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Legal Reconstruction in Indonesia Based on Human Rights

Imam As Syafei Building

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM.4 Semarang, Indonesia

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The 5th PROCEEDING

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Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Reconstruction Of Operational System As A Community Economic System Based On Welfare

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Abstract

The cooperative is Essentially a people's economic movement, which was born from the economic culture of the community, through mutual cultural values, has a constitutional restriction on Article 33 of the 1945 Constitution. change the paradigm and return it to the true cooperative as a populist economic system and pillar of the Indonesian economy through the reconstruction of all regulations that govern Cooperatives in Indonesia.

Keywords: Reconstruction, Cooperative System, the People's Economy System, Welfare value

A. preliminary

The history of cooperatives emerged in the 19th century, when the Germans hit by the economic crisis and the Industrial Revolution which has resulted in massive layoffs because human labor is replaced by machines. This condition is alarming mayor Flammers Field, Friedrich Wilhelm Raiffeisen. He managed to garner support and raise money and bread, then distributed to the poor. Turns derma not solve the problem of poverty. Because poverty is the result of wrong thinking. The use of money is not controlled and not least the recipient of charity wasting money to immediately ask for alms anymore. Finally, the benefactor is no longer interested in helping

the poor. Raiffeisen³⁵⁸ concluded:“

Difficulties of the poor can only be overcome by the poor themselves. The poor man must gather money together and then lend to their neighbors as well. The loans must be used for productive purposes that provide income. Loan collateral is the borrower's character. “Raiffeisen together with the workers and poor peasants finally formed a cooperative called Credit Union (CU) means a collection of people who trust each other. Credit unions eventually spread to Italy, France, Holland, England and Austria. Raiffeisen name is still used by Raiffeisenbank, Austria's largest banking group, Rabobank³⁵⁹ (Netherlands) and also named agricultural credit unions in Germany.

357 The author is the Official Notary in Cirebon, also listed as the Faculty of Law, University of Cirebon August 17, 1945, and is completing the Doctoral Program at the Law Faculty of Law, University Islam Sultan Agung Semarang.

358 Indonesian Wikipedia, retrieved August 23, 2019.

359 Rabobank was founded in Indonesia in the 1990s, because of the regulations in Indonesia, Rabobank established as a legal entity Limited Liability Company (PT), with the name of PT Bank Rabobank International Indonesia, which is run by the principle of cooperation. PT Bank Rabobank Indonesia is a bank that is part of the financial services provider Rabobank Group of the Netherlands. 2020 coming Rabobank Indonesia will be closed and re globally will concentrate on supply chains in sectors of Food and Agriculture. That is the principle of the cooperative that raised him and ultimately return to the principles of cooperatives.

Cooperative essentially people's economic movement, born from the culture of the local economy, through a culture of mutual cooperation³⁶⁰ originally born from the traditional customs that maintain the original rules, developed into permanent cooperation and meet modern needs.

Cooperatives in Indonesia as an economic system, have the backrest constitutional, ie³⁶¹"The economy is structured as a joint venture based on the principle of family". Build businesses that match the principle of the family was cooperative³⁶², Such an interpretation is put forward by Bung Hatta, which is referred to as the framers of the article. Explanation of the constitution also states that Indonesia's economic system based on the principles of economic democracy, where production is done by all and for all that his form can be interpreted as a cooperative. This study formulates the problem as follows:

11. Why cooperative system as a democratic economic system is not based on the value of well-being?
2. What are the weaknesses that arise in the implementation of the cooperative system as a democratic economic system in Indonesia at this time?
3. How is the reconstruction of the cooperative system as a democratic economic system based welfare value?

