



## Characteristics of the Application Economic Law Development in Indonesia

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### History:

Submit: January 21, 2023

Review: February 27, 2023

Publish: March 2023

### Keywords:

contracts, economic  
development, government, law  
of economics, social economy

### ABSTRACT

*Economic law develops as the background of the rapid growth and development of economic activity in almost all parts of the world. The presence of the main economic law aims to regulate and limit all economic activities for the implementation of economic activity and economic development are not always appropriate and ignore the rights and interests of the wider community. Law of increasing economic development, one example when entering the era of the free market. The objective of the application of the law in the Indonesian economy is to set the rule of law to be easy in terms of planning related to the economy and distribution of economic policies towards a pro-people. Therefore, it is necessary that every topic of discussion was the economy or technology experts and legal experts are concerned, especially regarding the development of various forms of corporate law in the Indonesian economy to come, which, according to the Working Group for the Economy, Finance and Industry (Ekuin) seen as a problem that is still not enough to be touched by the Indonesian Corporate law. Economics that must be addressed in the conceptual, systemic and professional, but also the field of economic law and must be studied in line with the policy direction of the economy.*

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## INTRODUCTION

At present, the term economic law is no longer something foreign, even economic law is a well-known and very popular law. There is no doubt about the existence of the field of economic law in the Indonesian legal system (Sulistiyono, 2005). In contrast to the introduction of law in Indonesia, which had caused controversy as part of the legal system. The existence of economic law in Indonesia is the most important part that cannot be separated at this time. Based on the elucidation of Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which outlines the concept of a rule of law in Indonesia. As a rule of law country, Indonesia accepts law as an ideology to create order, security, justice and prosperity for its citizens, for this reason the 1945 Constitution of the Republic of Indonesia as the constitutional basis guarantees the existence of the field of economic law, this can be seen in Article 33 of the 1945 Constitution of the Republic of Indonesia as follows: Paragraph (1) reads; The economy is structured as a joint venture based on the principle of kinship, Paragraph (2); Production branches which are important for the state and affect the livelihood of the people at large are controlled by the State, Paragraph (3) states; Earth, water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people, Paragraph (4), The national economy is organized

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based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining balance of progress and national economic unity.

The concept of economic law is a legal arrangement in the field of economics and not law in the sense of economic determination that arises in economic activity (economics). These two things have almost the same meaning when we first hear the term economic law. Economic law develops against the background of the increasingly rapid growth and development of economic activity in almost all parts of the world. The presence of economic law primarily aims to regulate and limit all economic activities so that the implementation of economic activities and economic development is always appropriate and does not ignore the rights and interests of the wider community (Suhardi, 2002). According to Jeremy Bentham, rights are children of law.

From real laws arise real rights. On the other hand, from imaginary laws, namely natural laws, imaginary rights arise. Natural rights simply don't make sense. Prior to Bentham, David Hume also argued that natural law and natural rights were metaphysical and unreal. Therefore Bentham argues that real law is not natural law, but law made by legislatures (Marzuki, 2016). In the theory of expediency that was first encountered in Bentham's work which was later adopted by Rudolf von Campbell, and others. According to Ihering, the purpose of law is not to protect individual will, but to protect certain interests. Therefore he defines rights as interests protected by law. These interests are not created by the state because these interests already exist in social life and the state only chooses which ones to protect (Paton, 1972). Paton argues that the essence of rights is not power guaranteed by law, but power guaranteed by law to realize an interest. To support this opinion, Paton argues that the human will does not work without any intention but reminds of certain goals, namely interests. Therefore, he asserts that interests are objects of human desire (Paton, 1972). but the power guaranteed by law to realize an interest. To support this opinion, Paton argues that the human will does not work without any intention but reminds of certain goals, namely interests. Therefore, he asserts that interests are objects of human desire (Paton, 1972). but the power guaranteed by law to realize an interest. To support this opinion, Paton argues that the human will does not work without any intention but reminds of certain goals, namely interests. Therefore, he asserts that interests are objects of human desire (Paton, 1972).

