

Principio de la familia y las ideas cooperativas en las disposiciones económicas de la Constitución de Indonesia

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Resumen. Este artículo narra el viaje en la historia económica de Indonesia y el desarrollo dinámico del Principio de la Familia y las ideas cooperativas. El principio de la Familia y las ideas cooperativas fueron elegidas por los fundadores de la nación Indonesia como las bases para regular la economía nacional en la Constitución de Indonesia. Esta elección fue motivada por la historia económica desde la llegada de los europeos para llevar a cabo un comercio internacional de especias en 1512 hasta el final del colonialismo holandés en 1942. La formulación de las estipulaciones económicas en la Constitución tenía como objetivo transformar la economía de una economía colonial a el sistema económico nacional democrático que está de acuerdo con los valores y las culturas de las comunidades adat. Para realizar esta transformación económica, las cooperativas se eligen para ser la estructura empresarial y también el sistema económico. Se cree que las cooperativas como una institución que se origina en los pensamientos europeos están de acuerdo con los valores y las culturas de las comunidades adat que son comunales, lo que en la Constitución se denomina Principio de Familia. La dinámica y el desarrollo del Principio de Familia dependen en gran medida de la voluntad política de los encargados de formular políticas económicas. Sin embargo, desde el nacimiento del Tribunal Constitucional en la era de la democracia política, hubo desarrollos muy interesantes en Indonesia. La revisión judicial de la Ley de Cooperativas es un ejemplo en el que el Tribunal Constitucional desempeña un papel importante en la protección del Principio de Familia y las ideas de las cooperativas como bases para regular la economía nacional.

Palabras clave: Ley de Cooperativas; Derecho Adat; Pueblos Indígenas; Colonialismo; Transformación Económica.

Claves Econlit: N45; P13; P32; P48.

[en] Familyhood principle and the cooperatives ideas in economic provisions in the Indonesian Constitution

Abstract. This article narrated the journey in Indonesian economic history and the dynamic development of the familyhood principle and the cooperatives ideas. The familyhood principle and the cooperatives ideas were chosen by the Founders of Indonesian Nation as the bases for regulating national economy in the Constitution of Indonesia. This choice was motivated by the economic history since the arrival of Europeans to conduct an international trade of spices in 1512 until the end of Dutch colonialism in 1942. The formulation of economic stipulations in the Constitution was aimed at transforming the economy from a colonial one to the democratic national economic system which is in accordance with the values and cultures of adat communities. To perform this economic transformation, cooperatives is chosen to be the business structure and also economic system. Cooperatives as an institution originating from European thoughts is believed to be in accordance with the values and cultures of adat communities that is communalistic, which in the Constitution is termed familyhood principle. The dynamics and development of familyhood principle are highly dependent on the political will of economic policymakers. However, since the birth of the Constitutional Court in the era of political democracy there were very interesting developments in Indonesia. The judicial review of the Cooperatives Law is an example in which Constitutional Court plays an important role in guarding the familyhood principle and the cooperatives ideas as the bases for regulating the national economy.

Keywords: Cooperatives Law; Adat Law; Indigenous People; Colonialism; Economic Transformation.

Summary. 1. Introduction. 2. History of International Trade of Spices and Colonialism. 3. Communal Traits in Socio-Economic Life. 4. The Basis for the Regulation of the National Economy. 5. The Dynamics and Development. 6. Closing. 7. References.

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1. Introduction

Asas Kekeluargaan or Familyhood Principle is the principle of the tradition of living together that is found in various indigenous groups or adat (customary) law communities that inhabit the entire territory of the Indonesian archipelago.³ Hilman Hadikusumah, a Professor of Adat Law, provides a comprehensive definition of the understanding of familyhood principle. According to Hadikusumah, familyhood principle is the principle of mutual help and assistance among members of adat law community in their communal life, in the form of extended family, neighbourhood or organizational relations (Hadikusuma, 1981).

The familyhood principle is born from the communal values of Indonesian society. The communal culture of Indonesian society is expressed academically from the results of research conducted by Dutch scholars on indigenous peoples since the Dutch colonialism (Van Vollehenhoven, 1931; Ter Haar, 1939/2001; F.D. Holleman, 1935). In post-independence Indonesia until the present time, various studies conducted by Indonesian researchers and foreign researchers also showed that the communal culture is still a common feature in Indonesian society, especially in the rural area (Der Kroef, 1952, 1953; Sardjono, 2004).

In such Indonesian communal culture, familyhood principle holds the role and position in all aspects of social communities of the indigenous people, including in the field of economic activity. The role and position of familyhood principle were important in the socio-economic lives, it has made the Founding Parents of Indonesia chose the principle as the basic norm of the national economy in the constitution. The choice of familyhood principle as the basis for regulating the national economy was carried out when Indonesia first drafted the Indonesian Constitution, namely, the 1945 Constitution.

The familyhood principle contained in Article 33 paragraph (1) states that "*Economy shall be organized as a common endeavour based upon the familyhood principle.*" The provision of Article 33 paragraph (1) is still valid until today, although the constitution has undergone several amendments and even substitution of the constitution. The formulation of the material provisions in the constitution is the ideals of the Founding Parents to carry out the economic transformation after Indonesian independence on August 17, 1945. The nature of economic transformation is to change the colonial economic system into a national economic system that is democratic and following the values and culture of the Indonesian people (Swasono, 2005, 2018). To realize the notion as stated in Article 33 paragraph (1) above, the historical document contained in the elucidation section of the 1945 Constitution also states that the suitable company structure is the cooperatives.⁴

This paper intends to explore the history and development of the familyhood principle and the cooperatives ideas in Indonesia. To answer the subject of this question, the study will use the legal history approach. Methodologically, this research is based on the study of literature, especially historical documents regarding the preparation of the national economy in the Indonesian constitution in the year 1945, the historical literature on international trade of spices and colonialism in Indonesia as well as South East Asia and various researches by Dutch scholars concerning indigenous people in the colonial period. The development of the familyhood principle and the cooperatives ideas will be analysed from the Decision of the Constitutional Court of the Republic of Indonesia in regard to the judicial review of Law No. 17 year 2012 concerning Cooperatives. The analysis of this decision aims to make the familyhood principle and the cooperatives ideas be seen as a series of a historical journey from generation to generation.

