
AN EXPLANATION ON THE IDEOLOGICAL DEVIATION OF ECONOMIC LEGISLATURE IN INDONESIA

Oleh

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Abstract: *This article is aimed to narrate the transformation of the Indonesian economic system as stipulated under its legislation. The methods of the paper's research being Conceptual, Philosophical, and Analytical which are used to discover and expound any relevant findings. The focus of the article is the Indonesian authentic "third way" which was introduced long before Giddens sparked his idea. It was Ekonomi Kerakyatan (people-centred Economy) that had been introduced and widely discussed before independence at the meetings of the Investigating Committee for Independence Preparatory Work (BPUPKI). Claimed as the authentic Indonesian socialism, it was rooted in the value of Pancasila as Indonesia's Weltanschauung (Philosophische-Grondslag). Ekonomi Kerakyatan was introduced with the main characters of cooperativism and kinship. The aim of this paper is ultimately to explore the idea of Ekonomi Kerakyatan in its original perspective of Indonesia's founding fathers. The first part of the paper will explain how Ekonomi Rakyat was defined and postulated under the Indonesian Constitution. The second part will explain the transformation of the economic legislature, how it happened and its implication to national development. And the last part will explain the prescriptive resolution to reinvigorate Ekonomi Kerakyatan as the main character of Economic Democracy in Indonesian Legal Framework. Ultimately, this paper also aimed to link the correlation between law, economics and politics. In the end, it can be concluded that the economic system should be narrated in a sound legal framework, while the process of legal drafting and legal enforcement depends on its political commitment.*

INTRODUCTION

Economics is epistemologically constructed—not only to answer the question on income growth, yet at first, was used in order to solve the humanitarian problems such as poverty, famine, the greed of predecessor mercantilism, monopoly, and the unjust access for the resources. Without moral and integrated comprehension of other disciplines, economics will only become meaningless quantification. (Heilbroner, R. L.1986)

Law, on the other hand, is used to being considered as a discipline that is closely related to politics. However, in the last decades, the role of law is highlighted to facilitate state-led economic development. Rule of law is not an independent variable in the process of socio-economic change. Rather its effectiveness must be contingent on other factors including the understanding of its legislator in the basic ideology of economics.

The debate on two economic polar antipodes has been claimed to be inexpedient and obsolete. However, the two ideologies have become a world constellation of many countries' economic systems that translated into laws. Some others favor the idea of capitalism which is considered self-correcting, flexible in facing any change, and could also become socialistic (Berten, 2000). While others believe, even though capitalism is nurtured and forged in the globalization era to become a world dominant system, the failure of capitalism is inevitable since it is laid on a fragile foundation. Whatever the arguments are, such ambivalent ideology should not be considered becoming the only two configurations of world economic legislation. In fact, “the swing of the pendulum” between the right and the left will only pursue partial stability. They do not represent genuine *volksgeist* that characterize every social life. It was Anthony Giddens who first initiated the Third Way Movement that re-evaluate the traditional conception of capitalism and socialism. The Third Way stands for a modernized social democracy, passionate in its commitment to social justice. (Giddens, 1999).

METHODS

1. Conceptual Approach

Firstly, it is necessary to outline all sources of primary and secondary law based on the historical timeline, the authors will formulate the concept of *Ekonomi Rakyat* in legislation. Formulation of this concept will be done regarding the big concept in the existing economic system in the world which are capitalist and socialist.

2. Philosophical Approach

Having fully understood the concept of *Ekonomi Rakyat* and people's sovereignty system, the authors will further examine whether the ontological, epistemological and teleological aspects of the fundamental idea of the idea of *Ekonomi Rakyat* have been manifested in the laws and economic policies of investment.

3. Analytical Approach in Conclusion and Prescription

The method to be used in drawing a conclusion is a deductive method that is a method that discusses general matters (theories, legal sciences and legislation) and compared them with special (empirical and practical) data. From the concept of populist economic ideas then the author will attempt to attract it to the ideal investment arrangements and in accordance with the legal ideals of *Ekonomi Rakyat*.

RESULTS AND DISCUSSION

I. The Design of *Ekonomi Rakyat* Ideology

The term *Ekonomi Kerakyatan* emerged at the time of a big economic depression that happened in 1930. Hatta, the initiator of *Ekonomi Kerakyatan*, put forward miseries of Indonesian people under the regime of *Cultuurstelsel* (Dutch cultivation policy requiring a portion of agricultural production to be devoted to export crops). He wrote his concern in several declamatory articles; two primary influentials were titled "*Pengaroeh Koloniaal Kapitaal di Indonesia*" and "*Ekonomi Ra'jat*". There are at least three big ideas that were delivered on the articles:

- Hatta rejects the idea of national dependency on colonial capital. He strongly criticized the premise stating that the economy of Indonesia depends on the capital injected by colonial and/or foreign capital because of its contribution to national tax.
- Hatta emphasizes that the decrease of the state's stock is not only solely related to *belasting* (tax), yet also to the two other variables: *invoerrecht* (customs duty) and *handel* (trade income). The domination of foreign investment and/or colonial capital will make a country susceptible to the global crisis.
- Therefore, the resiliency of the national economy must be built by a robust ideology of *Ekonomi Rakyat*.

