

## RECONSTRUCTING INDONESIAN ECONOMIC SYSTEM BASED ON LEGAL STATE PRINCIPLE OF PANCASILA

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### ABSTRACT

*Both political configuration and national economy development already put legal instrument as a tool to eternalize regime dominance which politically have the power to dominate both asset or national economy resource centralistically and capitalistically. Law just been both politic and economy legitimation to meet regime desired in order to control and guide national economical system development required by Act 1945 of Republic Indonesia, 1945 Chapter XIV Article 33. Pancasila is state fundamental ("filosofische grondslag", "Statesfundamentalnorm"), and as state principle, Pancasila was regulate state behavior, which created within the making and act regulation implementation (Constitution, Act, Government Rule and etc) which due to legal state principle of Pancasila also revealed within practice and act habit of state dominance executor. Therefore, needed legal instrument which able to transform and create national economy system based on Pancasila as required by Constitution of Republic Indonesia.*

Keywords: System of National Economy, Legal State Principles of Pancasila, Pancasila Moral Value

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### Introduction

Motivation in this study is for the protection of people's economy in the economic system that is based on Pancasila as Indonesia-based economic system and the welfare state is not liberalism as mandated by the article 33 UUD 1945 is a cooperative initiated by Muhammad Hatta in the present articles of the legislation focuses more on capitalism so that economic actors will be marginalized. Article 1 verse (3) Act of 1945 clarify that, "Unity State of Republic Indonesia was Legal Country." In line with Article 1 subsection (3) Act of 1945 NKRI, Soehino stated that, Unity State of Pancasila Indonesian republic and Act of 1945 NKRI was Legal country, it was state that all of the activities both implemented by arbiter or by citizen must based on legal definitions or legal rule. Law must become the principle and combination for any governmental implementation. In practice of governmental implementation was implemented by state apparatus.

Concept of national economy system based on Pancasila till recently still as such idea that keep develop and change due to development and Indonesian society alteration. Created the justice, prosperity and safety for all of Indonesian people as stated within commencement Act of NKRI 1945 principally was such state responsibility, therefore created such authority principle of dominate from state, presence dominate authority from state both physically or it's dominance. As mentioned within article 33, subsection (3) Act 1945 NKRI before amendment, Act of 1945 NKRI have general description and explanation of article by article.

Economical democracy within democracy economy due to Act of 1945 NKRI was strongly against presence individualism, capitalism and economy exploitation privately, but ironically democracy economy which refer to society collectivity recently was really difficult to compete because more erode by economy globalization, globalization which focused on individualism, capitalism and free fight competition.

Development paradigm alteration which based on public economy was seen when Conference of National V, Association of Native Indonesian Entrepreneur (HIPPI) on August 10, 1988, President B.J Habibie confirm that nextnewly economy order, relied on three main principles, it was democracy, prestige and independent, the main point at Governmental Palace state on October 17, 1988 as establishment society economy resurgence's day. Muhammad Hatta for many times were written of society good fortune about risks that threat people economy and how democracy economy must united and self integrated within cooperation organization as business development which due to kinship principle. Cooperative institution initially was introduce in Indonesia already directed to sided public economy interest, cooperative existence was such certain phenomena, because there were no one similar institution which could make the same, because all at once expected became the balancing to other economy pillar. Cooperative institution by much arena, believed really compatible with tradition and Indonesian living order, but the uniquely of development quality always became the conflict because usually cooperative was used out of their generic interest. Also by macro, the most fundamental question related to cooperative contribution to income increasing and the member prosperity, from quality site, cooperative existence still needed truly effort to develop followed business world environment and living environment and their member prosperity. Cooperative segment within various economy activities still relative small and cooperative dependence to external power, especially government still really large. Based on background above, therefore the writer give the title "Merekonstruksi Sistem Ekonomi Indonesia Berbasis Pada Prinsip Negara Hukum Pancasila".

### Problem

In facing commerce liberalization recently was based on Adhoc decision only. Within commerce principle was still refer to colonial act product, it was *Bedrijfsregleens Ordonantie*, Stb. 1934 (BRO 1934) therefore must include modernity in reconstructing Indonesian economical system which based on Law State principle of Pancasila. There were problematical submitted in this working paper as follow:

1. Why Indonesian economical system tend to followed liberal market economy system/capitalistic.
2. How the Indonesian system construction which based on Pancasila legal state?

