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# The Conception of The 1945 Constitution of The Republic of Indonesia As An Economic Constitution

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**ABSTRACT**
The Republic of Indonesia which is based on Pancasila as the way of life of a society influences the design of a country's economic system. The purpose of this research is to analyze (1) the conception of the 1945 Constitution of the Republic of Indonesia as an economic constitution, and (2) the political characteristics of national law as the identity of the economic constitution. The research method used is a normative legal research method using a statutory and conceptual approach. The results of this study indicate that (1) the conception of the 1945 Constitution of the Republic of Indonesia as an economic constitution is the basis for the framework of the national economy. The Indonesian economic constitution has been formulated based on the spirit of the mandate of values contained in the Indonesian nation itself, and (2) The characteristics of national legal politics as the identity of the economic constitution provide directions for the formation of legal political policies in the economic field. Even though it was implicitly mandated in the 1945 Constitution, this matter was still influenced by legal politics and the direction of the legal political policies of the authorities.

**KEYWORDS**
conception, The 1945 Constitution of the Republic of Indonesia, constitution, economy

## Introduction

### 1.1 Background of problem

The style of a country's economic system can be strongly influenced by global economic systems such as capitalism and socialism, which are used by almost every country in designing economic policies. Likewise, the Republic of Indonesia which is based on Pancasila as the way of life of a society influences the design of a country's economic system. The guidelines and direction of a country's economy are generally contained in the Constitution or constitution which is a consensus with that country. The constitution must

be used as a substantive reference in every policy taken in the process of economic development. The economic policies implemented should not simply follow the flow of economic developments that are occurring, both at the national and global levels. The constitution as the basic law that is the direction of a running constitutional system, is also interpreted as a role model for the rules below it. Constitutions can be seen into three types, political constitutions, economic constitutions, and social constitutions. The economy, which is one of the basic problems of every country, has always positioned itself as an instrument used in assessing the stability of every country.

Economic constitution is a term used in basing an economic system adopted by a country. There is a policy or economic direction that is formulated by each country in its constitution; this translates a basis and economic framework adopted by that country. Indonesia as a country which is based on law is clearly written in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) "Indonesia is a country based on law". Dicey stated that the concept of a rule of law must be accompanied by the consistency that the law is the commander in chief, not the person (law enforcer) who has power and determines.

According to the 1945 Constitution of the Republic of Indonesia, social welfare is the responsibility of the state through programs and policies related to the national economy. This can be seen from the idea of amending the constitution of the Republic of Indonesia which places the national economy and welfare in one discussion as outlined in Article 33 and Article 34 of the 1945 Constitution of the Republic of Indonesia. Examining Jimly Asshiddiqie's ideas regarding the national economy and social welfare mandated in the constitution which is referred to as the economic constitution. The economic constitution is interpreted as a form of economic concept set forth in the legal framework, it is based on that economics is different from economic policy.

The significance of this research is that national economic practices are constitutionally harmonized in the economic field so as to realize social welfare.

## Theory

### Rule of Law Theory

The rule of law theory reveals that in a rule-of-law state, the law is the highest authority and acts as commander in chief to realize the supremacy of law. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, stipulates that the State of Indonesia is a state of law, not a mere state of power (machtsstaat). To explore the concept of rule of law basically, it can be explained through two schools of thought, namely the concept of rechstaat and the rule of law. The concept of rechtsstaat is a rule of law concept that is based on the Continental European legal system called "Civil Law" or "Modern Roman Law". A rule of law in the sense of rechtsstaat, concerning the ideas put forward by Julius Stahl, there are at least four foundations that a rule of law country must have, namely: the protection of human rights grondrechten, the division of powers (trias politica), government based on law -law (wetmatigheid van bestuur), and the existence of a state

administrative court (administratieve rechspraak).

The concept of the rule of law rests on a legal system called "Common Law" or "Anglo Saxon". The concept of the rule of law develops evolutionarily. In the Anglo Saxon tradition, as expressed by A.V. Dicey, a rule of law in the sense of the rule of law must have at least three characteristics, namely: upholding the rule of law (supremacy of law), equality before the law equality before the law, and guarantees and self-protection mechanisms for rights (constitution based on individual rights).

The discourse on the rule of law then began to develop when the idea of natural law theory emerged, which grew in Europe in the seventeenth to eighteenth centuries. In general, in the theory of rule of law, there are two kinds of conceptions of the rule of law, consisting of the concept of a rule of law in the sense of rechtsstaat, and a rule of law in the sense of the rule of law. The term rechtsstaat is known in Continental European countries, this understanding was developed by, among others, Immanuel Kant, Paul Laband, Julius Stahl, and Fichte. Meanwhile, the rule of law, developed in Anglo Saxon countries, adherents of common law, which was pioneered by A.V. Dicey in England. However, the two conceptions have a similar purpose, namely the protection of human rights and respect for human dignity the dignity of man.