In order to give a comprehensive idea of the philosophy values of *Ekonomi Rakyat*, it is necessary to describe the idea according to three different philosophical paradigms as followed:

<i>ONTOLOGICAL</i>	<p>Japan's victory in the Tsushima War (1904-1905) against Russia augmented the confidence of Asian people. Given the epithet of Rising Sun, Japan was the initiator of many significant changes in international relations. The significant changes themselves were not only experienced in the insurgency of third world countries against western countries but also between the European countries themselves which were marked by the beginning of World War I in 1914. Besides, other changes of the political constellation also flare-up.</p> <p>Realizing such motivation, Indonesian people then learnt to alter their clannish ideology into nationalism. The similarity in history background and bitter experience of imperialism also triggered the unification of Indonesia. (Hatta, 1993)</p>
<i>EPISTEMOLOGICAL</i>	<p><i>Ekonomi Kerakyatan</i> is not only conceptual but real and concrete. Therefore, in examining its epistemological-philosophical content, the review must cover comprehensive scopes of real sectors that have thrived in a system of people's economy which was, among others, people's agriculture, smallholder plantation, people's fishery, people's markets, etc. In addition, it was also familiar with commodity-based people's economies such as copra folk that became the ultimate pillar for the sector.</p> <p>The grandiose interpretation of <i>Ekonomi Kerakyatan</i> as the adversary of capitalism can actually be simplified by measuring</p>

	<p>the human development index. Everything that could improve people's welfare and/or level up the quality of people's lives is part of <i>Ekonomi Rakyat</i>. (Rizal Ramli, 2014)</p>
AXIOLOGICAL	<p>In examining the philosophical content of the People's Economy through an axiological approach, it is important to understand its strategic role in national economic development, with the following premises:</p> <ol style="list-style-type: none"> a. Empowering the people is a national obligation. It is the government's responsibility to ensure that all prevailing regulations can increase people's productivity; b. The development of <i>Ekonomi Rakyat</i> will increase people's purchasing power. The ability to develop themselves (self-empowering) will not only enable them to achieve economic added value but also social culture added value. c. The empowerment of the people and development of <i>Ekonomi Rakyat</i> is taking a major role in increasing people's bargaining position towards economic exploitation and subordination; d. By having more active and more productive people in economic activity, the value-added of the economy will be maximized for the economic development; e. The development of <i>Ekonomi Rakyat</i> as an ultimate pillar of the national economy will increase the independence of the domestic economy; it will suppress as much as possible the dependency on import contents, increase domestic contents of domestic products and, finally, will concurrently develop the domestic market.
AXIOLOGICAL	<ol style="list-style-type: none"> f. <i>Ekonomi Rakyat</i> is the backbone of the national economy. In every stage of the economic cycle. <i>Ekonomi Rakyat</i> provides employment, low-cost products, low-cost services and low cost of living to a large number of citizens, especially to low-paid employees who work for large-scale corporations. In other words, <i>Ekonomi Rakyat</i> provides a trickle-up effect which subsidizes big economic agents and becomes an ultimate pillar of the national economy. This is the opposite of the trickle-down process of neoliberalism which is elusive and plunging. g. <i>Ekonomi Rakyat</i> as moral economics is playing a strategic role. It must give a significant impact to the acceleration of the economy and social transformation. It must not be considered as philanthropy, but purely focuses on people's wellbeing.

II. *Ekonomi Kerakyatan* ideology in the 1945 Constitution

The debate over which will be brought to the orientation of the Indonesian economy always refers to the two main poles. First, there are parties who want to implement the politics of liberalism into the body of the national economy. Second, those who insist on maintaining a Pancasila-based economic system as an identity and characteristic of the national economy.

In addition to the efforts of several parties who want the liberalization of the national economy through legislation, another problem arises - regarding the interpretation of article 33 of the 1945 Constitution. The undeniable thing to do is to try tracing back the historical side of our nation.

In sessions of The Investigating Committee for Preparatory Works for Independence's (BPUPKI) plenary meetings, the atmosphere that encompassed the spirit of founding fathers is dominated by the motivation of anti-colonialism and anti-imperialism. At the first time, *Ekonomi Rakyat* was initially shared and then institutionalized into the constitution, there was significant dialectic on the idea of people sovereignty (*volkssoeveriniteit*).

It is captured well in the Minutes of BPUPKI Plenary meeting that at the very first stage establishment of this nation, the idea of individualism is strongly refused. However, the idea of people's sovereignty that can be a functioning democracy in Indonesia itself was still vague. Muhammad Yamin proposed that the people sovereignty must be represented by a head of state as other it was the characteristic of a democratic state. Soepomo then emphasized that, unlike the democracy of western countries referred to the thoughts of Thomas Hobbes, John Locke and Rousseau, Indonesia must refer its democracy to the integralist theory of Spinoza, Adam Muller, and Hegel. (BPUPKI, 1945) However, it was not clearly defined the character of Indonesia democracy, the position on people and its role in the national economies.