This paper is structured with the following structure: Section 1 will explain about the background of this writing. After that, in Section 2, the history of international spice trade and colonialism is discussed. In section 3 the communal features of the socio-economic life of indigenous peoples are described. In Section 4 the history of the familyhood principle and the cooperatives ideas will be explored as a basis for the provisions of the national economy in the preparation of Indonesia's first constitution by the Founders of the Indonesian Nation. In section 5, the dynamics and development of the familyhood principle will be explained as seen from the Decision of the Constitutional Court regarding the Judicial Review of the Cooperatives Law No. 12 year 2012. In section 6 the conclusions of this article will be conveyed.

³ Long before the arrival of Europeans, indigenous people living in the Indonesian Archipelago lived by means of groups referred to as indigenous and tribal peoples. Adat law communities is a unity of people who live together and are autonomous, having legal unity, unity of authority, environmental unity, and common rights over land and water management (Hazairin, 1970). Although the territories of indigenous and tribal peoples are in the political power of a local kingdom, they still live as an autonomous organization. The term "adat law communities", in its development now, is also called as "indigenous people" or adat communities. This development is related to the birth of the United Nations Declaration on the Rights of Indigenous Peoples in 2007.

⁴ Elucidation of Article 33 of the 1945 Constitution. In Indonesia, cooperatives have two meanings at once: First, cooperatives as business structure, and Second, cooperatives as economic system. Cooperative as a economic system is the structure of the economy as a whole that are built on the basis of the spirit of the cooperatives. In this second meaning, cooperatives are the pillar (sokoguru) of the Indonesian economy (Hatta, 1954, 1971).

2. The History of International Trade of Spices and Colonialism

Discussing the socio-economic conditions in Indonesian society and the system of law that frame the legal system at the moment is inseparable from the history of international trade of spices and colonialism, in Indonesia and Southeast Asia. Before the arrival of Europeans to the Indonesian archipelago in the 16th century, starting from Portuguese, British, Spanish and eventually the dominance of the Dutch, those in Southeast Asia have been doing the international trade, and globalization of the economy has become the hallmark of this region for centuries (Henley, 2015).

In the mid-11th century, rice was one of the main commodities from Java which was exported for Asian markets (Christie, 1998). Valuable goods from outside Java such as camphor, sandalwood, various marine products, and the most important of all these export commodities are spices (nutmeg, cloves and nutmeg flower) generally from the Maluku Islands. This spice trade has attracted the emergence of wider international trade in the Maluku Islands for centuries before European ships arrived in the waters of the Indonesian Archipelago (Reid, 1984).

Spices that flourish in the Maluku Islands, have been making these islands known as the Spice Islands (Wagner, 1928). The Maluku Islands spices are products that Europeans craved for centuries because of the very high prices in the European market. Portugal's first expeditions beyond the Cape of Good Hope were stimulated largely by a desire for this lucrative spice (Nowell, 1936). After the conquest of Malacca in 1511, Portugal resumed exploration of the Maluku Islands (Warburg, 1896). The arrival of Portugal was welcomed by one of the local rulers, the Sultanate of Ternate who at that time was maintaining its local influence and needed Portuguese military assistance. For this purpose, the Sultan of Ternate gave a guarantee to the King of Portugal to monopolize the spice trade in the Ternate region, one of the islands in the Maluku Islands (Vlekke, 2008).

This agreement between the two parties has made Portugal known as the first European explorer to dominate the spice trade directly from the Maluku Islands to Europe (De Vos, 2006). Antony Reid, a Southeast Asian researcher, stated that in the 15th until the 17th century, spices, especially pepper and cloves originating from the Maluku Islands, continue to experience high demand from European markets (Reid, 1984). The direct trade of spices from Asia to Europe has provided profits for the Portuguese (Emmer, 2003). Portugal's domination of the spice trade in the Maluku islands has made Spain and the Netherlands eager to follow the same footsteps.

Spanish expedition to Maluku Islands began after King Charles accepted the proposal of Fernao de Magalhaes, anglicized as Ferdinand Magellan. He proposed a new westward way to the Spice Islands, because eastern hemisphere was under Portuguese rule due to the Treaty of Tordesillas in 1494 (Edwards, 2002). This expedition was led by Magellan himself, departing from Sanlucar de Barrameda, Spain on September 20, 1519 with approximately 270 men aboard five ships: Concepcion, San Antonio, Victoria and the flagship, Trinidad (Scott and Callaghan, 2008)—although Magellan never reached the Maluku Islands because he was killed in a firefight in Mactan Island, the Phillippines (Field, 2006). Spanish expedition reached the Moluccas in 1521, but the spice trade did not last long because it was thwarted and blockaded by the Portuguese (Tordash, 1971). Nevertheless, Magellan expedition is of an utmost importance for human civilization and is recorded in the annals of history as the very first circumnavigation of the Earth. Although it did not obtain direct trade from the Maluku Islands, Spain used Manila as a trade centre to obtain spices.

In the historical chronicles, there were two important events behind the success of Spain's bid to power over the Maluku Islands. First, Portugal involved in a war conflict with the Sultanate of Ternate in 1575 which forced them to be driven out of the Portuguese fort in Ternate. Second, the unification of the Portuguese and Spanish crowns in 1580 by Philip II had opened Spanish access to take over Portuguese military assets. After going through battles and building alliances with another local ruler, the Sultanate of Tidore, Spanish troops from Manila finally succeeded in taking control of the Maluku Islands on April 1, 1606 (Villiers, 1986). However, the Spanish and Portuguese forces did not last long because of the presence of a new European economic power in the Maluku Islands, namely, the Dutch Republic.

The rise of Dutch trade dominance began since the fall of Antwerp to Spain in 1585. The influx of southern traders into the northern cities has enabled Amsterdam to replace Antwerp as the centre of European trade (Brandon, 2011). It was during this time that an expedition was initiated into the Spice Islands as carried out by the Portuguese and Spanish. In 1595 an Amsterdam trading company sent four ships under the command of Cornelis de Houtman, followed by other companies from Middelburg, and Rotterdam in 1598 and 1602 (Gelderblom, 2013). This initial expedition had built the confidence of Dutch traders to control the spice trade from the Maluku Islands. To avoid competition among traders, the Dutch Republic Government merged the Dutch trading companies into *Verenigde Nederlandse Geoctroyeerde Oostindische Compagnie* (VOC)/United Netherlands Chartered East India Company in 1602 (Parthesius, 2010). In various literary documents, VOC is commonly referred to as the Dutch East India Company.

