economy development strategy chosen by Indonesia. There are several economy strategy, including: (1) classic theory based development strategy, which holds the assumption of trickle down effect, (2) development distribution strategy, and (3) dependent strategy².

ECONOMY BASED LAW POLITIC

The choice of the development strategy in the field of economy is highly influenced by the law politic implemented by the ruling government. Law politic is a way to take actions or strategic movements that should be done by the government regarding the

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² Yoserwan, *Hukum Ekonomi Indonesia*, (Andalas University Press, Padang, 2006), p. 100.

change of political direction to cope with domestic economy³. Furthermore, **Padmo Wahyono**⁴ defines law politic as fundamental government's policy to decide the direction, forms, or contents of the law to be formulated and set the criteria to formulate the law. Therefore, Padmo Wahyono argues that the law politic has a close relationship with the law to be implemented in the future (*ius constitutum*). Based on the argument, we can describe that the law politic made by a country will continuously be used in the future. For that reason, it is advisable that Indonesia's government should immediately determine its economy based law politic. It becomes very important since having a clear direction of future economic development will make our nation has a steady economic condition in the middle of global economic changes which is full of competitions and interests. On the other hand, **Sunaryati Hartono** sees the law politic as a tool or medium as well as a step which can be used by the government to create a desired national law system, so that by using the system, our nation can achieve its goals⁵. Based on the definition, we can learn that the law politic has certain characteristics. According to Purbacaraka and Soekanto, the law politic, in relation to the law formation (*rechtsvorming*) and the law invention (*rechtsvinding*), is practical and functional with a teleological-constructive spelling out. It means that as a law discipline, law politic serves as an academic foundation toward the law formation and invention which is more appropriate to the prosperity, situational and conditional, cultural and value contexts developed in the society by concerning on the people's need on the law implemented, so that the law can be accepted, enforced, and obeyed.

In the development of economy-based law politic, there are three integrated law domain components, including international, regional, and national competent law politics. The integration of those three components is very important since the world's development tends to lead to an open condition. This free economic relation among countries all over the world is highly influenced by the development of information technology. As a result, national boundaries become blur. Therefore, in the formation of a law politic which regulates a nation's economic should be based on the international, regional, and national development or situation.

Because of this global economy development, every nation in the world is accountable to regional and international institutions, through ratification process. This ratification should be done in regards to the values exist in each country. In Indonesia, the existing value is Pancasila. Therefore, Indonesia's legal ratification should be based on Pancasila. The use of Pancasila as a foundation to do ratification is related to both negative and positive impacts of international as well as regional interactions in the globalization era. The most dangerous impact of globalization is its unseen and implicit values which are articulated and synchronized with other accepted values.

Basically, most today's issues are reactions toward contradictory or threatening conditions concerning certain conflict of interests, whereas international, regional, or national interests. One of the biggest points of interests is in the field of economy⁶. It is due to other parties' interest over our country (for example United States of America). Therefore, we have to do progressive yet objective actions. For the benefit of our domestic social structure, we have to determine our standpoint.

In the globalization era, the choice of economy development policy which concerns on micro, small, and medium enterprises is the most suitable one to face the global challenge. Thus, this economy development policy should correlate with other developmental sectors, such as politic, law, social, and culture. Without the synergy of the correlation among those sectors, it is difficult for Indonesia to survive in the global competition.

Indonesia's economic system written in Article 33 of UUD 1945 is seen to be a mixed economy. This system has been widely used by various countries, especially those that do not apply capitalist or socialist system. Therefore, many argue that the mixed economy take only the good sides or points from the capitalist and the socialist systems. However, this notion may not always true since there are some risks that a country should take by adopting this system, especially the risk of economic failure. This failure will give impact to other sectors, such as politic, law, culture, etc.

The mixed economy used by Indonesia is implemented by combining powers and freedom at once, although it may vary in different degrees. The degrees of which mixed economy is used among many countries in the world are varied. One country may implement it more freely, close to capitalist system, since the country has higher degree of freedom. On the other hand, the mixed economy which is closer to socialist system may have bigger government intervention in implementing its economic policies.