It was Soekarno who then defined the *philosophische grondslag* of independent Indonesia. Independent according to him should mean "*political independence*" that not only provides democracy in politics yet also in economics (*politiek economische democratie*) by realizing social welfare. In his speech dated March 28, 1963, Soekarno emphasized that it was time to prioritize the national resources with a cooperative collaboration between people and government. Thereby, the Guided Economy was the most compatible mechanism to suppress the free-market forces through wide state interference and to dominate state ownership. However, it was still questionable what part of economics shall be operated by the government as the people's representation and what part shall be managed independently by the private institutions. Soekarno's concept still failed in defining how the welfare state can be manifested. It was the vice president, Muhammad Hatta, the one who was able to narrate the people spirit and clearly define how the Indonesian economic structure should be established accordingly to its *volksgeist*. He then drafted Article 33 of the 1945 Constitution as the economic breath and pillar of the Indonesian nation.

According to Hatta, the right to control the state only persists for strategic sectors. Nevertheless, it does not necessarily mean that the state itself should be an operator or provider of goods or services. More precisely, state control means state regulation of economic activities, in particular, to prevent exploitation of those who are economically weak by those who are economically strong ... The government should build public infrastructures such as electricity, water supply, sewage system, public transportation, and other utilities

that affect the livelihood of most people or what we call 'public utilities'. All these are the responsibility of the government." Since Indonesia established Article 33 in its constitution¹, it has actually, in fact, outlined a firm national policy for Indonesia's "economic transformation" and "social transformation". Furthermore, when we speak of economic transformation and social transformation is actually talking about socio-economic disparities and socio-economic injustice in the context of social welfare.

However, at the time the government still needed to face the challenge of economic transformation. It is really important to steadily "transform a subordinate colonial economic system into a democratic national economic system." The founders of the Republic have been very careful to avoid the possibility of chaos in the implementation of economic transformation, and therefore constructed Clause II of the Transitional Regulations of the UUD 1945 (Constitution) which reads:

"All existing state bodies and regulations still apply immediately, as long as there is nothing new according to this Constitution."

With such transitional rules, there is a "dualism" in the national economic system. The first system is imperative based on the understanding of economic democracy under Article 33 of the 1945 Constitution which is the economic concept based on "togetherness and family principle" (based on mutualism and brotherhood or in religious language based on *emaah* and *ukhuwah*) and the second system is temporarily based on individualism or "individual principles" following Wetboek van Koophandel (KUHD) in accordance with Clause II of the Transitional Rules of the 1945 Constitution.

Attention then was brought to *Ekonomi Rakyat* expressed by Bung Hatta. He argues that the economic development of Indonesia is essentially the development of a populist economy. His concern was on the historical background of colonization in Indonesia itself.

¹ In the point of view collectivism, economic democracy of Indonesia, placed the interests of society in the first priority, as described in the Elucidation of Article 33 of the 1945 Constitution, "...In economic democracy, the priority is the prosperity of society not the prosperity of the people ... Prosperity for all people..."

To guarantee the role of state to protect the priority position of people, Article 33 Paragraph (2) of the 1945 Constitution rules :

"... Any production that is important to the State and affects the livelihood of the people are controlled by the State ..."

Meanwhile, the people position as central-substantial priority explained in Article 33 Paragraph (3) of the 1945 Constitution :

"... Earth and water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people ..."

The concept of a *Ekonomi Rakyat* is a "middle way" ideology that Hatta initiated in response to the failure of communism and liberalism that developed at the time. This concept is embodied in Article 33 of the 1945 Constitution and the placement of cooperatives in the Indonesian economy.

Unlike others' economic state's nature, the Indonesian economy is not only determined by its natural resources, its international bargaining position and its people aspirations, yet it is also influenced by the shadow of colonization which impoverished the majority of its citizens.

The original value of Article 33 which derived from the spirit of *Ekonomi Kerakyatan* supposedly became the core framework of all legislatures in Indonesia. However, in fact, many of the economic laws do not adopt the philosophical value behind the original Article 33. If we refer to its historical background, the transformation began earlier since independence day. The transition rules of the Constitution 1945 facilitated the possibility for the existing state bodies and regulations to still be applicable immediately. The idea was actually to avoid any possibility of a legal vacuum, yet this article has not been amended even decades after the independence. Meanwhile, in the period before independence, the economic system brought by imperialism was way different from the idealism of *Ekonomi Kerakyatan*. As mentioned by Andrew Mack on his thesis, the economic system was characterized by competition, appropriation of economic surplus, collusion with local rulers, and ultimately the domination of capital also production efficiency by reducing labour costs– in other words imperialism was based on the main character of capitalism. (Mack, A. 2001) This condition then resulted in the dualism of the Indonesian economic legislature. It is further described by the senior economist, Sri Edi Swasono that eventually Indonesian legislature is divided into two structures: *first*, which is based on Article 33- the idealism of *Ekonomi Kerakyatan*- such as Law on Cooperatives and Law on National Social Security System; and *second*, which based on the *Transition Rules* – that enables the imperial capitalistic system to continue to exist– such as Law on Foreign Investment, Banking Laws, Capital Market Laws, etc. (Swasono, S.E.,2010)