Learning from this initial expedition and facing intense trade competition in Europe, since its inception the Dutch East India Company has designed competitive advantages. There are at least three strategies taken

to create this competitive advantage. First, it was to establish The Dutch East India Company as a modern company. The VOC is known as the pioneer of the world's first modern company, characterized by permanent capital, legal personality, separation of ownership and management, limited liability for shareholders and directors, and tradable shares (Gelderblom, 2013).

Second, creating large-scale operations management by making ships and crew larger. Third, the company's operations must be built permanently in the place of the main economic resources (Oscar Gelderblom and Joost Jonker, 2004). Through these three strategies and supported by the Government of the Netherlands, the VOC succeeded in establishing a highly efficient international trade system by monopolizing the purchase of spices from Maluku and sending them to Europe via Batavia, now Jakarta, for two centuries (Reid, 1990).

The history of international trade, especially spices in the Maluku Islands until the dissolution of the VOC in 1799, has had an influence on the socio-economic life of indigenous peoples in the form of the involvement of indigenous peoples in wider international trade, between the Asian Continent and Europe. This involvement has given indigenous people new knowledge about various types of local plants that sell well in the international market. In the area of indigenous and local peoples near the distribution channels of international trade, this new knowledge also changes the paradigm of agricultural economic activity. However, this new knowledge did not change much the legal system that applied to native Indonesians at that time, namely, Adat Law.⁵

Adat Law is a legal system that lives in native Indonesian communities derived from the cultural values of local community groups that regulate legal relations between community members and is not codified (Van Vollenhoven, 1933/1981; Soepomo, 1996; Koesnoe, 1992; and Soemadiningrat, 2002). Cornelis van Vollenhoven, a Dutch scholar who was credited with promoting Adat Law in the broad academic sphere stated that customary law was the original law of people living in the Dutch East Indies (after independence became Indonesian territory) found throughout the Indonesian archipelago (Van Vollenhoven, 1933/1981). Until now there has not been found legal history literature that specifically discusses the role of Adat Law in the international trade transactions of spices in the Maluku Islands until the 17th century. However, based on various historical documents, this article argues that Adat Law has been used by indigenous peoples in conducting international trade transactions of spices with the Portuguese and Spanish in the Maluku Islands in the early 16th century until the 17th century.

This argument is based on two reasons; First, the native Indonesian people who inhabit the Indonesian archipelago, have been using Adat Law at least since the arrival of Hinduism in Indonesia in the early years of the Christ. This first opinion is based on the findings of the contents of the provisions of Adat Law that contain elements of Hindu culture and religious beliefs (Koesnoe, 1992). In the Maluku Islands, adat (custom) is the basis for binding people's lives as a legal entity in an autonomous territorial area, which is called an adat village. Therefore, the implementation of Adat Law is an obligation for all members of the village community that aims to achieve happiness in living together which is a legacy from the ancestors (Cooley, 1966). This fact explains that Adat Law has become part of the way of life of the indigenous people of the Maluku Islands, and so is the case with other indigenous peoples in the Indonesian Archipelago.

Second, the Portuguese presence in the Maluku islands was based on the achievement of an agreement that united trade interests with politics between the Portuguese and the Sultanate of Ternate. The Portuguese were permitted to control the spice trade through purchases from the Sultanate of Ternate and erected a fortress in Ternate. The same went with the arrival of Spain that formed a partnership with the Sultanate of Tidore. Although the Sultanate of Tidore was officially incorporated into the Spanish Indies (*Indias Orientales Españolas*), the Sultan retained control of governing the island of Tidore. Spain also built a fortress and began trading spices from the Sultanate of Tidore (Stott, 2017).

The two historical facts above show that the Sultanate of Ternate and the Sultanate of Tidore held control of the law in their respective territories. Thus, the law that governed the spice business process, ranging from planting, caring, picking, collecting, and trading both through local authorities or directly to Portuguese and Spanish traders, must be local Adat Law. This second argument was strengthened from the literature which explains that Portuguese traders generally followed the pattern of indigenous peoples' trade. Most trade transactions are carried out in exchange with items needed by local people, such as Indian textiles and Chinese porcelain; although monetary payment in transactions over spices are sometimes also conducted (Villiers, 1981). Meanwhile, the Dutch East India Company had no problem whatsoever with the application of Adat Law for indigenous people. Repressive measures and military action were only carried out when indigenous peoples opposed their business interests. This policy was chosen because the Dutch East India Company is a company that aims to seek as much profit as possible to guarantee the interests of stakeholders (Soepomo, 1982).

⁵ The term Adat Law has been adopted in Indonesia to describe what in British colonies are called "native law and custom" It is from an Arabic word meaning "custom" (Gluckman, 1949).

At the end of the 18th century, the demand for spices originating from the Maluku Islands declined sharply in Europe. At the company's internal level, there was a financial crisis due to massive corruption, so that the company was no longer able to run its wheels. Finally, the Dutch Republic Government dissolved the Dutch East India Company on December 31, 1799 (Bremas, 2015). After the dissolution of the Dutch East India Company, the Dutch Government took direct control of the Indonesian archipelago. This action became the first official marker of a foreign occupation of most of the Indonesian archipelago. Direct Dutch colonialism in the Indonesian archipelago had a broad economic impact. To replace the declining spice trade, the Dutch colonial government built large-scale plantations in all of Indonesia which needed a lot of land and workers.

In 1830, the Dutch King William I introduced the cultivation system to return profits they had obtained through the Dutch East India Company. Unlike the previous system involving companies, at this time the Dutch colonial government led directly the exploitation of natural resources, especially in Java and East Sumatra, by requiring people to plant commercial crops (sugar, coffee, tea, indigo, etc.) for the European market (Bosma, 2007). In practice, this cultivation system requires a lot of land and indigenous villagers. For indigenous peoples, the village is a legal association, where land ownership and economic activities are communal in nature. This system has had a direct impact on the destruction of adat law institutions especially in Java and East Sumatra. The cultivation system policy was met with resistance from the village population because it caused widespread suffering even famine and also damaged their social institutions in villages that were governed very strongly by Adat Law (Bushar, 1961, Candra and Vogelsang, 1999).

