

The Collapse of the New Orde Regime Resulted in Changes in Indonesia's Economic Policy

Vicki Dwi Purnomo^{1*}, Kelik Endro Suryono²
Widya Mataram University Yogyakarta

Corresponding Author: Vicki Dwi Purnomo Vickydepe@gmail.com

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ABSTRACT

The reform era or the post-Suharto era in Indonesia began in 1998, to be precise when President Soeharto resigned on May 21 1998 and was replaced by the then vice president, BJ Habibie. This period was founded by a more open socio-political environment. Issues during this period included the push for democracy and a stronger civilian government, elements of the military trying to maintain influence, growing Islamism in politics and society in general, and demands for greater regional autonomy . The reform process resulted in a higher degree of freedom of speech , in contrast to the widespread censorship during the New Order . As a result, political debate has become more open in the mass media and artistic expression has increased. Events that have shaped Indonesia in this period include a series of terrorist incidents (including the 2002 Bali bombings) and the 2004 Indian Ocean earthquake and tsunami . Using the knife of deconstruction of critical legal theory and socio-legal methodology with statutory, historical, conceptual and legal political economy approaches, three questions are raised, firstly the role of law in the market reform agenda which underlies the idea of limiting the role of the state in the economy; second, how is the role of the state in the economy being debated in the MPR and; third, what are the implications of the market reform agenda for the results of changes to the economic constitution.

INTRODUCTION

With changes in the direction of the world economy, the cause of changes in society during the New Order era was because people began to find it difficult to get basic needs. The prices of basic necessities, including rice, cooking oil, kerosene, milk, eggs and others, have increased. In addition, Indonesia's political situation is increasingly uncertain and out of control. This resulted in people becoming more critical and distrustful of the New Order. Market reform is part of a narrower legal reform in the economic sector because it requires the target country to make institutional and legal changes that support increased efficiency and economic growth through the establishment of a free market regime. Since the early 1990s this agenda has become a trojan horse for the dissemination of Washington Consensus policies in developing and post-socialist countries which can be observed in the shift in policy and legislative products in the economic field from those that carry the idea of limiting the role of the state in the economy.

Such a shift is an important area of study to understand what is referred to in the constitutional law literature as an economic constitution. There are many developing countries and post-socialist countries that have taken steps to change their economic constitution to support their market reform agenda. In Russia, for example, the implementation of the Glasnost and Perestorika market reform agenda during the Gorbachev Administration cumulatively pushed for a change in the Soviet economic constitution from an economic constitution style with socialism nuances to an economic constitution with capitalism nuances. As stated by Jazim Hamidi and Malik, the shift from a socialist economic constitution to a free market is a radical step because this shift is only possible by overturning the paradigm of Marxism used by the Soviet constitution. The result is various concepts of neoliberalism such as protection of property ownership, contracts, restrictions on state interference, the principle of fiscal balance and guarantees of economic freedom.

This can be found in Russia's current economic constitution. ⁷ Since the entry into force of the Russian constitution in 1993, the country has demonstrated its adherence to implementing a constitutional market reform agenda under the direction of financial institutions such as the World Bank and IMF. In short, various global economic and political changes since the end of the cold war led to a proposition that changes to the economic constitution are the main prerequisites that must be fulfilled when a developing and post-socialist country implements a market reform agenda. A similar proposition can be observed in the phenomenon of changing the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia in Indonesia where international financial institutions such as the IMF, World Bank and USAID have played an important role in various market reform agendas during the 1998 economic crisis. There is a wide understanding that the provisions of the economic constitution of Article 33 The 1945 Constitution of the Republic of Indonesia has contributed to hampering efficiency and economic growth because it requires the formation of economic legislation that is restrictive and protective of market mechanisms

So that things such as corruption, collusion and nepotism, unfair competition and rent-seeking stem from the abuse of power granted by the constitution to the state during the New Order era. This experience gave rise to a consensus to avoid the formation of policies and legislative products in the

economic sector that could hinder the market reform agenda by changing the provisions of the economic constitution that hindered it. According to Todung Mulya Lubis and Mas Achmad Santosa, rewriting the economic constitution is an urgent and unavoidable matter to answer the challenges of internationalization of law and the economy in the future. By changing the provisions of the economic constitution to become more market-oriented, proponents of neoliberal policies believe that the state can benefit from market forces, without being burdened with the responsibility of meeting public needs as the previous economic constitution imperative. In addition, the context of economic globalization and political democratization has authoritatively contributed to the transfer of responsibility for managing a nation's economy from the state to free and competitive market institutions.