The system applied in Indonesia limits the government intervention and gives more rooms for the individuals to involve in economic activities. It is expected that both government and the private parties can work together and complete each other. Bung Hatta, one of Indonesia founding fathers, said that the mixed economy applied in Indonesia is the reflection of economy democracy. The economy democracy in Indonesia is done by following three principles, including social ethics written in Pancasila's values, economy rationalization embodied in economy planning, and economy organization based on the principles of togetherness, self-reliance, and autoact⁷.

³ Kamri Ahmad, Perubahan Politik Hukum Berbasis Ekonomi, makalah dalam Masalah-Masalah Hukum, Vol XXXII No. 3 Juli – September 2003, p 194.

⁴ Padmo Wahyono, Indonesia Negara Berdasarkan atas Hukum, Cet. II (Ghalia, Jakarta, 1986), p. 160

⁵ C.F.G. Sunaryati Hartono, Politik Hukum Menuju satu Sistem Hukum Nasional (Aumni, Bandung, 1991) p. 1

⁶ Sri Redjeki Hartono, Kapita Selekta Hukum Ekonomi, (Mandar Maju, Bandung, 2000), p 24.

⁷ Soewito, Reformasi Strategi Industri dan Pertanian, Suara Merdeka, Semarang, 3 February 1999

PANCASILA ECONOMY DEMOCRACY

Pillars of Indonesia's economic system are in line with social reform agenda, and is embodied in Article 33 of UUD 1945. It is stated in the constitution that in economy democracy, production is done by all and for all, under the leadership or the ownership of the society members. The prosperity of the people is more important than the prosperity of the individual.

The nation should have a powerful influence to arrange a strong national economic so that it is not dominated by other nations or corporations. Therefore, the government should ensure that the efforts of economic development done in this country should be based on the principle of togetherness. The government has a vital role in owning and managing important national production areas and strategic assets, which affect the livelihood of many people.

In the law formation, democracy becomes the standard of the national economic life. It can be said to be effective if it could accommodate the need of the micro, small, and medium enterprises. People's lives in general are still far from prosperity or welfare standard. So, the principle of economy democracy is presented in Article 33 of our constitutional with people-based system, in which fairness in any business endeavor is highly valued. This view is a combination of common law (judge made law, such as Roscoe Pound), where the judge creates a living law, and continental law, where the law is created by the executive and legislative institutions to accommodate the government's interests. This notion arises as a result of diverse society development which is influenced by global development. It is the reason why the economy development policy of a country should be based on its constitution.

In this view, the people are seen as all citizen or population in a country. Concerning on the people's interests means handed the sector to the people and for the welfare of people. For example in the agricultural sector, the government handed the sugarcane, its mills, and its production to and for the people. All concerns are given to the people. This what democracy means. Therefore, we can conclude that people-based economy focuses on all the population, regardless their classes.

Padmo Wahyono says that if the people-based democracy is implemented in Indonesia, it can reflect our Pancasila democracy, where freedom and equality become the basis of successful socio-economy development⁸. Prior to Indonesia's independence, the law did not concern on the people's interest, and focused more on the interest of the ruling party, such as forced cultivation system. After the independence, people's interest were accommodated in Article 33 of the constitution, which was amended for several times as the result of the government's increased appreciation toward the law which reflected Pancasila democracy and the principle of togetherness.

Economy democracy cannot be separated from democracy in general. The definition of democracy itself has developed from its original version stated by a Greek philosopher, Aristotle. In his attempt to find an ideal nation, he stated about his cycle theory. At first, a monarchy system was perceived as a good government system, before it finally led to tyranny system. Then, the tyranny system was opposed by people and changed to be an aristocrat system. As a result of people's thinking process or development, the aristocrat system was then changed into democracy system or so called monocracy system (the rule of democracy). Based on that cycle, Aristotle viewed democracy as a negative thing. This view is perceived differently in today's era. Democracy comes from two Greek words, *demos* which means people, and *cratein* which means ruling. Therefore, democracy can be defined as the government ruled by the people. Based on the constitution, the democracy system applied in Indonesia is based on Pancasila. However, in reality Pancasila Democracy is difficult to be implemented and formulated into concrete programs. The achievement of people's welfare based on the standard stated in the fourth verse of Article 33 in the constitution is done by the ownership of all production activities by the people.