In 1870 the colonial government replaced the cultivation system with a liberal economic policy by opening as much investment as possible to the private sector in the plantation sector which was marked by the adoption of the New Agrarian Law of 1870. This law allowed private foreign investments to rent land in the long run to plantations (Brown, 2003). This policy is also known as plantation economic policy, which is still the most important sector for the Indonesian economy. For the indigenous peoples, this plantation economic policy also raises serious problems for the existence of customary lands known as communal (*ulayat*) lands. Indigenous peoples are predominantly agrarian communities where land ownership is a very important issue and influences other areas of Adat Law. Land in the Indonesian archipelago has generally been divided into communally owned traditional lands whose inheritance rights derived from ancestors (Hartono, 2006).

Meanwhile, this new policy states that land that is not directly owned or does not have ownership rights is considered a *domein* (property of the state) or known as state land. This state land is given to foreign companies that invest in the plantation sector and eventually also develops into the mining sector. This rule is very detrimental to indigenous peoples because communal land does not have authentic evidence as to the concept of land ownership in Western Law (Sumardjono, 2005).⁶ As a result, customary land owned by indigenous peoples was made state land by the colonial government and distributed to foreign investment companies.

The two colonial economic policies above are backed up by legal instruments, namely, the enactment of two important regulations in the economic field originating from the Netherlands which were applied in the colonies, namely, First, *Wetboek van Koophandel (WvK)* or the Commercial Code and, Second, *Burgerlijk Wetboek (BW)* or the Civil Code. Both of these legislations took effect on May 1, 1848 (Mahy, 2013). These Dutch legislations were adopted from Code Civil Napoleon which had an enormous influence on the change in the agrarian economic system into an industrial economic system based on the ideology of liberalism and capitalism (Sardjono, 1998; Hartono, 2006).

Both of the above legislation only applies to the European population in Indonesia as regulated in Article 75 of the *Regerings-Reglement (RR)* year 1854, namely, Dutch Colonial Government Regulations in Indonesia. This regulation is part of the application of the Dutch Colonial Government's legal policies based on the differentiation of ethnic and national origins. Meanwhile, indigenous groups are still allowed to use their respective Adat Law in their economic activities (Mahadi, 2003). The phenomenon of legal dualism also occurred in the economic field in Indonesia, which is described by J.H. Boeke as dualistic economy.

Dualistic economics are two economic models that go together at the same time, namely, a subsistence economic system and a capitalist economic system (Boeke, 1947, 1983). The subsistence economic system is run by a production model that is based on the communal traditions of the local indigenous people. This system thrives in rural areas and is run according to local customary law. While the capitalist economic system is implemented by applying a modern production model. The capitalist economic system is a historical legacy of colonialism in Indonesia which is still the face of the Indonesian economic system today.

⁶ One common characteristic of indigenous peoples in the Indonesian Archipelago is always the guidelines on oral, rather than something written down. Thus, the boundaries of indigenous peoples' territories are usually also verbally decreasing based on natural signs, such as mountains, rivers, seas, lakes or very large trees in the forest.

3. Communal Trait in Socio-Economic Life

Law in the normative sense is a code of conduct for individuals or groups of people in various fields, including socioeconomic life. Based on the historical sequence described earlier, long before the arrival of Europeans into the Indonesian Archipelago the Indonesians lived in groups with a legal system, known as the adat legal system. Soepomo, a Professor of Adat Law, stated that Adat Law is a living law because it embodies the real legal conscience of the people (Soepomo, 1996). The legal conscience comes from the people's awareness which is the result of interaction among members of indigenous peoples.

Soepomo's statement above has similarities with the legal history school of thought which developed in Germany and the continental Europe in the early 19th century, pioneered by Friedrich Karl von Savigny. For Von Savigny, the law is seen as a product of the consciousness of the people or the soul of the nation (*Volksgeist*) who can only develop when staying in touch with this original legal source (Savigny, 1831; Brand, 1982). This school of thought in the history of law was also used by Van Vollehoven and colleagues from Leiden University in viewing Adat Law. Academically, Van Vollehoven has a very important role in the development and protection of Adat Law. Van Vollehoven strongly rejected the idea of the Colonial Government wanting to impose existing laws in the Netherlands on the entire population of the Dutch East Indies (Burns, 1999). Adat Law for Van Vollehoven is a legal system that differs from Western Law (Van Vollehoven, 1981).

One of the fundamental differences between Adat Law and Western Law is a very strong communal trait. This communal trait can be seen from the relationship of individuals with the community. In Adat Law, the main and first consideration is the interests of the community, not the interests of the individual (Soepomo, 1978). The traditional mindset of indigenous peoples places individual lives after that of the community as a family bond. Family ties mean that in family unity there must always be differences that arise from the individuals who are members. However, the differences that exist will never separate family ties. It is this situation that creates a family spirit that is described by the motto: "Unity in Diversity, Diversity in Unity" (Kartohadiprodjo, 1968).

The communal trait of Adat Law has given effect to the socio-economic life of indigenous peoples. In social life, mutual assistance and communal help have become an integral part of adat community legal life. This matter of giving, receiving and repurchasing applies to the relevant adat community and is also valid. Ter Haar, a Leiden scholar, divides mutual help in this into 2 (two) parts of the act, namely: First, mutual assistance among community members without giving back (*onderling hulpbetoon*). The obligation to do help is based on the provisions of Adat Law, also known as mutual cooperation. Second, mutual assistance reciprocates (*wederkerig hulpbetoon*) in adat law communities in the form of providing labour or goods for members of indigenous peoples who need to be based on the assumption that one day the recipient will return the favour properly (Haar, 1939/2001).

This form of mutual assistance and help is the basis for the birth of forms of social cooperation in the life of the village community as a unity of life together. This form of social cooperation, for example, the construction of houses in Javanese indigenous communities. If someone wants to build or renovate his house, he relayed this news to the neighbours. These neighbours jointly assist the homeowner in the work process, especially the contribution of unpaid labour. Once the neighbours who helped wanted to renovate his house, a social obligation arose to help him. This form of social cooperation takes place in many other social lives, such as wedding and funeral. In urban areas where the community is very heterogeneous so that as a bond of village fellowship or familyhood is weakened, mutual cooperation and help are indeed addressed differently. However, the influence of modernization, globalization and individualization did not eliminate the awareness of communal ties in the lives of Indonesian people (Budiono, 2001).