THEORETICAL REVIEW

According to Dawam Rahardjo, the narrative of globalization 'encourages the formulation of an economic constitution Article 33 of the 1945 Constitution of the Republic of Indonesia which leads to economic liberalization, particularly in terms of minimizing the role of the state on the one hand, and adopting a competitive market system on the other. so that at that time when the MPR began to discuss the draft economic constitution Article 33 of the 1945 Constitution of the Republic of Indonesia during sessions in the period 1999 - 2002. During the second and third sessions, there was a strong urge to replace the principle of kinship and the concept of state control which they considered irrelevant and multi-interpretation with principles such as efficiency and the concept of economic freedom which further encourages adjustments to economic globalization. This proposal is also complemented by changing the term 'controlled by the state' to 'regulated by the state' which will restore the function of the state as a regulator. Several MPR members who were more moderate proposed the concept of a social market economy constitution as a middle way for the opposing camps.

Each of the supporters of neoliberalism and populist economy fought each other with their views until towards the end of the fourth session, none of the parties in the polemic were willing to reduce their proposals. Although this debate had forced members of the Economic Experts Team from the populist economy camp to resign, 'the MPR ultimately rejected the neoliberal camp's draft which removed state control over vital economic sectors which were deemed contrary to the preamble of the 1945 Constitution of the Republic of Indonesia.'¹⁸ In August 2002 the MPR decided to maintain the provisions of paragraph (1), (2) and (3), and add new provisions in paragraph (4) and paragraph (5) as follows:

1. The economy is structured as a joint venture based on the principle of kinship
2. The branches of production which are important for the state and affect the life of the people at large are controlled by the state
3. Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people
4. The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, independence, and by maintaining a balance of progress and national economic unity

5. Further provisions regarding the implementation of this article are regulated in the Law

According to Jimly Asshiddiqie, the results of these changes eclectically unify the views of state socialism represented by paragraphs (1), (2) and (3) and market neoliberalism represented by paragraph (4) which are seen as more in line with the needs of the state role represented by socialism and the demands of globalization. who want the role of the market in the economy.

There are three important issues that must be scrutinized after the amendment to the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia. First, the inclusion of the principle of neoliberalism in paragraph (4) actually adds to the ambiguity between the articles which have been biased from the start. Quoting Reka Dewantara's opinion 'The addition of paragraph 4 becomes ambiguous because this new paragraph is a technical matter concerning the management and implementation of economic development policies and programs. The thought behind this new paragraph is the notion of free market competition which requires the inclusion of explicit provisions for a free market system in the Constitution. The principle of fair efficiency in this new paragraph (4) [pen-example], it is difficult to explain the intent and purpose because it combines 2 concepts that are clearly very different and even contradictory. A more serious mistake than the 4th amendment to the Constitution is the loss of the principle of people's economy or economic democracy which is listed in the elucidation of Article 33 because the 2002 MPR Annual Session decided to abolish the entire elucidation of the 1945 Constitution.' The principles of market-oriented economic democracy in paragraph (4) are *contradictio in terminis* both when read separately or as a whole with other verses.

To moderate certain political economy interests that can shift the state's obligations to mastery of vital economic resources and sectors. The market reform agenda which has been substituted from outside enters as the dominant discourse to redefine the role of the state which is responsive to market interests into legislation. The phrase efficiency with justice, for example, can be used as a constitutional basis for the privatization of SOEs which neoliberals believe will increase competition, efficiency and national economic growth. "The consequence of this contradiction in Article 33 paragraph (4) is that the constitutional nature of state control is not singular and determinative, but is measured by the power relations of various competing aspects.

Second, the results of changes to the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia have increased the emergence of legislation in the economic sector that supports the market reform agenda. There are many examples of legislation based on free market principles imposed by the market reform agenda of international financial institutions such as Law No. 22 of 2001 on Oil and Gas, Law No. 20 of 2002 on Electricity and Law No. 7 of 2004 on Natural Resources. Water, Law No. 30 of 2009 concerning Electricity and Law No. 30 of 2007 concerning Energy.

Third, the rhetoric that economic freedom and free markets are the fast track to achieving prosperity is a paradigm that holds an imperialist agenda. 27 The market reform program designed by international financial institutions also carries the interests of multinational corporations and advanced industrial countries for access to abundant economic resources. in Indonesia. By creating an economic constitutional structure that is accommodative to the neoliberalism paradigm, the formation of domestic policies that carry such interests will be made easier. Criticism of neoliberal economic policies, both in the Indonesian and global cases, is actually not new. Rachmad Safa'at's study states that post-reform neoliberal hegemony has made law in the current economic field only a tool for economic legitimacy in power. At the international level, a study on economic inequality written by Thomas Piketty shows that neoliberal policies after the 2008 global crisis contributed to creating the richest 1% of society who control 47.5% of world wealth.