The presence of economic law as part of the essence of things is a guarantee or mandate from the constitution. According to Jimly Asshiddiqie, constitutional rights are rights that are guaranteed in and by the 1945 Constitution of the Republic of Indonesia. Guarantees for these rights are either expressly stated or implied (Asshiddiqie, 2005). For this reason, it is necessary to construct economic law in guaranteeing human interests based on the concept of justice. According to Theo Huijbers, law must be closely intertwined with justice. Laws can only become law if they fulfill the principles of justice. Fair is a constitutional element of all understanding of law (Huijbers, 1970).

## **METHODS**

This type of research is normative legal research, namely research that uses law as a basis for norms, so this research is based on library research that focuses on reading and analyzing primary and secondary materials in the form of books related to economic law in Indonesia, namely development economic law and legal social economics with the aim of knowing the basic things for the existence of a legal norm. In normative legal research, researchers use several approaches, namely the 1945 Constitution approach and the statute approach because in this approach, researchers study various legal rules and their central themes.

## **RESULTS AND DISCUSSION**

### **Model of application of Economic Law in Indonesia**

In legal theory, the term "Economic Law" is a translation of Economisch Recht (Dutch) or Economic Law (American) (Lubis, 1991). However, the meaning or connotation of Economisch Recht in the Netherlands is different from the meaning of Economic Law in the United States. The definition of

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Economisch Recht (Dutch) actually comes from the term Droit Économique (French) and after the second world war developed into Droit de l'Économie which means the legal principles of state administration (especially those originating from executive power which began around 1930- The plan was held to limit market freedom in France, for the sake of economic justice for the poor, so that not only those with money can fulfill their food needs, but so that the peasants and workers will not starve to death.

Such state administrative law regulations are covered under the name Droit Économique (economic law in a narrow sense). Then, after the second world war, which was around 1945, European countries had to rebuild their countries with the help of the International Bank for Reconstruction, the United Nations was required to prepare a Five-Year Development Plan at that time, which was the basis for the International Bank for Reconstruction's decision to provide assistance to the country. concerned. The international agreement between the IBR and the recipient country is set forth in the policies and legal regulations of the recipient country to be implemented, as has been the case in Indonesia since the New Order era. All legal policies and regulations that are not limited to State Administrative Law,

Economic law is the overall norms made by the government or authorities as a personification of society that regulates economic life in which individual interests and the interests of society face each other. In these norms, the government tries to include provisions that put more emphasis on the interests of society, even if it is necessary to limit individual interests and rights. Economic law is a causal relationship or linkage of economic events that are interconnected with each other in everyday economic life in society or the birth of economic law due to the increasing growth and development of the community's economy.

According to some experts, there are several definitions of economic law, including:

- a. Rochmat Soemitro argues that economic law is the whole of the norms or rules of law made by the government or the ruling authority as a personification of society that regulates economic life, where individual interests and the interests of society face each other.
- b. Adi Sulistiyono argues that economic law is legislation made by institutions or officials who have legality (authority) to regulate activities and behavior as well as growth in the economic sector and resolve disputes that occur where the substance of these laws and regulations is influenced by the economic system in the constitution. country concerned.
- c. Sunaryati Hartono is of the opinion that economic law is a whole of legal rules and decisions that specifically regulate economic activity in Indonesia. Furthermore, Sunaryati Hartono argues that economic law is an elaboration of development economic law and social economic law (Juwana, 2002).

There are two models of economic law in Indonesia, development economic law and social economic law. Development economic law is a regulation regarding law which includes regulation and legal thinking regarding ways to improve and develop economic life in Indonesia nationally or as a whole, while social economic law is a regulation on how the results of national economic development can be divided fairly and evenly according to the values humanity (Wibisono, 1998). There are various case studies on economic law, including the following: if the price of basic necessities goes up, the price of other goods usually creeps up too; if in a certain location there is a large hypermarket shopping center with very low prices, then it is certain that the small retailers or shops in the vicinity will lose their turnover or go out of business; if the US Dollar exchange rate rises sharply then many companies whose capital comes from foreign loans will go bankrupt; the decline in the price of LPG will increase the sales of gas stoves both domestically and abroad; the higher the savings bank interest, the money supply will decrease and there will be a decrease in the amount of demand for goods and services in general; and others (Farida, 2011). the decline in the price of LPG will increase the sales of gas stoves both domestically and abroad; the higher the savings bank interest, the money supply will decrease and there will be a decrease in the amount of demand for goods and services in general; and others (Farida, 2011). the decline in the price of LPG will increase the sales of gas stoves both domestically and abroad; the higher the savings bank interest, the money supply will decrease and there will be a decrease in the amount of demand for goods and services in general; and others (Farida, 2011).