_____ This study uses empirical juridical ap-

360 *The practice of mutual assistance in the form of traditional and static, born from people's habits, such as: splice, layatan, autumn mountain (Java) or in the form of activities that have been organized by economic motives, for example: mapalus (Manado); arisan (Central Java and East Java) and Subak (Bali). See Murbyarto, Economics and Economic System According to Pancasila and the 1945 Constitution, Rosda paper, Bandung, hlm.168.*

361 *Indonesia, the 1945 Constitution, Article 33 paragraph (1).*

362 *Elucidation of Article 33 UUD 1945 before the amendment of the 1945 Constitution Act 1945 after the amendment is not included anymore explanation, because the explanatory material has been incorporated into the chapters.*

363 *Soerjono Soekanto, 1984, Introduction to Legal Research, UI Press, Jakarta, p. 52.*

364 *Lawrence M. Friedman, 1977, Law and Society, an introduction, Prentice Hall, New Jersey, p.7. (Hereinafter referred to Lawrence M. Friedman I) In principle, according to Friedman that the legal system consists of the legal structure, the substance of law and legal culture. The legal structure concerning its institutions, the substance of the law covers all legal regulations, while the legal culture includes an overview of the attitudes and behavior of law, and the factors that determine the acceptance of a particular legal system in a society.*

365 *Achmad Ali, 2008, Reveals the Reality of Law, Kencana Prenada Media Group, Jakarta, p. 9-11.*

proach, which is a method used to solve the problem by first examining the primary data in the field followed by a study of the data of the existing secondary³⁶³, This study will generate data descriptive data in the form of written or spoken of the research object holistic (whole), which deals with the problems examined.

B.Results and Discussion

The legal system according to Lawrence M. Friedman is composed of three elements,³⁶⁴ Achmad Ali, said that the problems faced by Indonesia today is the third element of the downturn in the legal system, and that is very sad is the fact that all three elements of the Indonesian legal system is still not in harmony with one another³⁶⁵, This is evident with the many regulations that canceled the Constitutional Court (MK) including Law No. 17 of 2012 concerning Cooperatives as contrary to the principles of cooperation as a pillar of the economy typical of Indonesia, particularly the principle of mutual assistance or family as the basic principles of the Indonesian economy contained in Pancasila and affirmed in Article 33 paragraph (1) 1945 . Whereas the purpose of forming the Act to revise the relevant Act cooperatives quo is directed at strengthening institutions and businesses to the cooperative to be healthy, strong, independent, tough, and developed through increased cooperation, potential and economic capacity of the members, as well as its role in the national and global economy.

Cooperative development in the concept of a global economy, it is not something that is not possible. Cooperatives should not be anti-market, precisely with the principle of economic values “ethical”³⁶⁶Her, cooperatives can create fair market conditions and even populist (market friendly). Ethical values owned cooperative has the potential to minimize the economic costs are growing due to dishonesty, fraud, fraud, discrimination, egotistical and irresponsible attitude. Cooperative mensejahterakan true for the people. Basic idea of a welfare state as proposed by Watts, Dalton and Smith, have existed since the 18th century when Jeremy Bentham (1748-1832) describes the idea that the government has a responsibility to ensure the greatest happiness (Welfare) of the greatest number of Reviews their citizens³⁶⁷, it means that the government is obliged to make happy as much as possible of its citizens.

Understand the welfare state (welfare state) was born in the nineteenth century as a reaction to the weakness of liberalism and classical capitalism and also a reaction to the teachings of the “country night watchman” (nachtwachtersstaat) who idealize the principle of government is best which govern as little as possible (the best government is the least the government)³⁶⁸, Welfare state (welfare state) according to Bagir Manan is the state or the government is not solely as security or public order, but the primary bearer of responsibility for social justice, public welfare and the overall prosperity of the people³⁶⁹, Understand the welfare state became a dominant idea in the administration of the

366 *Economic ethics, not only teaches the efficiency and maximization, but also able to teach people to act correctly and fairly. In economics ethics, human beings not only as homo sapiens ekonomikus but also as commentators. Check in Ace Partadiredja, 2000, “Economics of Ethics”, Speech Inaugural Social Sciences: Gadjah Mada Press, Yogyakarta, p. 381.*

367 *Bessant, Judiths 2006, Talking Policy; How Social Policy in Made, Crows Mest: Allen and Unwin, p. 11.*