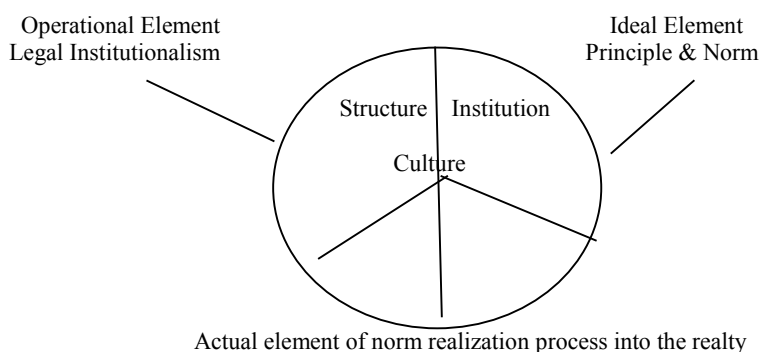
**Discussion**

**1. Principles of Pancasila Legal State**

National law was law or act regulation which created and implemented to reach the purpose, principle and ambition such country. In this context Indonesian national law was legal unity or act regulation which created to reach the state purpose which came from those commencement and Articles of Act 1945 NKRI which content state purpose, state principle and legal ambition of Indonesian country. Therefore, Indonesian legal system was such legal system which prevailed in all of Indonesia area whole legal elements, such structure, institution and culture. Structure and act regulation, and all of sub-element which dependent each other, one and another, which came from Commencement and Article of Act 1945 NKRI.

National law politic as content direction for development of national law system, which also guided by institutionalism and authority to implemented judicial review or material test, both by Constitution Court or by Supreme Court due to hierarchy of each regulations. Therefore, from both material site or national law political organization already provided strong enough instrument to guard consistence any legal act regulations. Basically, national law politic was refer to legal system, it was such law structure, institution and legal culture as stated by Friedman which have three elements within legal system, it was: legal system, legal institution and legal culture.

Practice 2. Legal system according to (Lawrence W. Friedman)



Therefore, very exactly of von savigny’s view who called that law was such realization and society law awareness (volksgeist). Law was came from tradition and reliance and wasn’t came from Legislator. Therefore prevailing law within such country must be seen within it history context. Because law which wasn’t came from the history or state soul wasn’t perceived as law because create uncertainty and wasn’t possibly will take the injustice for society.

State of RI Unity as legal country, acknowledgment that responsibility to assured and create social justice for all of societies wasn’t legal institution responsibility solely, but institutionalism and leadership responsibility on behalf society’s sovereignty. That case was such responsibility all of citizen; it’s meant by and for Indonesian society as Indonesian people, as determined by state philosophy of Pancasila and Act of 1945 NKRI. Responsibility realization of society upheld the justice was society law awareness quality seen within social order and national discipline. According to Hadjon, important elements of Indonesia law principle which based on Pancasila social welfare was as follow:

**1.1. Picture of Indonesian Economical System in Globalization era and Legal Role to Determine Nasional Economy**

Within Indonesian concept in national development was Pancasila Implementation. Economy development of Republic Indonesia must based on Pancasila, as principle, purpose and direction within implementation. With that basic thinking, therefore economic system which will develop was Pancasila Economical system. The writer knew that much experts who already tried to formulated what intended by Economy of Pancasila. Development during this time already give real enough result in increasing welfare and national economical ability, therefore give the capital and opportunity to us to think further of development idealism and explore withi development concepts step by step take us to that purpose. Of course it wasn’t easy for us to develop this concept, because as both economy and development concepts must meet various requirements. It was difficult for us to develop this concept, because as both economy and development concepts must meet various requirements, besides idealism or normative views, therefore there were both objective and rational principles which could develop. But, we also kept effort solely because wasn’t exist yet or less literature that study this concept deeply. According to the

writer, intended by Pancasila economic system, was market economy system managed and the organizer controlled was Pancasila values, with other word that economy of Pancasila of course must sense by Pancasila values. Based on these, therefore Economy of Pancasila wasn't have materialistic characteristic only, because based on both faith and piety existence that became spiritual, morale and ethics spiritual foundations for development economy implementation. Therefore, economy system of Pancasila was controlled by both morale and ethics norms, therefore our national development was morals development. Economy of Pancasila with humanity morale and fair values, respecting human status also both right and fundamental responsibility within economy live.