III. The Rise of Capitalism

There are many journalists and scholars that have conducted research on how the ideology of capitalism infiltrated many countries' economic policies and regulations. However, in regards to Indonesia's economic history background, there are at least five authors who can comprehensively explain the early years of economic shifting in Indonesia. They were Naomi Klein; Stiglitz; Bradley Simpson. Summing up the researches of those authors, we can conclude that there are at least three sequences that will orderly transfix Capitalism into and become the economic system:

1. Stage of Shock

The doctrine of shock is a theory to explain how strength, stealth and crisis are used in implementing neoliberal economic policies such as privatization, deregulation, and deduction to social services. Naomi Klein advances this theory in her 2007 book, *The Shock Doctrine: The Rise of Disaster Capitalism*. (Klein, 2007)

In periods of disorientation after wars, coups, natural disasters, and economic panic, pro-corporate reformers pushed aggressively through unpopular "free market" actions.

Klein tells the history of an electric shock therapy experiment conducted by Scottish psychiatrist Ewen Cameron for the CIA in the 1950s. Cameron's "shock therapy" tried to return troubled patients to blank sheets that could be used to write new personalities. Klein believes that a parallel "shock therapy" process has been used at the macro level to implement neoliberal economic policies in countries around the world.

The surprise doctrine states that in periods of disorientation following wars, coups, natural disasters, and economic panic, pro-corporate reformers aggressively pushed through unpopular "free market" measures.²

Klein argued that various forms of shock doctrine have since been used to advance hyper-capitalist reform, for example in the former Eastern Bloc countries after the collapse of the Soviet Union and in South Africa after the end of apartheid. Recently, pro-corporate supporters have used the 2004 tsunami in South Asia to privatize public beaches in Sri Lanka and have worked to cut corporate taxes and public education and reshape the environments behind Hurricane Katrina. In each case, we witnessed, in Klein's words, "regulating raids in the public sphere in the midst of catastrophic events, combined with disaster treatment as an attractive market opportunity."

In Indonesia, the patterns of giving shock to indoctrination also happened. Doctrine caused by those accused of being communists, then easily made enemies of the government, and the community followed the government's "direction" so that even the concept of Pancasila Economics was rejected. However, the 1997-1998 reforms made Indonesians aware that the economic paradigm during the New Order was wrong because it was not populist, and was clearly in favour of the interests of conglomerates who conspired with the government. Then came the populist economic movement which was actually none other than the Pancasila Economic sub-system, but because the word Pancasila had been misused by the New Order, people tended to be allergic and avoid it. If the Pancasila Economy includes 5 precepts (moral, human, nationalist, democratic and socially just), then the populist economy emphasizes only the fourth principle which had been most violated during the New Order period.

2. Stage of Dependency

Malpractice carried out by the IMF to Indonesia, the international funding agency came to offer various "medicines" for the Indonesian economy that was "sick". Soeharto looked down while signing his signature on the Letter of Intent (LoI) document. Next to him, Michel Camdessus, the IMF Director, stood with his arms crossed. After signing, Suharto then gave a short speech. Similarly, Camdessus gave his formal speech. Both of them then shook hands while throwing a smile at a ceremony in Cendana.

The January 15, 1998 incident was considered as "the surrender" of the New Order

² One of the earliest examples of the shock doctrine is the Chilean case. In 1973, democratically elected socialist president of Chile, Salvador Allende was overthrown in a coup led by great general Augusto Pinochet, with support from the United States. In the midst of the turmoil caused by the coup and tensions caused by the subsequent economic downturn, Milton Friedman suggested that Pinochet implement a "shock doctrine" of major reforms including privatization of state-owned industries, elimination of trade barriers, and government spending cuts. To implement these policies, the Pinochet regime was appointed to the important position of several Chilean Friedman students. In addition, to suppress popular movements opposed to this change, the regime released a notorious program of torture and "disappearance", which eventually led to the deaths of thousands of dissidents.

regime to economic turmoil. Soeharto finally gave up and asked for IMF assistance, after the Indonesian economy was hit by a severe crisis that made the country's finances bleed. Let alone, Soeharto and his family were actually gaining benefits from this particular event.

Like a "doctor", the IMF diagnosed the disease in Indonesia to experience "moderate-scale" monetary shocks due to the faltering market confidence in the Indonesian economy as a result of the Thai crisis.

Soeharto did not remain silent before falling into the lap of the IMF. Several economic policy packages have been deployed, including issuing foreign exchange saving policies, on July 11, widening the range of interventions to reduce the purchase of US dollars by BI. Postponement of large projects worth Rp39 trillion using the dollar on September 16, and raising BI interest rates to stimulate people to release dollars and buy SBIs. But this policy makes capital costs more expensive.

Indonesia's sick economy is not only reflected in the rupiah but all aspects of economic parameters. Miranda S. Goeltom in the Essay in Macroeconomic Policy: The Indonesian Experience recorded the most dismal peak in the Indonesian economy from 1996-1999 in 1998.