Adat Law which prioritizes social actions in community life as a communal unit requires good economic conditions first (Nasroen, 1971). Therefore, the forms of mutual assistance, helping each other out, and other forms of cooperation in indigenous peoples are also found in economic activities. In the field of agriculture, this form of social cooperation is found in most of the indigenous peoples in Indonesia which include: the work of collecting forest products, clearing forests for cultivation, planting activities, managing and collecting crops. These economic activities are generally voluntary because they are reciprocated and do not tend to be rewarded for services (Hadikusumah, 2001).

For indigenous peoples in general, the land has a very important position because it functions as a place of residence that is the basis of existence for an indigenous community. The relationship between humans and land is a very visible arrangement of rights and obligations on land that are found in all parts of Indonesia (Van Vollehoven, J.F. Holleman, Sonius, 1981). The strong relationship between indigenous peoples and land has given birth to both legal and internal relations. The rights of indigenous peoples to their lands were named by Van Vollenhoven as *beschikingsrecht* (right of disposal/ allocation). According to Van Vollenhoven, customary rights are one of the indigenous rights to land that can only be owned by the same community units and cannot be alienated forever (Van Vollenhoven, 1972).

In addition to social cooperation, land, a prominent communal trait in indigenous peoples is found in the way they resolve disputes. F.D. Holleman, a Leiden scholar, in a field study in Tulungagung, East Java stated that the principle of Adat Law, namely, the principle of harmony, played an important role in solving various problems of rural communities including in the economic field (F.D. Holleman, 1972). The principle of harmony is a guideline in resolving a matter of adat. The principle of harmony is derived from the views and attitudes of a person with other residents in a residential environment to achieve an ideal atmosphere of living together with a safe, peaceful and prosperous society.

Holleman gave an example of the role of the principle of harmony in the law of obligations. If a person (A) borrows money from another village community (B) with a repayment period of 3 months. A with a very strong value of honesty in the village community will try to fulfil that promise. However, if A is in a condition of being unable to pay the debt within the promised period, then both parties put forward the harmonious adat institution through a meeting by giving a new grace period. Thanks to this principle of harmony, thousands of disputes in the village can be resolved peacefully without having to go to court.⁷ This model of dispute resolution is referred to as a family resolution model.

It was this communal trait in the socio-economic life of indigenous peoples in Indonesia which gave birth to the familyhood principle, both in terms of help, assistance and other forms of cooperation. This communal trait is found in all indigenous and local peoples living in the Indonesian archipelago until now.⁸ In the development of history, since Indonesia drafted the first constitution, the familyhood principle that lived as a socio-economic life tradition of the indigenous people was raised by The Founding Parents at the national level. Thus, the familyhood principle is laid as a basis for binding Indonesian citizens in socio-economic life.

4. The Basis for the Regulation of National Economy

The choice of the post-independence economic system was decided by The Indonesian Founding Parents at the session of the Agency to Investigate Efforts to Prepare for the Independence (BPUPKI).⁹ At the session, historical documents showed that all Founding Parents agreed on a constitutional provision based on a new economy that replaced the economic system that was the legacy of the Dutch Colonial Government. The new economy formed is based on the socio-economic values that live in the Indigenous People and Local Communities of Indonesia, namely the communal trait. This communal trait is translated into the provisions of Article 33 paragraph (1) as familyhood principle. Furthermore, in the elucidation section of Article 33 paragraph (1), there is also a basis for economic democracy which will be carried out through cooperatives as company structure.

The following is the elucidation of Article 33 paragraph (1) of the 1945 Constitution:

*"Article 33 states the basis for economic democracy, production is carried out by all, for all under the leadership or supervision (monitoring) of community members. It is the prosperity of the people that comes first not the prosperity of individuals. Therefore, the economy is structured as a joint effort based on the familyhood principle. The company structure (bangun perusahaan) that is compatible with it is cooperatives."*¹⁰

This historical document explains two main points. First, the idea of building a democratic national economic system is stated explicitly in the document, namely: *"In article 33 the basis of economic democracy is listed, production is carried out by all, for all under the leadership or supervision (monitoring) of members of the community."*¹¹ Second, the idea of building an economic system that is in accordance with the values and culture of the community, namely: the communal trait of Indonesian society. This trait is found in the goals of the national economy, namely: *"The prosperity of the people takes precedence, not the prosperity of individuals."*¹² To realize the two big ideas above, this historical document also explains that

⁷ F.D. Holleman was a Judge in the colonial era of the Dutch Government who had an interest in the area of adat law research. His academic work is very important for the development of Adat Law because his research is based on field data where he is placed as a judge in several regions of Indonesia. In 1935, he was appointed as professor of indigenous law at Leiden University as Van Vollenhoven's successors.

⁸ This argument is based on the results of the author's field verification in several Adat Communities in Indonesia, such as: Ciptagelar (West Java), Nagari Pandai Sikek (West Sumatera), Candirejo Village (Central Java), Kedonganan Village and Penglipuran Village (Bali) in May-September 2019.

⁹ In 1942, Japan invaded Indonesia after winning the war with the Netherlands. The arrival of Japan was welcomed by some Indonesian elites because Japan promised to help the Indonesian independence process. One of the promises was to form The Investigating Committee for Preparatory Work for Independence (BPUPKI) and was subsequently replaced by the Indonesian Independence Preparatory Committee (PPKI). In this BPUPKI and PPKI session, Indonesian leaders drew up a draft constitution. Those involved in drafting this constitution in Indonesian history are known as Founding Parents.

¹⁰ Elucidation of Article 33 of the 1945 Constitution.

¹¹ Elucidation of Article 33 of the 1945 Constitution.

¹² Elucidation of Article 33 of the 1945 Constitution.

*“the economy is structured as a joint effort based on the familyhood principle, and the suitable company structure is cooperatives.”*¹³

This historical fact shows that Founding Parents believes that a national economic system that is democratic and following the values and culture of society will be realized through cooperative institutions. This document is authentic historical evidence that the cooperatives idea has inspired the Founding Parents of Indonesia in designing national economic systems in the constitution. Cooperatives as economic institutions originating from Europe and developed in Indonesia since 1896 (Hasan, Azhari, Majid, 2018), are believed to be most suitable with the values and culture of the indigenous people. Although the agreement of the Founders of the Nation above is the result of a joint masterpiece for Indonesians to date, historical records show the great role of the two main figures, namely: Soepomo and Mohammad Hatta in formulating and providing an explanation of Article 33 of the 1945 Constitution. Soepomo is known as “architect” in the preparation of the 1945 Constitution. He was an alumnus of Leiden University under the guidance of Carpentier Alting, colleague of Van Vollenhoven (Jan Michiel Otto and Sebastiaan Pompe, 2012).