Meanwhile, economic law in Indonesia has the following principles: benefits; humane justice and equity; balance, harmony and harmony in life; independence with a national perspective; joint or family business; economic democracy; and build without destroying the environment. Economic law is the elaboration of development economic law and social economic law, so that economic law has two aspects (Juwana, 2002), namely:

- a. Aspects of regulating economic development efforts in the sense of increasing national economic life as a whole; And
- b. The aspect of regulating efforts to distribute the results of economic development evenly among all levels of society, so that every citizen can enjoy the results of economic development in accordance with his contribution to the said economic development efforts.

Economic law if it is based on the international classification, the distribution is as follows:

- a. Agricultural or agrarian economic law, which includes norms regarding agriculture, hunting, animal husbandry, fisheries and forestry;
- b. Mining economic law;
- c. Industrial economic law, processing industry;
- d. Development economic law;
- e. Commercial economic law, including norms regarding hospitality and tourism;
- f. Infrastructure economic law including gas, electricity, water, roads;
- g. Economic law services, the profession of doctors, advocates, housemaids, labor;
- h. Transportation economic law;
- i. government economic law including defense and security (hankam), and others.

### **Principles of Development of Economic Law in Indonesia**

Philosophically legal principles are the foundation or basic points of thinking or acting that provide direction, goals and fundamental assessments, contain values and ethics (Sham, 2001). Some experts provide limitations or understanding of legal principles as follows:

- a. Bellefroid argues that general law principles are basic norms that are elaborated from positive law and which are not ascribed by the science of law to come from more general rules. So the principle of general law is the crystallization (precipitation) of positive law in a society.
- b. Van Eikema Homes argues that principles are not concrete legal norms, but serve as a general basis or guideline for applicable law. So it is the basics of direction in the formation of positive law so that in the formation of practical law it must be oriented towards legal principles.
- c. Paul Scholte, explained that legal principles are the basic thoughts contained within and behind each legal system which are formulated in rules, legislation and judge's decisions relating to provisions and individual decisions can be seen as an elaboration.

Niewenhuis emphasized that legal principles function as forming judicial legal products because they do not only affect positive law but a good judicial system so that a good law enforcement will not exist without the principles contained in legal products (Simamora, 2015). Based on the description above, the position of legal principles as meta-legal norms basically provides direction and a fundamental assessment of the existence of a legal norm. The basis or basis is embodied in the basis of the constitution in Article 33 of the 1945 Constitution of the Republic of Indonesia which states as follows: Paragraph (1) reads; The economy is structured as a joint venture based on the principle of kinship, Paragraph (2); The branches of production which are important for the State and affect the livelihood of the people at large are controlled by the State, Paragraph (3) states; earth, water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people, Paragraph (4), The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining balance of progress and national economic unity.

Based on the provisions above, the application of economic law in Indonesia is part of building justice which regulates the following matters:

- a. Regulate legal regulations so that it is easy in planning related to economic matters.
- b. Regulates the existence of equitable development and equal distribution of income when referring

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to the law of national development. This relates to social economic law which contains equitable distribution of development so that all development results can be enjoyed by all levels of society wherever they are in the territory of Indonesia.

- c. Regulate economic policy so that there are no legal violations in the social aspect when an economic policy decision is taken.