368 *Asshiddiqie 2006, Development and Consolidation of State Institutions Post-Reform, the Secretariat-General and Registrar of the Constitutional Court of the Republic of Indonesia, Jakarta, p. 330. (Hereinafter referred to Asshiddiqie II). See also Miriam Budiardjo, 2001, Fundamentals of Political Science, Gramedia Pustaka Utama, Jakarta, p. 50.*

369 *Abrar, 1999, the State Control Over Mining Rights Under Law 1945, Dissertation PPS Padjadjaran University, Bandung, p. 4.*

370 *Adji Samekto FX 2005, Sustainable Development In The Changing Social Order, Progressive Law Journal Vol. I No. 2 October 2005, hlm.18.*

371 *ibid,*

372 *Tjandra W. Riawan 2008, Constitutional Law, University Atmadjaja, Jakarta, hlm.4.*

state in Developed Countries and the Third World. The concept of a welfare state was a response to the excesses of negative understanding of capitalism first period which greatly minimizing the role of the state³⁷⁰, In the welfare state concept, the idea that the government is prohibited intervention in the affairs of citizens evolved into the idea that the government should intervene and responsibility for the welfare of the people, and therefore must proactively manage the economic and social life³⁷¹, The intervention when associated with the main objective of the welfare state, among others³⁷²:

1. Control and use of social and economic resources for the public good.
2. Ensure fair distribution of wealth in a fair and equitable.
3. Reduce poverty.
4. Providing subsidies for basic social services for disadvantage people.
5. Provide social insurance (health and education) for the poor.
6. Providing social protection for every citizen.

Pancasila IMHO justice is justice based on the precepts of Pancasila as mandated by the 1945 Constitution and based on God in Article 29 of the 1945 Constitution, which means that the four principles of the Pancasila must be based on God. In the context of a progressive law, the law does not

only run with spiritual intelligence. Law must be run with determination, empathy, dedication, a commitment to the plight of the nation to dare find other ways to the welfare of the people. The basic assumption of progressive law is the view of the relationship between law and human. There affirmation principle that “the law is for man” and not vice versa³⁷³,

Post-decision of the Constitutional Court (MK) cooperative paradigm is returned to an earlier era of Raiffeisen collected on bread and alms from the rich. Regulation puts the cooperative as a recipient of charity / CSR, this implies giving birth cooperative zombie and corruption, since the time of Raiffeisen charity can not be the welfare of the people, for the people just expect charity. Thus regulation of Indonesian cooperatives must be reconstructed, and the paradigm of the cooperative returned to the cooperative principles and cooperative as the pillar of the Indonesian economy.

Development³⁷⁴law has a more comprehensive meaning and basic compared to the terms of coaching the law or law reform. ‘Development of the law’ refers more to the efficiency, in the sense of increasing the efficiency of law³⁷⁵, ‘Renewal of law’ implies constructing a legal system to adjust to changing society. Therefore, the construction of the

law is not only focused on the substance of the rules or the law, but also on the structure or institutional law and in the legal culture of society³⁷⁶,

In order to improve the nation’s competitiveness, legal politics³⁷⁷in Indonesia directs the development of the law to support the creation of sustainable economic growth; regulate issues relating to the economy, especially the business world and the industrial world; as well as create investment certainty, especially law enforcement and protection. The development of law is also directed to eliminate the possibility of corruption and able to handle and resolve completely problems related to corruption, collusion, nepotism (KKN). Development of law implemented by the renewing of legal material with regard to the plurality of the prevailing legal order and the impact of globalization in order to increase certainty and legal protection, law enforcement and human rights, legal awareness and legal services on justice and truth,³⁷⁸,

The main weaknesses of the legal field often faced by economic agents in Indonesia is legal uncertainty. Whereas legal certainty is also needed to take into account and anticipate the risk, even for a country of legal certainty is one of the factors that strongly support the economic resilience of a country³⁷⁹,

373 Satjipto Rahardjo, *Progressive Law, Law That Frees*, *Progressive Law Journal*, PDIH Semarang, Volume I No. 1, April 2005, p. 5.