## **1.2. Description of Indonesian Economy System in the Globalization era within both Challenge and Barrier to Determine National Economy Direction**

### **a. Globalization as challenge from external of Indonesian Economy System**

Beginning free trade in Indonesia could be great challenge for democracy economy system, the prevailing of China-ASEAN Free Trade Area (CAFTA) and Indonesia-Japan Economy Partnership Agreement (IJEPA) will made Indonesian people difficult to compete, presence free market were made foreign products more cheap because there were no tax cost post or export duty charged to foreign product.

AFTA itself was established when High Level Conference (KTT) ASEAN IV in Singapore on 1992. On free market implementation, especially in South East Asia which include within that trade process of AFTA that systemic on scheme of CEPT-AFTA. Common Effective Preferential Tariff Scheme (CEPT) was tariff decreasing stage program and non-tariff barrier erasing which agreed together by ASEAN countries therefore in implementing the commerce among members it's operational cost could be pressed.

Main challenge in faced alterations within globalization era was maintain consistence among three legal product levels. Effort and response that have anticipative characteristic in law sector could implement within sector:

1. Law structure, it was through citizenry institutions exploitation efforts.
2. Legal Institution, it was through law harmonization effort. Law harmonization could implemented by kept maintain consistence of Indonesian law system.
3. Supra infra structural institution and large society to make the law as legal supremacy within society live. Obedient in act and behave in all of living sectors and presence example from apparatus of all level to law.

### **b. Challenge from domestic**

High energy cost that made that product were expensive because large domestic production cost used for energy cost. Complicated and difficult bureaucracy made high cost economy within business development and product marketing produced. High cost economy was made micro entrepreneur difficult, and who will benefited was macro entrepreneur.

Need preference of all economy actors in handling all of that. Cooperation from upper course and lower course will overcome each other of future industrial development. Government policies within domestic business became very important for domestic industrial advancement.

## **1.3. Legal role in determine national economy direction**

Pillar of Indonesian economic system which in line with social reformation and then provided within Article 33 of Act 1945 NKRI, include economy democracy principle, whereas production was implemented by all, for all under leadership and society member ownership, prioritized public welfare, wasn't individual welfare.

Needed strong state role to arrange strong national economy and avoided dominance national economy by state and foreign corporation, therefore state need to directed in order that economy business which grow and develop in Indonesia was business effort which relied on collective business and based on kinship principle. Refer to that legal principle, therefore state have vital role to dominate and manage both production branch and important strategic asset and dominate much people live. Democracy economy according to Padmo Wahyono, if implemented as state ambition picture was described democracy of Pancasila, based on independence which ignored public interest and presence forcefulness of desire dominance recently. When independence, society need totally provided on Article 33 of Act 1945 NKRI that already experience several amendments that give more attention as Pancasila which implemented within kinship principle.

### **2.1. Construction of Indonesian Economy System Based on Legal Values of Pancasila**

Thinking way of that constructivism paradigm was used as a tool to implemented legal political reconstruction of Indonesian economy system which previously include deviations, whether philosophically, sociology and judicial to Indonesian economy system, therefore needed grammatical or historical interpretation in reconstructing article 33 of Act 1945 NKRI.