As the first Minister of Justice of the Republic of Indonesia, he composed the elucidation section of the 1945 Constitution (Saifudin, 1996). Soepomo's views were found in his speech on May 31, 1945, at the BPUPKI session as follows:

“In the economic field, the State will be familial as well because family is the nature of eastern society, which we must maintain as well as possible. The mutual help system, the cooperative system should be used as one of the economic bases of the Indonesian State” (Bahar, Kusuma, Hudawati, 1995).

Soepomo's view above appears together with the discussion of the *sistem kekeluargaan* (familyhood system). With regard to the familyhood system, Soepomo reaffirmed the importance of the familyhood system in the Constitution to be established. According to Soepomo:

“... by accepting this opening, we have rejected the flow of individual thoughts. We accept and encourage the mindset of family thoughts. Therefore, our Constitution cannot be different, it must also contain a familyhood system” (Bahar, Kusuma, Hudawati, 1995).

Soepomo was of the view that economic activities should be arranged based on familyhood principle. Therefore, there must be a mutual assistance system and it can be implemented using a cooperative system as an economic basis that is different from a system that is based on individualism (Kusuma, 2009). According to Soepomo, cooperatives must be used as one of the economic bases in the new State Indonesia. Soepomo's opinion shows that the values of indigenous peoples and the cooperatives ideas have inspired the formation of the constitution (Priambodo, 2018).

Meanwhile, Mohammad Hatta, an economist and an alumnus of Nederlandsche Handels-Hoogeschool Rotterdam (now Erasmus University Rotterdam) formulated the concept of the post-independence Indonesian economic system. The draft was made by Hatta during his activities as an activist and intellectual in the Netherlands and Europe (Hatta, 1994). On the expertise and economic concepts, he offered, Hatta was appointed as chairman of the financial and economic affairs in the drafting of the constitution in BPUPKI and First Vice President (Kusuma, 2009). Hatta's role was very dominant in developing the national economic system through cooperative vehicles (Manullang, 2010).

The cooperatives ideas that form the basis of the national economy as aspired by the founding parents of the nation has emerged since the Dutch colonial era. The cooperatives ideas are seen as the best way to build up gradually the weak economy of the people. This is based on the structure of the Indonesian economy at that time, where three layers of the economy were stratified. The first economic layer (upper) is an economy controlled by the Dutch and Europeans (Hatta, 1971). At this layer, production-related to international trade is controlled by this group. They controlled the production of plantations, industry, transportation, banks and insurance.

The second economic layer, which mediates and links with indigenous Indonesians, is approximately 90% in the hands of Chinese and other Asians. Indonesian people who can be included in the second economic layer at most fill 10%. Whereas the third economic layer (lower) are groups of indigenous Indonesians whose economic level is very small. They work as small farmers, small traders, small fishers and workers. Hatta stated that the structure of the three economic layers above occurred because of the results of the application of the colonial economic system. Therefore, Hatta believes that the new economic system, namely: an economic system based on cooperatives is believed to be able to change the structure of the economy (Hatta, 1971).

¹³ Elucidation of Article 33 of the 1945 Constitution.

The cooperatives ideas are seen as having advantages to improve or change the structure of the Indonesian economy above, especially in the third layer. Cooperatives were chosen because these economic institutions are the most promising to provide collective welfare. In cooperatives there are no employers and no workers, all workers jointly take care of common interests based on the familyhood principle in accordance with the values and culture of the Indonesian nation (Hatta, 1954). In the model of companies such as cooperatives, the idea of economic democracy can easily grow and develop. The notion of economic democracy inspired the choice of cooperatives as the industrial structure or organization. Without economic democracy, there will be a concentration of economic power in one or several groups that can ultimately form economic dominance (Swasono, 2018).

Hatta added that cooperatives are a means of realizing social justice for the lowest economic groups, especially in rural areas (Kahin, 1980). In rural areas, the familyhood principle is upheld by almost all communities in the village. Hatta holds that although cooperatives are institutions that originate and develop from the Western thought traditions, the values and goals of cooperatives are immensely following the familyhood principle. Therefore, he believes that the familyhood principle is the foundation of Indonesian cooperatives. Indonesian cooperatives reflect a collective Indonesian society, rooted in the original customs of Indonesian life, namely: mutual assistance and mutual cooperation grown at a higher level, in accordance with the demands of modern times (Hatta, 1971).

Hatta's thoughts have placed the familyhood principle and the cooperatives ideas as an important part of the history of the preparation of the national economic foundation in the Indonesian constitution. After the proclamation of independence until his death on March 14, 1980, Hatta was the only founder of the Nation who consistently fought for the cooperatives ideas in the Indonesian economic system. For his great contribution to the development of cooperatives, Hatta was appointed as the Father of Indonesian Cooperatives in the second Indonesian Cooperative Congress in 1953.

5. The Dynamics and the Development

The familyhood principle is a way of life of the Indonesian people in various aspects of life, including in the socio-economic field which is rooted, growing and developing in the unity of indigenous peoples in Indonesia. When the familyhood principle is transcended in the Indonesian constitution, the dynamics and development of the familyhood principle are no longer based on indigenous groups living throughout the Indonesian archipelago. With the adoption of the familyhood principle at the national level, every Indonesian citizen with different socioeconomic backgrounds is seen as a legal associate that has the same rights and obligations (Hadikusumah, 1981).

The familyhood principle as the basic value for governing the national economy in the constitution shows that the Founders of the Nation aspire to create an economic system that is in accordance with the personality of the Indonesian people themselves. Through this familyhood principle, there is a very clear difference between the economic system aspired to with the understanding of individualism. This new concept was designed in accordance with the background of the Indonesian revolution which rejected economic liberalism. Economic activities no longer contain the motive for personal gain, but the motive for serving society for the common good (Wilopo, 1987).