The essence of this economic law is that all policies are based on the interests of society and the state, so that the interests of the state can be achieved without causing misery to the people. Those are some of the economic laws that occur and exist in the country of Indonesia, either in an easily visible or natural way, so that in the future it is hoped that it will work well and function well for the welfare of all Indonesian people (Sumantoro, 2008). Bentham argues (Bentham, 2000):

“Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subject, will serve but to demonstrate and confirm it. In word a man may pretend to abjure their empire: but in reality, he will remain. Subject to it all the while. The principle of utility recognizes this subject, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it, deal in sounds instead of sense,

Based on Bentham's statement, nature has placed mankind under the control of two masteries, pain and pleasure. Only these two indicate what man should do, and determine what man will do. Standards of right and wrong on the one hand, as well as causation on the other hand, are closely attached to these two powers. Related to the principle of utility Bentham bases his entire philosophy on two principles, namely the association principle and the greatest happiness principle. The principle of association is rooted in the psychology of conditioned reflexes. In this context Bentham shows that law has the ability as a stimulus to condition ideas about goodness (Sdindingta, 2007).

Pleasure or benefit referred to above can be achieved with the size of the consequences (consequences). Thus a good law is a law that can provide the most beneficial consequences or cause the greatest happiness for the greatest number of people (the greatest happiness of the greatest number). This happiness arises from the function of the law itself. According to Bentham “All the functions of law may be referred to these four heads: to provide subsistence; to produce excesses; to favor equality; and to maintain security.” Furthermore, in interpreting law, according to Bentham, law is a collection of signs (assemblage of sign) (Bentham, 2000). The sign referred to by Bentham is the expression of will that emerges from the will that is understood and absorbed by the rulers of the country.

“A law may be defined as an assemblage of sign declarative of a volition conceived or adopted by the sovereign in a state, concerning the conduct to be observed in certain cases by a certain person or class of persons, who in the case is in question is or are supposed to be subject to his power: such volition trusting for its accomplishment to the expectation of certain events which it is intended such declaration should upon occasion be a means of bringing to pass, and the prospect of which it is intended should act as a motive upon those whose conduct is in question” (Freeman, 2001)

### **The Function of Economic Law in Legal Development in Indonesia**

In terms of its function, the development of economic law in Indonesia functions as (Sumantoro, 2008):

- a. Means of maintaining order and security;
- b. development facilities;
- c. Means of upholding justice, and
- d. Community education facilities.

These four functions can be applied in economic law which is a national legal system that is oriented towards people's welfare. Meanwhile, economic law is responsible for:

- a. Establish and provide legal facilities and infrastructure;
- b. Increasing economic development;
- c. Protect the economic interests of citizens;

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- d. Improving community welfare;
- e. Develop & apply sanctions for violators; And
- f. Assisting the realization of a new international economic order through legal means & institutions.

Through an in-depth and professional analysis of economic law in Indonesia (Sulistiyono, 2005), the following can finally be revealed:

- a. National economic policies, both at the macro level, but also at the micro level, what should be taken, so that the national economy after 2003 becomes healthier and in accordance with Articles 33 and 34 of the Constitution (after 4 amendments).
- b. This policy is further elaborated on how to empower small and medium enterprises in order to increase the role of self-help economies in the post-2003 National Economy; how to develop our system of Industry, Transport and Foreign Trade without harming our environment for future generations; how to improve our Financial System and Banking System so that we can support all activities of the Indonesian government as well as entrepreneurs and consumers in an efficient, effective, balanced and equitable manner; how best to manage our marine resources, fisheries and maritime communications in the 21st century; how to prevent KKN in the bureaucracy by improving public service processes and procedures; and others. General wisdom in the economic field needs to be known by lawmakers and law enforcers alike in order to be able to formulate an Economic Law System (in the sense of *Droit de l'Économie*; and *Droit Économique* as stated above). In particular, which new laws and institutions need to be promulgated, which old laws need to be corrected or deleted, which legal institutions and institutions must be promulgated or amended/modified or abolished, and other matters such as among others procedures for public service, or procedural law, or how dispute resolution is most appropriate for resolving disputes in the economic field; whether arising between entrepreneurs or between entrepreneurs and government officials, or between Indonesian parties and foreign parties.
- c. It is hoped that the national law can be revealed the way how the legal institutions, as well. other state institutions can play a role in changing the face of the state apparatus, the government (bureaucracy) and the judiciary; tend to be seen as an arena for KKN and an "entry gate" for corrupt behavior, as a clean, beautiful, and trusted face for providing excellent service to the community. It is also hoped that the various policies in the economic field will receive direction and regulation in legal norms, namely both in laws and regulations, but also in jurisprudence and customary law; even in the scientific field, namely Economic Law, so that with this systemic approach it is hoped that our national economic system will truly be a legal system in the truest sense.
- d. There is a need for a grand design and a shared paradigm that must underlie all and every aspect of economic activity (macro or micro) and the development of economic law as a whole system, so that economic law and legal regulations in the field of or touching economic life no longer only provide or to fulfill temporary needs such as firefighting, but so that economic law actually provides channels or channels through which all economic activity can be channeled towards the national economic system that we aspire to.