Indonesia's spooky macroeconomic figures were reflected in that year. In 1998, the peak of the crisis occurred with banks with bad loans or gross NPLs in banks reaching 48.6 per cent. Indonesia's economy is minus 13.3 percent, the average investment is minus 33 percent. The issue of debt is no less complicated.

Stiglitz said, there were four steps that became the IMF pattern.

- a. Privatization. Sales of SoE assets to IMF cronies.
- b. Capital market liberalization. Open capital markets so that investment increases. For this reason, the IMF forced patient countries to set high-interest rates. Indonesia is forced to set interest rates up to 70% and apply free division systems.
- c. Revocation of subsidies by increasing the prices of strategic commodities such as fuel, fertilizer, food. The impact of the people's economy is getting squeezed, life is increasingly difficult, which then leads to riots. In the case of Indonesia, it was proven in the May 1998 riots.
- d. Free trade. Opening a market for imported products from developed countries resulted in the killing of domestic products.

In the book "Political Economy" by Deliarnov, the government's foreign debt at the end of December 1997 was large enough to measure at that time it reached 137.42 billion US dollars, while private foreign debt penetrated 73.96 billion. This debt is said to rise many times. The rupiah which is getting worse against the dollar adds to the debt burden for the government or the private sector.

Since the fall of Soeharto in May 1998³, the new government is still in the

³ Soeharto had built a business empire and stockpiled billions of US dollars at home and abroad. Suharto's assets abroad included a US \$ 4 million hunting park in New Zealand and shares on a \$4 million cruise ship moored near Darwin, Australia.

Not only assets, billions of dollars of Soeharto's money were kept in Swiss banks. This is known when Soeharto stepped down, he also moved quickly to secure his wealth by transferring 9 billion US dollars from Swiss banks to Austrian

shadow of the IMF. As it is found that from 1997 to 2003, Indonesia has signed 26 LoIs with the IMF. Stiglitz lists several important aspects that need reform. First, is the importance of recognizing that capital market liberalization and short-term capital flows have a large impact on economic instability. This aspect needs to be regulated. Second, if there is a crisis caused mainly by instability in the capital market, then debtors who cannot pay must be declared bankrupt, not "helped" (in IMF terms bailout). If a bailout is carried out, the country will bear the debt burden so that the government is required to cut all costs of public services to save foreign exchange in order to repay debt. Third, in dealing with the crisis, you should not rely too much on the bailout. Fourth, there is a need for better and more efficient banking regulations in developing countries, in contrast to developed countries. Fifth, the handling of risks arising from economic liberalization or globalization needs to be improved. Sixth, the security net also needs to be strengthened as part of risk management. Finally, more prudent and targeted actions are needed to overcome the crisis due to the mismanagement of economic globalization. This is a reform that must be carried out in the IMF in a package that is often referred to as financial architecture reforms.

3. Conglomeration in Indonesia

Supporting Karl Marx's formula on the never-ending Money-Capital-Money (MCM) formula, in the book *The Nature of Capitalism*, Heilbroner defined that Capital is not a material thing but a process that uses material things as moments in its continuously dynamic existence.⁴ Heilbroner notes that the relationship of domination that is represented in the capital has two poles: (1) the dependency of the working class on the capitalist class, and (2) the never-ending drive to accumulate capital.

Soeharto alone was the one who gained benefits after he signed the agreement with the IMF. It is recorded that before the regime of Soeharto the average wage of a CEO was only 10 times the amount of the middle blue-collar, now it has doubled for hundred times. Based on the results of a Time investigation published in 1999, Soeharto had built a business empire and stockpiled billions of US dollars at home and abroad. Suharto's assets abroad included a US \$ 4 million hunting park in New Zealand and

bank accounts.

According to a report from the National Land Agency quoted by Time, Soeharto controls 3.6 million hectares of land (real estate) and 100,000 square meters of office space in Jakarta. In the New York Times report, Suharto's assets were estimated at US \$ 30 billion. However, Suharto denied the report. According to him, he only has 19 ha of land in Indonesia and savings of 2.4 million US dollars.

The Economist's report cited Soeharto's total personal property of US \$ 16 billion because it had been divided among wives, six children, half-brothers, and Suharto's grandson. Based on the Transparency International institution, Suharto's assets reached US \$ 15-35 billion.

Soeharto's assets did flow to his children. They help in hoarding dollars at home and abroad. Based on Time's report, Suharto's children have equity in around 564 companies, and have links with hundreds of other overseas companies spread from the United States, Uzbekistan, the Netherlands, Nigeria and Vanuatu.