374 Development is an effort to mentransformasika society from a state to a better condition. Therefore, the transformation process should be directed to (1) calendar old values that are no longer relevant to the needs, challenges and context of the times, (2) modification and revitalization of old values are still relevant to the needs, challenges and context of the times, (3) the discovery and popularization of new values that are required to interact with the changing environment and to respond to new problems brought about by the changes. Wardiman Djojonegoro, in John M. Abdul Aziz, ed., *Global Vision Indonesia Anticipation Entering the 21st century*, Yogyakarta, Reader Student, Adi Sulistyono 1998. In 2007, the Law of Economic Development to Support Achievement of Vision Indonesia 2030 Inauguration Speech On Economic Law Faculty of Law, University of March Surakarta, Delivered in the Open University Senate Meeting of March Surakarta, On November 17, 2007, the University of March. Surakarta, p 5.

375 Satjipto Rahardjo, “Some Thoughts About Definition Interdisciplinary in the National Law Development”, Jakarta, BPHN, 1993.

376 Satjipto Rahardjo, *Law and Social Change*, Bandung, Alumni, 1983. Compare this with the Reformation understanding of Satjipto Rahardjo in the “Breadth of Legal Reform”, *Kompas*, May 8th, 1998.

377 Some experts try to give the meaning of “legal politics.” Padmo Wahyono, said that politics is the law of the basic policy direction, form, and content of the law to be formed. check Padmo Wahyono, “Formation Processes investigate Legislation”, *Justice Forum*, No. 29, April 1991.

378 As stated in the Appendix of Act No. 17 of 2007 on the National Long-Term Development Plan 2005-2025, in part Achieve competitive nation letter E 34.

379 According to the evaluation of the IMF on Singapore stated that Singapore is considered successful stem monoter shocks due to Singapore’s economic fundamentals and strong management. Plus there are two more factors, namely: the transparency and legal certainty is high. See Charles Hima, “Lighthouse Law For Economic Actors”, *Compass*, 21 April 1998.

But the government has made other regulations governing business entities that hinder the development of cooperatives. Some of the regulations include:

1.UU no. 19 of 2003 on the law governing bodies SOE SOE shaped Housing and the company (Article 1 paragraph 2 and 3 in conjunction with Article 9) even stressed SOEs subject to the Limited Liability Company Act (Article 11 in conjunction with Article 34). While SOE intents and purposes as stated in Article 2 (1) a and c are:

- a. Perkembangam contribute to the national economy in general
- b. Menyelenggarakan public benefit in the form of provision of goods and services for the fulfillment of the lives of many people.

If the intent and purpose so, why not given the choice to form a cooperative state-owned enterprises? More appropriate to hold a cooperative effort for the common good, considering he managed democratically which involves the participation of the community. Cooperative only be a place of alms (charity), as the object of beneficiaries of state-owned companies as set forth in

- a. Article 2, paragraph (1) letter e: where bumn expected to participate actively provide guidance and assistance for the weak economy and cooperatives.
- b. Article 88; which is set to SOE net profit set aside for SMEs and cooperatives.

Article 5, paragraph 2 states that foreign investment shall be in the form of PT. This resulted in the provision of other business entities (cooperatives) were knocked out of the arena of international business economics. Cooperative just called in:

- a. Article 12, paragraph 5, which stipulates that certain sectors are closed to FDI in order to protect the interests of SMEs

and cooperatives.

- b. Article 13 paragraph 1, which provides that for certain sectors PT PMA must cooperate with SME cooperatives.
- c. Article 13, paragraph 2, which stipulates that the government's guidance and protection to SMEs and cooperatives through partnership programs.

3. Law No 44 of 2009 on the Hospital (RS)

Article 7, paragraph 2 and 4, provides that in addition to government and local government hospitals may be established by the private sector. In the case established by the private sector, it must be a legal entity whose business is specialized in the field hospital. The provisions of the bill as a ban for cooperatives to set up the RS, but the regulations hereunder and government policy in the field of licensing RS does not give access, so the majority of private hospitals founded by a PT. few were shaped foundations, or associations, such as some hospitals founded by Persyarikatan Muhammadiyah.