Based on the description above, this study will present a critical legal analysis of the implications of the market reform agenda injected by international financial institutions after the 1998 economic crisis on the processes and results of changes to the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia after the New Order. This study departs from a conceptual understanding that rewriting the economic constitution is the most representative way that will provide a constitutional framework for laws and regulations in the economic sector with a neoliberal pattern as the imperative for international financial institution market reform. It should be noted that the legal and sociological implications of the inclusion of the neoliberalism paradigm in the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia led to a reduction in the state's responsibility for controlling natural resources and vital production branches. This creates legal uncertainty regarding the fulfillment of socio-economic rights of the community which should be realized through the management of natural resources and vital production branches. The market reform agenda which increasingly dominates the discourse on the formation of economic policies after the amendment to the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia, has systematically contributed to the formation of legislation that shifts the role of the state to that of the market in controlling economic sectors which affect the livelihoods of many people.

So in this study using critical legal theory and socio-legal methods that place law in a social, political and economic context to obtain a holistic position in its study. To discuss the implications of market reforms for the process and results of changes to the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia. There are a number of studies on the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia which take a critical perspective as this research plan (will be described in the previous research sub-chapter), but does not touch on market reform discourse. To overcome these deficiencies, the results of this study can be a relevant reference.

METHODOLOGY

Formulation of the Problem

1. What are the implications of the market reform agenda for the results of changes to the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia?
2. Through what mechanism was the role of the state in the economy debated during the process of changing the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia in the MPR in the period 1999 – 2002?
3. What is the role of the state in the market reform agenda that underlies the idea of limiting the role of the state in the economy?

Research Purposes

1. Analyze the implications of the market reform agenda for the results of changes to the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia. 1.4. Research Benefits 1. Theoretical Benefits 12 Research results can contribute to the development of constitutional law studies in the field of economic constitutional studies. This research can be a reference for further legal research that examines the theme of economic constitution. 2. Practical Benefits The results of this research can be used as material for consideration in planning the direction of changing the economic constitution of Article 33 of the 1945 NRI Constitution in the MPR Working Committee.
2. Map and show the relationship between the market reform agenda and legal arguments related to the role of the state in the economy that arose during the process of changing the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia in the MPR in the period 1999 – 2002.
3. Deconstructing the theoretical foundations of legal thought or doctrine that underlies the idea of limiting the role of the state in the economy, its relation to neoliberalism ideology and its implications for the economic constitution as the supreme law that determines the direction of national economic policy.

The legal neutrality proposition is an attempt to cover up injustice and dominance of the dominant class through law. According to the CLS movement, law is nothing but an expression of certain powers and as such it is used to serve certain economic classes. They reject the view that law is made to serve broad and value-free public interests. The assumption that law is neutral, says Mark Tushnet, is nonsense. This thought is devoted to exposing the myth of liberal legalism, especially objectivism and legal formalism which hides the mode of oppression in legal products. CLS rejects claims that the law does not reflect class interests that have been taken for granted. Instead, CLS offers a theory of law and politics that is integrated with the postulate point that law is a product of political interests that is not neutral and value-free. It is not surprising that politically this movement views that a revolutionary political movement must necessarily take power as a condition for the formation of transformative legal products.

Types of Research

This legal research is non-doctrinal legal research, which uses socio-legal legal research methods. According to Soetandyo Wignjosoebroto, Socio-legal legal research rests on an inductive syllogism that emphasizes the explanation of whether or not there is a relationship (both causal and correlative) between various socio-legal variables. The word 'socio' in socio-legal represents an interface with a context within which law exists. Socio-legal research, according to Imam Koeswahyono, is legal research with: 'an interdisciplinary approach, namely using concepts and theories from various disciplines combined and combined to study legal phenomena, which are not isolated from the social, political, economic and cultural context in which the law exists.'

Research Approach

This socio-legal legal research uses four approaches to describe the legal issues studied. Statutory approach. This approach is used to map the normative aspects of the economic constitution Article 33 of the 1945 Constitution of the Republic of Indonesia and other laws and regulations related to market reform.