⁴ Heilbroner, *The Nature and Logic of Capitalism*, 1985

shares on a \$4 million cruise ship moored near Darwin, Australia. Not only assets but billions of dollars of Soeharto's money were also kept in Swiss banks. According to a report from the National Land Agency quoted by Time, Soeharto controls 3.6 million hectares of land (real estate) and 100,000 square meters of office space in Jakarta. In the New York Times report, Suharto's assets were estimated at US\$ 30 billion. However, Suharto denied the report. According to him, he only has 19 ha of land in Indonesia and savings of 2.4 million US dollars. Based on the Transparency International institution, Suharto's assets reached US\$ 15-35 billion. Soeharto's assets did flow to his children and cronies. They help in hoarding dollars at home and abroad. Based on Time's report, Soeharto's children have equity in around 564 companies and have links with hundreds of other overseas companies spread from the United States, Uzbekistan, the Netherlands, Nigeria and Vanuatu.⁵

IV. Deviations of *Ekonomi Rakyat* in Indonesian Legal Framework

Facts of Unconstitutionality

The dependency of the economy has not been achieved decades after independence. Several figures as followed slightly illustrated how the people sovereignty has not been represented in the national economy:

- According to the Indonesia Politics Economics Association (AEPI), it is reported that 85% public shares of Indonesia State Owned Enterprise belong to foreign investment (AEPI, 2018)
- From the Investment Coordination Agency (BKPM)'s Investment Realization Report, from January – December of 2018, Foreign Direct Investment (FDI) has been dominating most of the business sector in Indonesia. Of the total Rp692.8 Trillion investment realization, 62.1% is controlled by FDI. Only 37.9% is contributed by Domestic Direct Investment (DDI). (BKPM, 2018). However, even with the comparison of data of January - December of 2020 whereupon from the total of Rp.826.3 Trillion where approximately 49.95% controlled by FDI, and 50.05% by DDI sector (BKPM, 2020), there is still much to be desired as the domestic sector have yet to uphold a major undertaking of the field.
- From the data of Statistics Indonesia (BPS), Indonesia booked a US\$116 million trade deficit in February 2018, bringing the deficit year-on-year (yoy) to \$872 million. (BPS,2018). Newer data presented by BKPM, however, has announced that the state has enjoyed a trade surplus of US\$ 5,73 Billion as of October 2021 (BKPM, 2021), but also with the reality of non-gas trade deficit remaining at US\$ 9.28 Billion.

Considering facts above-mentioned, it is questioned whether the legislation related to economic activities such as investment and trading has truly rooted in the idea of *Ekonomi Rakyat* which prioritizes the role of people in the central substantial, not the other way around, where people are considered as marginal residual economic factors.

⁵ Time Asia archive documents, 1999, https://kepuustakaan-presiden.perpusnas.go.id/uploaded_files/pdf/article_clipping/normal/TIMEASIA_19990524_1.pdf, accessed on 21 December 2021

If we refer to the relationship between the rule of law and economic development, it is prescribed that the law can be a facilitating factor for economic development *only if* some basic conditions are satisfied. Those conditions vary depending on the history, culture and initial situation in each country. However, they may be concerned with (i) the domestic and international economic situation such as the degree of commercialization and the extension of impersonal exchange, (ii) the cultural attitude of the people toward law, for example, the reliance on formal rules, (iii) the strength (or weakness), efficiency and rationality of the existing informal rules. (Hiroshi Matsuo, 2005)

In the case of Indonesia the gap between formal rules of economic law in legislation and the informal rules such as the origin people's ideology of law is very clear. It will be further explained by the case study of three major legislation that play the biggest role in determining the economic national kaleidoscope.

In order to explain the deviation of such additional clauses, it is important to understand the value of *Ekonomi Rakyat* which differs from the value of neoclassical. Although the value of neoclassical ideology has been globally flourished, yet a constitution must only refer to the genuine character of its people's idealism (*volksgeist*). The distinction between the two ideology is as followed:

NEOCLASSICAL ECONOMICS Neoliberalism /Capitalism	EKONOMI RAKYAT Pasal 33 UUD 1945
Based on the Principle of Personal Freedom / Liberalism	Based on the principle of Mutualism
Individualism	Fraternity/ Brotherhood
Competitiveness	Cooperativism
Market-sovereignty	People-sovereignty
Homo-Economicus	Homo-Humanus Homo-Socius Homo-Ethicus Homo-Religious Homo-Magnificus
Self-Interest	Mutual- Interest
Capital-centered	People-centered, people-based
Maximum Individual Profits	Social Welfare
Exploitation Economics	Democracy Economics
Individual Business Ownership	Public Business Ownership
Social Ideology is considered as caritas and/or philanthropy	Social ideology embodied social civil rights

The Amendment of Article 33 Indonesian Constitution

It was back in the early reformation regime when parliament was experiencing *pseudo euphoria*, the article 33 of 1945 Constitution was changed. The origin article 33 was put in Section XIV titled social welfare. This section is actually very representative and self-explanatory. It remains for all the readers that the main goal of the Indonesian economy should be social welfare.

The 2002 constitutional amendment changed the title of section XIV to become national economic and national welfare. Although, the title is still self-explanatory yet the change brought fundamental and significant deviation of social welfare in Indonesia. With this new amendment, social welfare has not become the primary goal in the national economy. Its ultimate position is reduced in meaning and rule. It is now only a derivative goal of the national economy.

Moreover, article 33 was edited with two new clauses in the fourth and fifth paragraph.

“(4) The organisation of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, *efficiency* with justice, continuity, environmental perspective, *self-sufficiency*, and *keeping a balance in the progress* and unity of the national economy.