RS would be ideal if it is established by the cooperative. as a cooperative non-profit oriented and in it there is the spirit of self-help movement to liberate themselves from poverty, hardship and oppression of humanity. Implementation of RS by PT as an arm of the capitalist economy, would put patients and their families who are experiencing distress, as an object of exploitation in pursuit of material gain.

Various regulations that weaken the cooperative as described above occurs because the Government (the legislator) incorrectly use paradigm. Cooperative only narrowly conceived, limited to small businesses or micro-credit, it should be understood at the macro, as an ideological movement populist economic system of a democratic, participatory and equitable as anti-thesis (resistance) against the capitalist economic system. Act as

a tool of social engineering (a tool of social engineering) too much engineering to the development of cooperatives, but the engineering is likely to lead to Country destruction (debilitating, deadly), not lead to the construction that lbh good as expected by Rescou Pound in theory sociological jurispreudence her.

Various regulatory laws that hamper it eventually resulted in the cooperative knocked out and marginalized. cooperatives as a cornerstone of the nation's economy just a slogan nonsense, construction perkoperasi system today is designed For perpetuate domination by capitalist corporations. therefore to do the reconstruction. Of 212 thousand cooperative Listed (BPS data in 2104), 70% of whom torpor, just a nameplate, the contribution of cooperatives to national GDP is also very small, only 1% less alone.

Reconstruction of Indonesian cooperatives, in addition to the narrow paradigm shift toward cooperative, also have to reconstruct the legislation in place to regulate cooperatives in Indonesia.

C. Conclusions and suggestions

1. knot

- a. Cooperative system as a democratic economic system is not based on the value of well-being, because the cooperative in the Indonesian economy system is placed as the recipient of charity and marginalized than other business entities.
- b. Weaknesses in the implementation of the cooperative as a democratic economic system is now positioned cooperatives as a recipient of charity, and this condition is laden with corruption
- c. Reconstruction of cooperatives as a democratic economic system based on the value of well-being embodied with

regulations that marginalize legalize cooperatives and cooperative position as legal entities under other business entities.

2.Suggestion

- a. Should change the paradigm of the cooperative is not only viewed as micro-organization as a business entity, but also macro economic populist ideology as a movement with the principle of kinship.
- b. Should provide socialization and counseling to cooperatives to be competitive, independent and not rely on government assistance, because during the cooperative lulled by the help given government, ahead of political events, election, pilbup, pilgub, election or election, the government both at national and at many regions provide assistance to cooperatives, but often it was not effective and counterproductive, cooperative management of the minus spirit tempted to divert funds and eventually forced to live in prison
- c. Statutory reconstruction should undangn Indonesian cooperatives, is to reconstruct: Law 25 th 1992 on cooperatives clause which stipulates that cooperatives must be established by at least 20 people, had to be reconstructed, because it is very difficult. gather 20 people who have the same vision and mission is certainly not an easy thing.

If referring to the Islamic economic system, cooperation (partnership) or so-called business syirkah was pretty created by two people as the founder. In the cooperative system, as there should be administrators and supervisors, the founder quite 5 people. With the provision as a board 4, respectively as chairman, vice chairman, secretary and treasurer, as well as one person as supervisor. Furthermore, the founder 5 people can social-

ize and recruit as many members.

Article which requires that the founder / member cooperative capital deposited in the form of principal at the beginning of the membership is also very burdensome. Cooperatives are business entities based group of people, so that capital is not a deciding factor but only auxiliary factor alone. Principal can be paid later after members have benefited from net income (SHU). Cooperative aims to maximize the benefit (benefit) for members and the public. This differs from the PT which is a capital alliance, so that capital can be a decisive factor, everything in PT diputusan by a handful of capitalists. PT aims to seek profit (profit). With the change of the articles

of the Cooperative Law will facilitate the establishment (formation) of the cooperative.

Modifiers articles of the Law regulating business fields that weaken the cooperative, namely: Articles of the Law on State Enterprises; PMA Law; RS Act.

Reconstruction of the legislation referred to align cooperation with other business entities and given the same opportunity to scale up.

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