Types of Legal Materials The legal materials used in this study consist of primary, secondary and tertiary legal materials. The primary legal materials for this study are constitutional documents, namely:

1. The 1945 Constitution of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 1959 Number 75); and
2. The 1945 Constitution of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2006 Number 14)

The secondary legal materials used in this study consist of the minutes of the trial and the comprehensive text as follows:

1. Minutes of the Meeting of the Investigative Body for Preparatory Efforts for Indonesian Independence and the Preparatory Committee for Indonesian Independence, 28 May 1945 - 22 August 1945 Jakarta: State Secretariat of the Republic of Indonesia 47, 1995; and
2. Comprehensive Text on Amendments to the 1945 Constitution of the Republic of Indonesia book 7 concerning Finance, National Economy and Social Welfare, Jakarta: Secretariat General and Clerk of the Constitutional Court, 2010. Tertiary legal materials are in the form of official and unofficial documents. Official documents consist of Supplementary Memorandum of Economic and Financial Policies documents, loan agreements that contain market reform programs for debtors, national development plans and documents on market reform including Policy Research Documents, Project Documents, and Briefing Papers. While unofficial documents include books, scientific journals, seminar papers and dictionaries both in print and electronic form that are relevant to the subject matter of the research.

RESULTS AND DISCUSSION

The Constitutional Economics Law and Economics School founded by Frans Bohm and Eugen Eucken at the University of Freiburg is a school that institutionally contributed to the first generation of constitutional economics literature through the publication of the *Ordnung der Wirtschaft* series before the defeat of Germany in 1945. The desire to seek a balanced political and economic order since the Republic of Weimar who pushed why the economic constitution was still being developed in the early days of the West German government through the formation of a new constitution, especially in the aspect of the economic constitution which was in the style of market socialism. This idea later supported the foundations of the theory of economic democracy (*wirtschaft demokratie*), social market economy (*sozialwirtschaft*) and social constitution (*sozialverfassung*) applied by the Scandinavian welfare states and several newly independent countries. Outside the European tradition, Charles Beard, an American citizen, is perhaps the only scholar who provides the most complete explanation of the economic interests of the US constitution in the 1920s. Publications on economic constitutions that were more serious began to develop rapidly in the 1980s as a response to the needs of European countries for an integrated European Economic Community free market through what constitutional experts called constitutional treaties. Meanwhile in Indonesia, at least as claimed by Jimly Asshiddiqie, he used the term economic constitution in his dissertation he wrote in 1994 on the evolution of regulation and implementation of economic democracy and political democracy in Indonesia.

Market Reform as Part of Legal Reform In various literatures, the term market reform (market reform) is often associated with the term legal reform (law reform). The term law reform itself in Indonesia is repeatedly used to describe significant changes in the field of law that contain positive prospects for achieving the goals of legal certainty, justice and expediency. Experts have their own definition of legal reform which varies depending on how and for what the definition is intended. The main idea of the Law and Development movement is promoting law as the primary means of driving social change, which, according to its designers, is envisioned as a linear step towards a liberal, individualist American society. In the context of political economy, Law and Development practitioners are greatly inspired by modernization theory which emphasizes a 'deterministic model of development in which poor countries will pass through tiered stages towards industrialization as in the historical experience of western capitalist countries. It places great priority on macroeconomic stabilization where the state plays a role in creating a domestic capitalist market through protection policies, import substitution, allocation of subsidies to private and state capitalist enterprises and other forms of policy support that can stimulate the formation of a domestic capitalist market. It is assumed that 'because the role of the private market is too weak to ensure economic growth, the state is required to play a role in market activities and laws must strengthen state intervention in the market. Modern capitalism which is characterized by continuous capital accumulation and purposive

contractual relations between market participants' requires an environment legal and conducive investment climate provided by an open and impersonal system of adjudication and bureaucratic administration. This view confirms that a rational legal system will provide legal certainty to the market to predict and calculate the supply and demand for goods and services, assisting the market in determining resource allocation decisions based on instrumental considerations, which means that economic actors will make choices and calculations about the appropriate way. most efficient way to get maximum profit . According to this theory, the natural mechanism of the market will provide various choices and possibilities regarding the consequences of a decision by requiring economic actors to choose the option that causes the least loss.

CONCLUSIONS AND RECOMMENDATIONS

The implications of the market reform agenda for changing the economic constitution through the principle of equitable efficiency has led to the birth of a dualism of constitutional policy choices whose interpretation is highly dependent on power relations and competing political economy interests. The addition of these principles does not become a complementary element to the previous verses which allow for two interpretations of socialism or neo-liberal economic policies as mutually negating policy choices. The term equitable efficiency contains a contradiction in itself (*contradictio in terminis*) because efficiency always presupposes the maximization of prosperity which results in a concentration of wealth, while justice presupposes the redistribution of prosperity which has consequences for the distribution of wealth.