(5) Further provisions relating to the implementation of this article shall be regulated by law.”

The additional clause has brought incompatible value in the constitution. Mainly the value of *efficiency* never becomes a goal in Pancasila.

However, having an ambiguous constitution has made vague ideas on how the economic system itself must be regulated. This following table recap how many times judicial reviews on legislation related to Article 33 Constitution alone have been filed.

Period	Register Number	Claims	Verdict
2003 - 2008	001-021-022/PUU-I/2003	Liberalization of Electricity	Granted
	002/PUU-I/2003	Deregulations of oil and gas	Partially Granted
	058-059-060-063/PUU-II/2004	Commercialization and Privatization of Water	Rejected
	21-22/PUU-V/2007	The same treatment; national economy; controlled by the state; economic democracy; the spirit of equality; asset acquisition; open a business field; closed business field; Provision of land rights	Partially Granted
2008-2013	121/PUU-VII/2009	Mineral and Coal Mining Exploration Permit Mechanism	Rejected
	10/PUU-X/2012	Centralization of Mastery of Mineral and Coal Mining Areas	Conditionally Constitutional
	25/PUU-VIII/2010	Redistribution of mineral and coal mining resources	Granted

	30/PUU-VIII/2010	Mechanisms for Mineral and Coal Mining Exploration for CVs, Firms and Individuals	Partially Granted
	35/PUU-X/2010	The existence of customary forests in the Forestry Law	Partially Granted
	36/PUU-X/2012	Oil and Gas Liberalization through the Authority of the Oil and Gas Management Agency in the Oil and Gas Law	Partially Granted
	5/PUU-X/2012	The existence of the International Standard School Pilot Project in the National Education System Law	Granted
	13/PUU-VI/2008	Education Budget Allocation in the 2008 State Budget Law	Granted
	11-14-21-126-136/PUU-VII/2009	Education Commercialization	Partially Granted
	12/PUU-VIII/2010	Privatization of Health Experts	Partially Granted
	19/PUU-VIII/2010	Limitations on Cigarette Ads	Rejected
	27/PUU-IX/2010	Outsourcing	Partially Granted
	37/PUU-IX/2011	Severance Conditions	Partially Granted
	55/PUU-VIII/2010	Customary rights are related to actions that will require permission for plantation business	Granted
2013-2021	85/PUU-XI/2013	Privatization and Commercialization of Electricity	Granted
	9/PUU-XI/2013	Privatization and Commercialization of Electricity	Rejected
	106/PUU-XI/2013	Privatization and Commercialization of Electricity	Rejected
	58/PUU-XII/2014	Privatization and Commercialization of Electricity	Partially Granted

	4/PUU-XIII/2015	Privatization of Oil and Gas	Rejected
	87/PUU-XIII/2015	Privatization and Commercialization of Electricity	Rejected
	111/PUU-XII/2015	Privatization and Commercialization of Electricity	Partially Granted
	122/PUU-XIII/2015	Deliberation on the surrender of land	Rejected
	138/PUU-XIII/2015	Discrimination against farmers in conducting plantation business activities	Partially Granted
	14/PUU-XVI/2018	The aim of SOE should not to gain maximum profit; The change of capital structure should involved the people concern and not be only decided unilaterally by government regulation	Rejected
	60/PUU-XVIII/2020	Regarding the amendment of the coal mineral law. It also covers on whether its article 169A is in accordance with the Constitution including article 33	Rejected
	59/PUU-XVIII/2020	Involvement of the Regional Representative Council (DPD) in the formation of the amendment of the coal minerals law, also covering whether the formation of said law is in accordance with the Constitution including article 33	Rejected
	64/PUU-XVIII/2020	Extension of Buit, Operate, and Transfer contracts in regard to coal minerals given to the private sector	Partially granted

Table: sample Constitutional Court's verdicts related to Article 33 of the 1945 Constitution. There are at least 40 requests that have been received by the Constitutional Court regarding

cancellation of laws relating to *Ekonomi Rakyat* deviations.⁶ This shows the lack of understanding of the House of Representatives in manifesting the breath of the *Ekonomi Rakyat* in the body of laws which become the pillars of the economic system in Indonesia.

The above judicial reviews in regard to the meaning of Article 33 of the 1945 Constitution, here brought by the Constitutional Court, reflects the interpretation that the court has towards the meaning of the article as it has understood it historically and legally. The court, as the preserver of the Constitution and throughout these reviews, have provided the state the meaning of Article 33 principles which are: in regard to the vital means of production, in regard to land, water, and natural resources, on state domination, on the usage for the greatest extent of prosperity of the people, and on the principle of Indonesian economic democracy.