#### **Practice 4. Construction of Legal Politic Concerning Indonesian Economy System Article 33 UUD 1945 NKRI.**

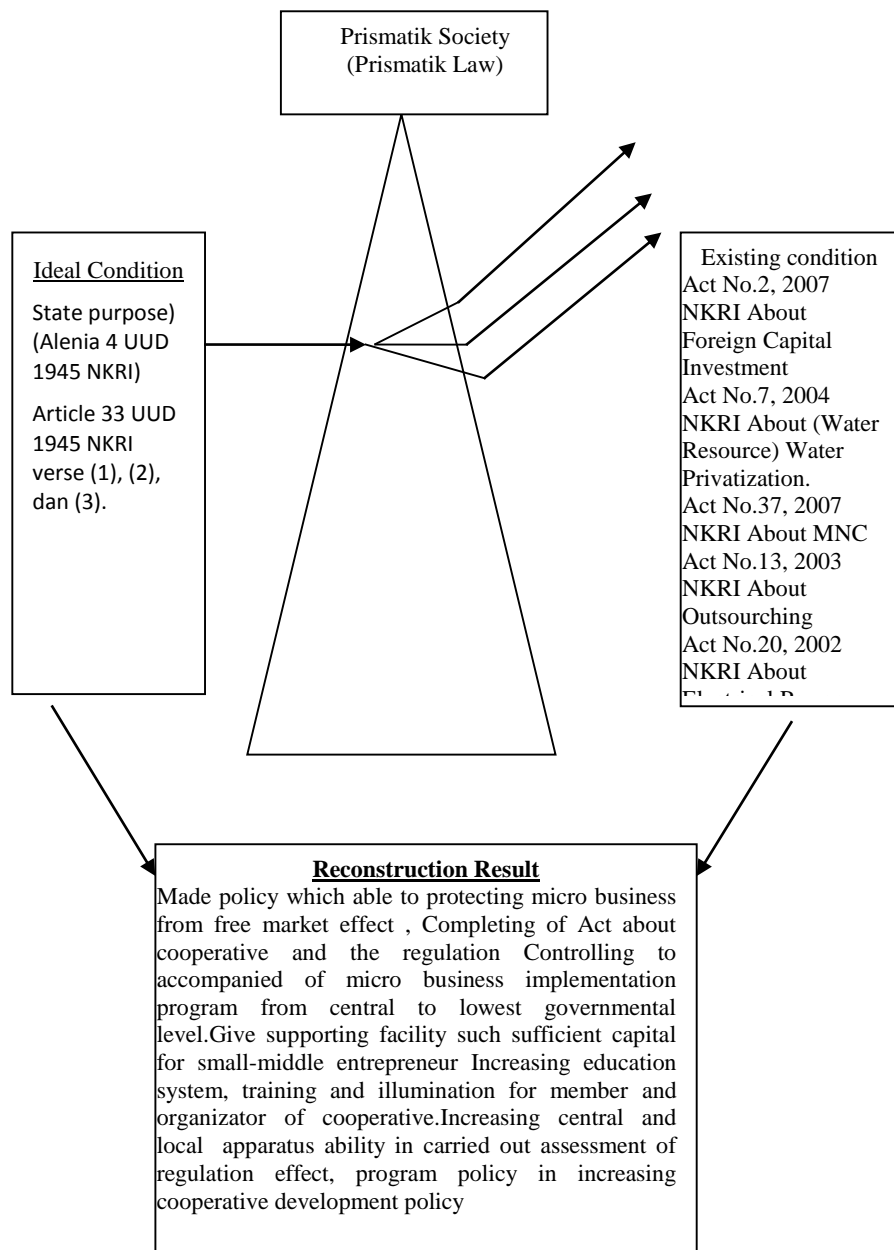
Law Politic of Indonesian Economy System

1	Principle : State authority giving : Article (1). (2). (3), (4), (5)
2	Subject : NKRI (Government and society), wasn't related to sub-ordination
3	Purpose : As much as possible for society welfare
4	Substantion : a. Economy was arranged collectively based on kinship principle b. Collective interes was prioritized not individual interest. c. State acknowledgment individual right to participate within natural resource manajement restrictly. d. State must dominate important production branch for state which dominate much human live. e. Company which wasn't dominate much people live could dominate individually or private. f. State have the power to: g. (1) formulating policy (beleid); (2) Carried out arrangement (3) regulation and (4) controlling. Consequences : state as both regulator and production branch organizer which dominate much people live

Legal politic according to Purbacaraka and Soekanto, in related to legal formation (rechtsvorming) and legal recovery (rechtsvinding), have practice function by explanation of theology-constructive. it's meant, as such legal discipline, legal politic was give academical foundation to both legal creation and invention which more compatible with welfare concept, situation and condition, culture and values which develop in society by seen society need to law which will implemented in the society could accepted, implemented and obeyed. Fred W. Riggs develop about prismatic society. Riggs was differentiated between "fused types of society" as such complete society with "diffracted types of society" who signed by separating complete functions.

On fused society, the prototype was kinship. Within diffracted society therefore all of elements have specific structure. On those societies there were economy, political , education and law subsystems that have certain organizations and implemented function from that subsystem functions. Indonesia was rejected extremely the selection of both socialism and capitalism but take the positive sites from both of them. Both Pancasila and UUD 1945 NKRI was acknowledge individual and ownership rights as fundamental right but relied collective interest above personal/individual interest. To construct that thinking was could describe within practice as follow:

Practical 4. Concept of Prismatic Law People Resources: Elaborated from Fred. W.Riggs (1964)the focus of study in this paper is to outline the legal protection in the field of law in the field of water privatization, the field of labor contracts, electricity trade and investment in accordance with the values of Pancasila



Based on this global economy development, therefore each countries were gives responsibility to both international and regional institutions which used to called by ratification. This ratification activity implemented by such state must paid attention to both grow and develop values within each countries. Both develop and increasing values in Indonesia was Pancasila.