Because of this, it is endeavored that every topic of discussion is carried out by experts in the field of economics or technology as well as the relevant legal experts, especially regarding the development of various forms of corporations in the forthcoming Indonesian economic law, which according to the Equine Working Group is seen as an issue that has not yet been adequately addressed. by Indonesian Corporate Law. Even though the regulations originating from the Dutch East Indies Commercial Code regarding Firma, CV, NV, Cooperatie, and others are already known, since the New Order it has only been the NV form, or PT, and the cooperative form that has been the concern of legal scholars and economist. Even though nowadays various new hybrid forms have developed and newer forms of corporation are needed.

What is still being questioned is where is the location of the trading business, BUMN, especially PERUM and PERSERO and other hybrid forms such as Domestic Private Companies, or Foreign Investment Companies, or Multinational Companies, and so on. It is time for the law on Economic Actors to be scrutinized integrally, both in terms of its economic role in the national economy and as a legal institution in the entire system which regulates the rights and obligations of each legal actor.

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Until now, there has never been a properly regulated contract law that must apply to different contractual activities and arrangements, such as for various adhesion contracts (contrats d'adhesion), which in Indonesian is sometimes translated as a standard contract or standard contract, and whose nature is far different from the simple contracts regulated in the Indonesian Civil Code. Therefore, almost 15 years ago, the Netherlands itself changed its principles and legal regulations for this standard contract, in its new Burgerlijk Wetboek, because the application of the old principles and regulations (which are still applied in Indonesia) is believed to result in injustice for the parties involved. weak.

The same applies to international contracts as can be seen in the chapter on "Algemene Voorwaarden". Moreover, regarding contracts made via computers or the internet (e-contracts) in Indonesia there is still a legal vacuum, and it is very unfair and unfair, if for e-contracts and other contracts mentioned above it is easy and immediately just using the regulations on Contract Law originating from the Code Napoleon, which was born in 1800 to be implemented more than 2 (two) centuries later. It cannot be denied that almost every economic activity is based on contracts (Himawan, 1984).

When society is committed to carrying out reforms in the political, economic and legal fields, the mistakes made in the past, when the law was always neglected, should not be repeated. For this reason, it is appropriate that when Indonesia's economic condition is still not recovering as it is today, we will begin to give priority to the development of economic law in Indonesia, so that it can be used as a foundation and guide for economic actors to carry out their activities. That is why the Indonesian government must not only focus on economic recovery, but must also lay the foundations for sustainable, more efficient and more equitable economic growth.

## **CONCLUSIONS**

Two models of economic law in Indonesia, namely development economic law and social economic law. Development economic law is a regulation regarding law which includes regulation and legal thinking regarding ways to improve and develop economic life in Indonesia nationally or as a whole, while social economic law is a regulation on how the results of national economic development can be divided fairly and evenly according to the values humanity.

Legal principles as legal meta norms basically provide direction and fundamental assessment of the existence of a legal norm. The direction of the goals and the fundamental assessment The application of economic law as part of a policy is based on the interests of society and the state, so that the interests of the state can be achieved without causing suffering to the people. Those are some of the economic laws that occur and exist in the country of Indonesia, both in a way that is easily seen or experienced, so that in the future it is hoped that it will run well and function properly for the welfare of all Indonesian people.

Economic law is part of the existing legal system in Indonesia and plays a very large role in regulating economic activity in Indonesia as something that is very fundamental in nature, so we can find arrangements regarding economic law easily in various laws and regulations in Indonesia. It is clear that it is not only the economic field that must be dealt with conceptually, systemically and professionally.

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