In the first period when the Founding Parents were still in control of power until 1965, a very strong effort was seen in formulating economic policies based on familyhood principle and cooperative ideas. At this time the economic policies adopted were very collective and were held directly by the Central Government in a centralized manner. The role of government is very large in the development of cooperatives in this era. Cooperatives are not only a people's economic movement but also as a pillar of the Indonesian economy (Jimly, 1992).

However, since the change of power due to political turmoil, the economic policy has changed. Under the new regime supported by military forces under the leadership of General Soeharto, the efforts of economic transformation that had been carried out previously did not receive main attention. This argument is based on a fundamental change in economic policy from the previous policy of economic centralism towards economic liberalization policies in the Soeharto era (Mallaranggeng, 2004).¹⁴

The dynamics of the political history of post-independence in 1945 until the demise of Suharto regime by the power of the people in 1998 had influenced the application of the familyhood principle in the economic regulations. However, in 2012 there was a Constitutional Court ruling that revoked the enactment of the new Cooperative Law, namely: Law No. 17 of 2012 concerning Cooperatives. The formation of the new cooperative law is a response to the development of the global economic order. In the 2012 Cooperative

¹⁴ The economic liberalization policy began in the early 1980s when oil prices began to fall. The economic liberalization policy is better known as the deregulation policy which aims to replace the economic centralization policy. This policy was carried out with several economic reform packages, especially in the fields of trade, finance and banking.

Law, the familyhood principle is no longer a part of the definition of cooperatives. Article 1 number 1 states that a cooperative is a legal entity established by an individual or cooperative legal entity, with the separation of the wealth of its members as capital to run a business, which fulfils aspirations and common needs in the economic, social and cultural fields in accordance with values and principles of cooperatives.¹⁵

In addition to the absence of familyhood principle, the definition of cooperatives in the Cooperatives Law 2012 was also different from that understood by International Co-operative Alliance (ICA). Within ICA there is an international standard that serves as a guideline for legislative drafters regarding cooperatives in each member country, known as the "Statement on the Co-operative Identity." It is asserted in the Statement, pertaining to the definition, that a co-operative is "an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a joint-ly owned and democratically-controlled enterprise" (ICA, 2015). Indonesian Cooperatives Law 2012, instead of understanding a cooperative as an "association of persons," define it merely as a "legal entity," emphasizing not the identity but that it has to be legalized i.e. acknowledged by, or registered to, the State.

In the minutes of the discussion in the People's Representative Council regarding the Cooperatives Law 2012, a fact was discovered that initially the "Government-Council Joint-Team for Revision of the Draft of Cooperatives Law" agreed to adopt ICA's definition of cooperatives into the draft law. However, after quite a lengthy debate, somehow it was the "legal entity" definition that was adopted in the enacted Law. The document proved that the Team, whose members comprised of representatives from both the Government and the Council, attempted to impose a limitative definition of cooperatives that acknowledges as cooperatives only those which already acquire the status of legal entity. This policy is further underscored in a stipulation that the use of the word "cooperatives" is forbidden for business organizations established not in accordance with the Law, meaning, cooperatives that is not registered, hence, has not yet acquire the status of legal entity (DPR, 2011).

This stipulation is potentially problematic, from a societal point of view, because there are multitude of business associations and organizations among Indonesian indigenous and local communities with cooperatives characteristics, although not in the form of legal entity. In addition, the stipulation that cooperatives is a legal entity "founded by individuals" also stirred public polemic. Various groups criticize the use of the phrase "founded by individuals" which shows that the formation of the 2012 Cooperative Law has changed the collectivist nature of Indonesian cooperatives as an embodiment of the familyhood principle in a joint effort to be individualistic. It is this change in the spirit of cooperatives that led a group of people to submit requests for a review of the 2012 Cooperative Law in 2013 to the Constitutional Court.¹⁶ On May 28, 2014, the Constitutional Court issued a Decision of the Constitutional Court No.28 / PUU-XI / 2013 on the application for judicial review of Law No.17 of 2012 concerning Cooperatives, which contained the revocation of the entire provisions and stipulations of the new Cooperative Law.

The Constitutional Court states that the phrase "individual" in the sense of cooperatives contained in Article 1 number 1 of the 2012 Cooperative Law is contrary to Article 33 paragraph (1) of the 1945 Constitution on the grounds that the definition refers to individualism. The Constitutional Court is of the opinion that definition is a fundamental matter in a law because it reflects the philosophy of the subject it seeks to govern. Furthermore, The Constitutional Court believes that a country's economic system strongly associated with values that live in the society where the economic system was born and prevails. These values grow and develop along with the history of the existence of the development of society. The values which are held in high regard which later become their character have been formulated in Article 33 paragraph (1) of the 1945 Constitution, namely: an economic arrangement as a joint effort based on the familyhood principle.¹⁷

In this Decision, the Constitutional Court based its argument on the original intention of the Founding Parents of Indonesian Nation, as the drafters of the 1945 Constitution themselves. The Court cited directly the elucidation to Article 33 of the Constitution that serves as the historic document pivotal to the existence of cooperatives in Indonesia. The elucidation is as follows.

"Article 33 states the basis for economic democracy, production is carried out by all, for all under the leadership or supervision (monitoring) of community members. It is the prosperity of the people that comes first not the prosperity of individuals. Therefore, the economy is structured as a joint effort based on the familyhood principle. The company structure (bangun perusahaan) that is compatible with it is cooperatives."

¹⁵ Article 1 number (1) of Law Number 17 of 2012 concerning Cooperatives.

¹⁶ The Constitutional Court is a judicial institution that was born in the era of Indonesian democracy through a constitutional amendment on November 9, 2001 and was officially established on October 15, 2003. One of the authorities of the Constitutional Court is to test the application of norms in the law to the constitution.

¹⁷ The Constitutional Court of the Republic of Indonesia, Decision No.28/PUU-XI / 2013, pp. 236-237.