## 2.2. Cooperative as an example of Indonesian Economy System based on Principle of Pancasila Legal State

National economic development that have social justice characteristic based on kinship was such strong description in order to relied Indonesian economy foundation. Pancasila was such philosophy and the way of live for state. Pancasila also became main reference for any country state to relied national development principles.

According to Muhammad Hatta, there were several reason why cooperative could be said as economical example. For example, because cooperative was educate the dependence, develop society behavior, and challenge all of both individualism and capitalism concepts. Agenda that must be implemented by government to exploited cooperative within national market by government was:

- a. Made policy that could protecting micro business development and national market expansion and global. Policy that made by government must able to protecting micro business from free market effect.
- b. Giving both direction and management training to micro business actors. This activity was aimed to give managerial ability to the business people in order to grabbed global market.
- c. Controlling to accompanied program implementation of micro business from central to lowest government level.
- d. Giving facilities that support production good's market of UMKM, controlled market season, structure and infrastructure of

economy and sufficient, production tool support, tax dispensation and easy of business license administration.

Democracy economy effort could be done by optimize cooperative as instrument which could reach all of social aspect levels. Role as facilitator, mediator to develop national economic must kept implemented by government by prioritized principles of justice, balance, harmonization between public and private sectors. It was unfair, if government to close with private sector and ignored other sector or on the contrary.

## Conclusion

Concept of national economy system based on Pancasila till recently still as such idea that keep develop and change due to development and Indonesian society alteration. Created the justice, prosperity and safety for all of Indonesian people as stated within commencement Act of NKRI 1945 principally was such state responsibility, therefore created such authority principle of dominate from state, presence dominate authority from state both physically or it's dominance. As mentioned within article 33, subsection (3) Act 1945 NKRI before amendment, Act of 1945 NKRI have general description and explanation of article by article. AFTA itself was established when High Level Conference (KTT) ASEAN IV in Singapore on 1992. Globalization as challenge from external of Indonesian Economy System. On free marker implementation, especially in South East Asia which include within that trade process of AFTA that systemic on scheme of CEPT-AFTA. Common Effective Preferential Tariff Scheme (CEPT) was tariff decreasing stage program and non-tariff barrier erasing which agreed together by ASEAN countries therefore in implementing the commerce among members it's operational cost could be pressed. Challenge from domestic need preference of all economy actors in handling all of that. Cooperation from upper course and lower course will overcome each other of future industrial development. Government policies within domestic business became very important for domestic industrial advancement. Based on explanation above, therefore could be conclude as follow:

1. Within Indonesian economy system, ideally already arranged within Article 33 (1) Act of 1945 NKRI, that economical was arranged as collective effort based on kinship principle, economy based on democracy, welfare economy for all of people, in other side free trade and globalization existing condition was couldn't avoided because Indonesian Government already signed by international agreement within AFTA and WTO plan and add by government debt that only could depleting national economy resources only to paid debt from donor countries which joined within International Monetary Fund (IMF) and Consultative Group on Indonesia (CGI) or World Bank
2. Construction of Indonesian economy system was social welfare as such economy which arranger collectively due to kinship principle as such ambition from economy development was aim to welfare for society. Basic definition within activity implementation was provide on Article 33, verse (1) Act 1945 NKRI, that economical was arranged as collective effort based on kinship principle. Kinship principle became strength of democracy economy.

Contribution in this paper is that the government in making the regulations relating to the dignity of many people must side with the destination countries, namely in the opening paragraph is uud 1945 to 4 that the welfare of the people, instead of siding with investors, giving rise to multi-player effect a balanced and competitive prioritizing interests of the people for example made policy that could protecting micro business development and national market expansion and global. Aspect legally to make policy that made by government must able to protecting micro business from free market effect. Aspect sociology controlling to accompanied program implementation of micro business from central to lowest government level. Aspect philosophy giving facilities that support production good's market of small medium and enterprises, controlled market season, structure and infrastructure of economy and sufficient, production tool support, tax dispensation and easy of business license administration.

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