To understand the difference between rechtstaat and rule of law, one can trace the history of the development of these two influential concepts. The concept of rechtstaat originates from Germany and the concept of the rule of law originates from England. The term rechstaat became popular in Europe since the nineteenth century, while the term the rule of law became popular with the publication of a book by Albert Venn Dicey in 1855 entitled Introduction to the Study of the Law of the Constitutions.

The concept of rechtsstaat was born from a struggle against absolutism, so it is revolutionary. The notion of a rechtsstat state is described as a "night watchman state" (nachtwakersstaat), the government's duties are limited to maintaining public order and security (de openbare orde en veligheid). Meanwhile, Mochtar Kusumaatmadja stated the deepest meaning of a state based on law is: ... power is subject to law and everyone is equal before the law. The concept of a rule of law of course simultaneously combines the notion of people's sovereignty with the rule of law as one unit.

A rule of law, as stated by Frans Magnis Suseno, is based on a desire that state power must be exercised based on good and just laws. Law is the foundation of all state actions, and the law itself must be good and fair. Good because it is in accordance with what society expects from the law, and fair because the basic intent of all laws is justice. There are four main reasons for demanding that the state be organized and carry out its duties based on law, namely: (1) legal certainty, (2) demands for equal treatment (3) democratic legitimacy, and (4) intellectual demands .

Jimly Ashiddiqie, based on various thoughts on a rule of law state, stated that there are at least twelve main principles that must be owned by a rule of law (rechtsstaat), namely: Supremacy of law; supremacy of law; Equality in the law of equality before the law; The legality principle of due process of law; Limitation of powers; Executive organs of independent executive auxiliary agencies; Free and impartial judiciary; State administrative

court-administrative court; constitutional court; Protection of human rights; is democratic; serves as a means of realizing the goals of the state; Transparency and social control. Jimly added the thirteenth principle, namely the principle of believing in the One and Only God, in addition to the principles of transparency and social control, adding the principle of a free press and the principle of accountability.

If examined carefully, there is an overlapping of the rule of law principles put forward by Jimly Ashiddiqie such as equality in law and the principle of legality can be combined with the principle of protecting human rights. Likewise, the principles of state administrative justice and state administrative justice can be incorporated into the principle of an independent and impartial judiciary.

**Economic Constitutional Theory**

The term economic constitution can be said to be new in the fields of law and economics. This was pioneered by Wolfgang K.'s writing in the Journal of Law and Economics in 1999. Wolfgang argues that "Franz Bohn developed the idea of the term economic constitution". According to Wolfgang K, Franz Bohn developed the idea of competition in the form of law and laid down a theoretical basis for economic order which opened our eyes to the concept of economic constitution. In fact, laying the highest economic policy foundation in a constitution was already done around 1918. In 1918 Soviet Russia put the basic principles of economic policy into its constitution. Meanwhile, in 1919 the Weimar Republic of Germany included the basis of economic policy in its constitution.

James M. Buchanan describes the economic problems that arise in the Constitution as a social contract for all people, not one person. Even this research cannot be said that the economic constitution can be used as an object of study of constitutional law or as an object of study of the constitution. In Indonesia, the term economic constitution has been known as a depiction of the concept of the Indonesian economy. Jimly Asshiddiqie in 1990 and published in 1994 had already introduced the term economic constitution in his dissertation.

The highest economic policy of a country contained in a constitution is called the economic constitution. The economic constitution must become the basic principle of forming an economic policy. The aim is that every economic policy encourages the achievement of the economic goals stated in the economic constitution. The purpose of the economic constitution is to optimally increase the welfare and economic safety of citizens because welfare guarantees are carried out by ensuring economic rights in the constitution.

The economic constitution is based on law as the basis for implementing the economy so that the economy is not only implemented as an effort and business as economics does. Based on constitutional principles, the implementation of the national economy is used as a policy in the form of regulation, so that economic practice is a representation of legal provisions both through the constitution and regulations as a form of legal policy. The dynamics of the national economy in the context of realizing social welfare will always be influenced by political power factors which have implications for the direction of national legal political policies.

## Research Method

The research method applied is the normative legal research method. Normative law research serves to provide juridical arguments when there is a vacuum, ambiguity, and conflict of norms. Furthermore, this means that normative legal research plays a role in defending the critical aspects of its legal science as a normative science. The types of approaches used include statutory approaches and conceptual approaches. The sources of legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. The technique for collecting the necessary legal materials is through a literature review technique (study document). The legal material analysis techniques that have been collected will then be analyzed and explained in a descriptive, interpretive, evaluative, and argumentative manner.

## Result and Discussion

The conception of the 1945 Constitution of the Republic of Indonesia as an Economic Constitution

The 1945 Constitution of the Republic of Indonesia as an economic constitution regulates economic policy choices and adheres to certain principles in the field of economic rights. The economic constitution contains provisions regarding the national economy. Many people consider that Indonesia's economic constitution has a style in accordance with the values and character of Indonesian culture which is heavily influenced by culture and religion.