The debate regarding the direction of the state's role in the economy is based on two aspects which underlie the urgency of changing the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia. First, the experience of abuse of power by the New Order regime which international financial institutions identified as a consequence of bad governance), the absence of the rule of law and interventionist economic policies that are corrupt, closed, and inefficient. Second, the demand for economic globalization which is characterized by the involvement of international financial institutions in determining the direction of policies and products of domestic legislation so that they are in line with the spirit of liberalization, privatization and deregulation of neoliberalism. These two aspects systematically build a collective agreement among members of the MPR session to formulate new economic constitutional provisions that can prevent abuse of power by the state and are able to accommodate market needs. In the second and third round of reforms (1999 - 2001), the dominance of the idea of limiting the role of the state in the economy can be seen from the draft economic constitution based on the concept of neoliberalism which was accepted by all factions of political parties without significant opposition. However, the debate regarding the direction of the draft economic constitution in the fourth round (2002) shifted with the emergence of differences of opinion among the team of economists in addressing the abuse of power by the New Order regime and

demands for economic globalization. This debate resulted in a division between the political party factions which turned their backs on the defense of the economic constitution Article 33 paragraphs (1), (2) and (3) of the 1945 Constitution of the Republic of Indonesia and the political party factions which consistently supported the draft neoliberal economic constitution. This ended in a compromise between the socialist group that tried to defend paragraphs (1), (2) and (3) and the neoliberal group that tried to incorporate the concept of neoliberalism through the principle of 'efficiency with justice' into paragraph (4). This formula brings together the concept of socialism inherited by the founders of the republic and the concept of neoliberalism which is in line with the agenda of market reform for international financial institutions.

The role of the state in the market reform agenda which underlies the idea of limiting the role of the state in the economy After the Results of Amendments to the Economic Constitution Article 33 of the 1945 Constitution of the Republic of Indonesia What are the legal implications of changes to the economic constitution of Article 33 of the 1945 Constitution on the role of the state in the economy? To what extent has the idea of limiting the role of the state in the economy contributed to the results of these changes? These questions will be answered in this section to evaluate the original intent of the amendments to the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia. In a critical legal perspective, law and the process of forming laws – including the constitution as the highest law – should be seen as a political economy process in which ideas proposed as a legal norm basically reflects certain interests. The presence of certain texts or rules, therefore, represents the dominant force that explains why there are rules behind the law which in turn shape legal normativity.

Recommendation

This study recommends a fifth change with the approach of state responsibility to fulfill people's socio-economic rights. The main problem faced by the implementation of neoliberalism policies and legislative products in Indonesia today is the increasing concentration of wealth in the hands of elites and the exploitation of resources which is detrimental to society and the environment. According to researchers, the state's responsibility approach to fulfilling people's socio-economic rights will clarify the state's obligation to produce policies that are more oriented toward the redistribution of wealth and are pro-environmental, which in turn can create social welfare and justice. The fifth amendment must clarify the objectives of state control by embedding the attributes of socio-economic rights of the people in it and the concept of economic democracy that supports community participation and environmental preservation. The concept of the state's right to control has often been used as an excuse for neoliberal development by the state which actually harms marginalized communities, especially in areas rich in natural resources, which ironically was not mentioned during the process of changing the MPR. In addition, the fifth amendment must be preceded by research or academic papers based on an interdisciplinary and comparative approach to map all

legal, economic and political issues that have arisen since the results of changes to the economic constitution Article 33 of the 1945 Constitution of the Republic of Indonesia were implemented.

There are two themes that the researcher suggests for subsequent studies on economic constitution based on the results of this research. First, the topic of comparative legal research which examines the experiences of developing and post-socialist countries in Eastern Europe, Asia, and Latin America which have comparability with the economic constitution in Indonesia. They are also interesting to study because they have a similar background to the market reform agenda in Indonesia. Second, the research topic is related to the reconceptualization of the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia which is based on regulation of economic-social rights. This research topic can be started by examining some experiences in other countries, by studying what solutions are useful in solving problems related to the economic constitution in Indonesia. The researcher really hopes that there will be further socio-legal legal studies that are very relevant to the big issues around the implementation of the economic constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia which can enrich the repertoire of legal science, especially in the field of constitutional law.

FURTHER STUDY

This research still has limitations, so it is necessary to carry out further research related to the topic of The Collapse of the New Order Regime Resulted in Changes in Indonesia's Economic Policy

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