The dynamical approach of the court is first expounded on the first two judicial reviews of the table numbering 001-021-022/PUU-I/2003 and 002/PUU-I/2003 where, despite basic economic ideology written down since BPUPKI times, were ambiguous at best. The meaning of “vital means of productions” are left to the Government and official legislators and future interpretations may lead to soft liberalization if the Government finds it that one such means is not “vital”. One the other hand, in regard to judicial reviews on state domination, meaning the same judicial reviews as mentioned above as well as 058-059-060-063/PUU-II/2004 and 8/PUU-III-2005, the court finds that it is justified that the state shall have the ability to formulate policies and regulations, to participate in the management, through the ownership of shares, of state-owned enterprises, and to supervises the usage of state domination on natural resources for the greater prosperity of the people. It refers to the basic idea that vital means of production shall be dominated and the Court opinionated that it shall be used with the state in a central position in the usage of such natural resources. This came through the form of permission granting and concession that is under the control of the Government so that truly the state can participate in the overseeing of the usage of vital resources.

In regard to principles of Indonesian economic democracy, it is found that the court in the judgement of judicial reviews, meaning those numbered 001-021-022/PUU-I/2003 and 002/PUU-I/2003 among others, has used the principles found in paragraph 4 of Article 33 in the judgement of constitutionality of laws. Based on these principles, the court refused market mechanism, market competition, and refer to sustainability to judge whether certain laws truly live in the spirit of article 33 and refer to the wider social prosperity. Even with the judgement of recent judicial reviews such as one numbering 64/PUU-XVIII/2020, the court acknowledged how, in regard to the extension of contracts and licenses for private institutions, the domestic sector shall be prioritized first for the greater prosperity of the people and how it deemed was appropriate to restrained the applications of provisions within certain laws to not only benefit the agenda of the central government and private institutions. The dynamics and soft ambiguity that the court has presented in a number of these decisions, including those which were only partially granted or even rejected, is worrisome when it shall be considered that by the authority that was given to it, the court must present a firm line on the construction of economic regulations that shall be based on a

⁶ Only 6 of them were granted, the rest were partially granted, rejected, and even can not be accepted.

righteous foundation. The court has acknowledged Indonesia's foundational economic approaches in its decisions and is aware of the spirit of the founding fathers of the nation. It has proved the unconstitutionality that can be apparent on laws produced by blind liberal thoughts and restrained market behaviours.

It is right to say therefore that the court, as the guard of the Constitution, shall take on the role to firmly interpret *ekonomi kerakyatan* as Indonesia's indigenous economic ideology in judicial reviews in light of Article 33 as today the original spirit of cooperation is not explicitly stated and the people's role in economy is not yet solid. Thus, in greater effect, the actions and decisions of the court shall give a clear image to the government and legislators on how methods of economic sector management can be constructed and implemented so that it can be found that further regulations truly abide on the basis of fair efficiency as mandated by article 33.

CONCLUSION

The distribution of wealth, poverty, and a distinction between the rich and the poor is a legacy that must be accepted by the reform government and Indonesian society today. It is a paradox, when a country which proclaims an economic system that is said to have originated from a sense of common sense and affinity as a colonized nation, but it is actually comfortable with an overly capitalistic mixed economic system through the mechanism of free markets. This is positively correlated with the focus of efficiency in economics that never goes hand in hand with justice. The value of Pancasila itself has clearly determined that the economy of Indonesia should be established with the focus on its people as a central substantial priority.

In fact the deterioration factor of *Ekonomi Rakyat* value has existed earlier since Indonesia independence by having the transitional rules (which should be temporary) in permanent period of time. The values of *Ekonomi Rakyat* are worse forgotten with the political blueprint that is enforced to legitimize incumbent rulers in the regime of new order.

The one ultimate key exit from the strategic capitalism master plan and reinvigorate *Ekonomi Rakyat* is by understanding its nature and logic. Therefore it is important for economists and jurists to understand the history that shaped the people itself and the value behind that empowered them.

In the end of this discussion, it shall be noted that Independence shall clearly express a nation's true values and abolish those that are not in accordance with Indonesian democracy. To achieve this, the proclamation of independence shall be viewed not only as a political statement but also as a cultural statement that changes the point of view, colours, and design (*Die Gestaltung*) of the people that leads to its transformation from being non-sovereign to be responsible in its sovereignty in determining the future of its civilisation.

The Constitutional Court shall also take on the role to provide interpretations affirming the shape and colours of *Ekonomi Kerakyatan* in particular to the meaning of certain phrases in the Constitution that in the post-amendment era have lacked the inclusion of cooperation, which should be important in the Indonesian economic system. In addition, a comprehensive meaning of fair efficiency (*efisiensi berkeadilan*) shall be placed importantly so that the parliament and the government understand the clear picture and boundaries needed to determine the methods to manage the economic sector based on fair efficiency as ascribed by the Article 33 of the Constitution.

Finally, *Ekonomi Kerakyatan* can be further established through the development of national legislation. This can be done through the creation of cross-sectoral acts known as *Omnibus Law* and the implementation of triple co principle (co-ownership, co-determination, and co-responsibility) which will integrate *Ekonomi Kerakyatan* that is in line with Article 33 of the Constitution to that developing legal climate. Through the triple co principle, the notion of co-ownership can be achieved via employee shares ownership. Therefore, the people, in particular: employees, are placed in a substantial and central position which is a native thought of *Ekonomi Kerakyatan* as delivered by Hatta.

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