LEGAL CULTURE IN ECONOMY

Friedmann states that a legal culture is "the core of justice"⁹, which means that if this component is missing, it weakens and even eliminates the meaning of other components since in the legal culture consists of general attitudes and values which determine whether or not a certain law system works, take for example the law of micro, small, and medium enterprises (UU UMKM). Satjipto Rahardjo¹⁰ defines the legal cultures implemented in Indonesia. He argues that to make a certain law works, we cannot underestimate the role of the people or the society members who become the target of the law formation as well as those who perform those positive law. Eventually, the law that is implemented in the society is largely determined by the attitudes, views, and values of the people. So, it can be concluded that the legal culture performed and developed in the society is the one that best suited to the lives' values of its people. Therefore, the development of the legal culture is highly influenced by the people's understanding toward the values they hold in their daily lives.

With different understandings of legal cultures, Satjipto Rahardjo differentiates legal cultures in traditional, modern, and developing societies. In a traditional society, where closeness is one of the major characteristics of the people, "absolute legal culture" is implemented. In this system, individual is not given any freedom to do any effort in an attempt to collect personal benefit. If it exists, the individual and his/her activities will be perceived negatively, and the attempt they have done will not be developed, so that they will not live harmoniously and peacefully in the society¹¹. Cultural values are highly recognized in this

⁸ Padmo Wahyono, *Praktek Negara Dalam Negara Kekeluargaan*, (Mandar Maju, Bandung, 1990), p. 17.

⁹ Friedmann in Abdurrahman, *Tebaran Pemikiran Tentang Studi Hukum dan Masyarakat*, (Media Pustaka, Jakarta, 1986), p. 87.

¹⁰ Ibid. p. 91

¹¹ Ibid. p. 91

traditional society. Therefore, the legal culture, especially in the field of economy, cannot be developed since the main focus of economy is to fulfill personal needs, so that trading is not likely to occur.

This condition is different from what happens in the modern society. Satjipto says that in the modern society, an “open legal culture” is implemented as the reflection of freedom of choice. Every individual is given the opportunity to decide how he/she accept applicable law and institutions¹². On the other hand, in a developing society, a “personal legal culture” is implemented. In this system, laws and its institution is treated in an easy way, based on their personal desires¹³. Different perceptions toward the legal culture, especially in the field of economy, become one of the reasons why micro, small, and medium enterprises cannot develop well. It is because the legal cultures owned by the owner of small and medium enterprises comprise:

- a. Submissive culture, so they tend to accept anything without arguing.
- b. Dependence culture, so they rely on the government support, in terms of facilities and/or subsidy.

By having those economy legal cultures, there is some concerns in which the owner of small and medium enterprises cannot compete with regional as well as international economic development. Therefore, the government should take concrete actions to protect the micro, small, and medium enterprises, based on the planned legal cultures. With sufficient support and attention from the government, the micro, small, and medium enterprises can compete well. They will become more independent and therefore the existence of micro, small, and medium enterprises can bring economic security for Indonesia.

CONCLUSION

Based on the explanation above, we can conclude that the economic development of a country is strongly determined by the law politic applied in the country. Especially in Indonesia, the law politic applied is Pancasila-based law politic.

Based on Pancasila-based law politic, Indonesia employs Pancasila economy democracy. This Pancasila democracy gives equal opportunity for all the business owners to develop so that they can compete and participate in national economic activities. The participation of small and medium enterprises' owners is highly influenced by the legal cultures that they possess in their daily lives.

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¹² Ibid p. 74

¹³ Ibid p 92