Many people consider that the economic constitution of Indonesia is heavily influenced by Bung Hatta's thoughts, which are especially contained in Articles 33 and 34 of the 1945 Constitution of the Republic of Indonesia. Although it is acknowledged that Bung Hatta's economic thinking is heavily influenced by socialism, the socialism that Indonesia wants to build is socialism with a positive character. religion or religious socialism, especially Islam.

The content of the economic constitution stipulated in the 1945 Constitution of the Republic of Indonesia could have been influenced by the global economic system at the beginning of its formulation. For example, the influence of the principles of socialism in the preparation of several articles on the economy in the 1945 Constitution of the Republic of Indonesia. However, many people consider that the economic articles in the 1945 Constitution of the Republic of Indonesia are dominantly influenced by religious values that develop in Indonesian society. In a sense, the understanding and belief of religion, especially Islam, has a strong influence on the basic philosophy and principles as well as the goals to be achieved contained in the economic constitution of Indonesia.

According to Dawam Raharjo, Indonesia's economic constitution is based on the values contained in the five precepts of Pancasila. Pancasila, he said, is essentially a combination of three ideologies, namely Nationalism, Socialism, and Democracy, but all of them are based on Humanism and Monotheistic beliefs. Bung Karno even called Pancasila the result of a combination of three ideologies, namely Nationalism, Islamism, and

Communism which is commonly referred to as Nasakom. Meanwhile, Bung Hatta mentioned three other sources, namely Islam, Socialism, and Indonesian culture.

The Indonesian economic constitution contains several national economic provisions such as the system of ownership of economic resources, objectives of economic development, management of economic resources, forms of economic enterprise, social security system, role of the state in economic development, and others. The 1945 Constitution of the Republic of Indonesia is said to be an economic constitution because it regulates provisions regarding economic policies as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia. Other articles related to the economy contained in the 1945 Constitution of the Republic of Indonesia are Article 23 concerning state finances and related matters, Article 27 paragraph (2) regarding decent work and livelihood for humanity.

Political Characteristics of National Law as an Identity of the Economic Constitution

The characteristics of legal politics in law by Purnadi Purbacaraka are said to be a unique study as one of the teachings on the law where legal politics has a relationship between theory and legal philosophy. Therefore, legal politics is seen as a legal science that examines the discovery of law (rechtsvinding) and the formation of law (rechtsvorming). Legal politics within the framework of constitutional law by Faisal Sulaiman is interpreted as the basic policy of state administrators in the field of law that will, is, and has been in effect, which originates from the values prevailing in society in order to achieve the goals aspired to.

The economic constitution as the basic foundation in the formation of legal political policies in the economic field will not be separated from the processes and programs set by the government in power. So that the economic law policy within the framework of the economic constitution as Jimly Asshiddiqie's idea as a legal and constitutional approach in the economic field is due to the uncertainty in the implementation of the national economy in realizing social welfare.

The interpretation of the conception of economic constitution differs from constitutional economics in his research explains that the economic constitution is a constitution that contains the basic norms of economic policy. Meanwhile, a constitutional economy is an economy based on the Constitution or also known as a constitutional market economy. The purpose of this interpretation is that the concept of an economic constitution is more on the basic policies in the development of a national economic system that originate from the constitution and as a source of control over economic power. Meanwhile, the constitutional economic conception only embodies legal policy as a regulator of the implementation of the economy as a result of the rule of law concept. Moh. Mahfud MD argued regarding the differences in the format and substance of democracy, that the appearance of a political system may look democratic, but its essence is actually authoritarian.

Based on the conception of legal politics described above, the authors conclude that the characteristics of national legal politics based on the principles of constitutional democracy in Indonesia are reflected in the normative juridical framework as stipulated in

the constitutional framework and statutory regulations. However, in the empirical process of establishing legal policy, it tends to be authoritarian

## Conclusion and Suggestion

### Conclusion

Based on the discussion that has been stated above, it can be concluded that:

The conception of the 1945 Constitution of the Republic of Indonesia as an economic constitution is the basis for the framework of the national economy. The Indonesian economic constitution has been formulated based on the spirit of the mandate of values contained in the Indonesian nation itself; And

The characteristics of national legal politics as the identity of the economic constitution provide direction for the formation of legal political policies in the economic field. Even though it has been implicitly mandated in the 1945 Constitution, this matter is still influenced by legal politics and the direction of the legal political policies of the authorities.

### Suggestion

The suggestions that can be put forward are as follows:

It is suggested to the government that formulating economic policies in the 1945 Constitution of the Republic of Indonesia must be understood as the highest economic policy that must be used as a reference and reference in developing any national economic development policies.

The government and House of Representatives (DPR) are advised in making laws related to the economy to stick to the 1945 Constitution of the Republic of Indonesia and the basic values of custom, culture, and religion that exist in Indonesia.

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