Based on the Article 33 of the 1945 Constitution and its elucidation, cooperatives are crucial building blocks of Indonesian economic structure. The Constitutional Court asserted that the economic structure of a state should be arranged in accordance with the fundamental values that inspire the establishment of the state. The value, which is also characteristic of the nation, is the collectivist value, as opposed to the individualistic value which was clearly rejected by the drafters of the 1945 Constitution.¹⁸

Furthermore, the Constitutional Court Decision also considered the legislative history of cooperatives definitions as a comparison. First, Law Number 79 Year 1958 on *Cooperatives Associations*, in Article 2 Paragraph (1) stipulated that “Cooperatives is an association whose members are individuals of legal entities which are not concentrations of capital.” Second, Law Number 14 Year 1965 on *Cooperatives*, in Article 3 stipulated that “Cooperatives are people’s economic organization as well as tools of the revolution that serve as the crucible for cooperative humankind as well as the vehicle to realize Indonesian socialism based on Pancasila.” Third, Law Number 12 Year 1967 on the *Fundamentals of Cooperatives*, in Article 3 stipulated that “Indonesian cooperatives are people's economic organization with a social trait, whose members are individuals or cooperative legal entities, that together comprise the economic structure as a mutual endeavour based on the familyhood principle.” Fourth, Law Number 25 Year 1992 on *Cooperatives*, in Article 1 Paragraph (1) stipulated that “Cooperatives is a business entity whose members are individuals or cooperative legal entities that based its activities on the cooperative principles as well as people’s economic movement based on the familyhood principle.”¹⁹

Constitutional Court, after comparing the above definitions, concluded that the emphasis in a definition of cooperatives clearly pertains to the true identity of the cooperatives itself, that is, as an economic actor or subject in an economic structure or system. It is why, therefore, in the previous legislation, cooperatives is defined broadly as association, economic organization, people’s economic organization, or at least, as in the case of Law Number 25 Year 1992, a business entity. Those concepts are fundamentally different from the restrictive “legal entity” definition adopted in Law Number 17 Year 2012. Furthermore, the definition does not imply the substantive and fundamental understandings of cooperatives as intended by the Article 33 Paragraph (1) of the 1945 Constitution and its elucidation that clearly refers to the concept of business structure which is unique.²⁰

The Constitutional Court was also of the opinion that the individualistic leaning implied in the 2012 definition contradicts the original philosophy contained in the Constitution. Since the case at hand pertained to the very definition of cooperatives itself, and that it had been proven that the definition in question is fundamentally flawed, it was ruled that any provisions and stipulations that follows within the Law can no longer function. The Court, therefore, decided that Law Number 17 Year 2012 on *Cooperatives* as an entirety is unconstitutional, hence, not legally binding. For the time being, temporarily until a new legislation is adopted and enacted, as well as to avoid legal vacuum, the Constitutional Court rules that the previous cooperatives legislation i.e. Law Number 25 Year 1992 on *Cooperatives* shall be in effect.²¹

The ruling of the Constitutional Court is very interesting as during the reign of the Soeharto government, the Indonesian judicial system was not familiar with the mechanism of judicial review at legislative level. Substantially, this decision reaffirmed the thoughts of the Indonesian Founding Parents, especially the thoughts of Soepomo and Muhammad Hatta recorded in the historical documents of the preparation of the 1945 Constitution. The decision of the Constitutional Court could be the basis of a legal framework for economic policymakers in Indonesia that socio-economic values that live in Indonesian society, which in the constitution use the term the familyhood principle and the cooperatives ideas as the bases for regulating the national economy.

The socio-economic values that live in indigenous peoples are also in accordance with economic democracy, which is also explicitly stated in the elucidation section of Article 33 paragraph (1) of the 1945 Constitution. Economic democracy in the Indonesian constitution means that a production activity must involve as many members of the public as possible. Economic activities that involve the participation and emancipation of as many citizens as possible are expected to open up equal opportunities that ultimately aim to create shared prosperity. Founding Parents believes that without an economic democracy there will be a concentration of economic power in just one or a few community groups, thus widening the economic gap. Learning from the experience of Indonesia's economic history, Founding Parents believes that the familyhood principle and the cooperatives idea are instruments for economic transformation.

Through the path of economic transformation, the formulation of economic policies will guide the community towards the formation of a democratic economic system that is in accordance with the values and culture of the Indonesian people. Although this economic transformation has not materialized to date due to

¹⁸ The Constitutional Court of the Republic of Indonesia, Decision No.28/PUU-XI / 2013, pp. 239-240.

¹⁹ The Constitutional Court of the Republic of Indonesia, Decision No.28/PUU-XI / 2013, pp. 240-241.

²⁰ The Constitutional Court of the Republic of Indonesia, Decision No.28/PUU-XI / 2013, pp. 241.

²¹ The Constitutional Court of the Republic of Indonesia, Decision No.28/PUU-XI / 2013, pp. 254. Until the time this article is written, the draft for new cooperatives legislation is still being discussed in the People’s Representative Council.

the dynamics and development of political and economic history since Suharto era, the existence of the Constitutional Court's Decision is very valuable for future economic policy. For economic policymakers, this decision is a history that has been delayed so that the formation of new cooperative laws, as well as other economic laws, should be imbued with the soul and spirit of the familyhood principle.

6. Closing

Socio-economic historical events that occurred in Indonesia greatly influenced the choice of the familyhood principle and the cooperatives idea as the basis for regulating the national economy in the constitution. This matter started from the history of the international trade of spices in the Maluku Islands which has become an attraction for European expeditions to the territorial waters of Indonesia. For indigenous peoples, the arrival of Europeans for commercial purposes was not initially rejected, although in some areas it caused resistance from local authorities.

The arrival of Europeans in this era has given new knowledge about various types of local plants that sell well in international markets, thus involving indigenous peoples in wider international trade between the continents of Asia and Europe. This article argues that adat laws governing all aspects of community life have been used in various international trade transactions of spices. Although international trade has influenced the socio-economic life of indigenous peoples, the use of Adat Law in economic activities in this era is able to maintain the socio-economic institutions of indigenous peoples, especially regarding land and socio-economic obligations of indigenous villagers.

Massive changes to the socio-economic life of communal society occurred in the era of Dutch colonialism. There are two policies that affect the socio-economic institutions of communal society, namely; the implementation of the cultivation system policy in 1830 and the application of the liberal economic policy system in 1870. The cultivation system policy was led directly by the Colonial Government by requiring rural people to plant commercial crops for the European market. Whereas liberal economic policy is carried out by opening as much investment as possible for the private sector in the plantation sector which is marked by the application of the New Agrarian Law of 1870.

Both of these economic policies required a lot of customary land and energy from indigenous villagers. The implementation of these two economic policies has directly damaged the institutions of indigenous people for two main reasons. First, community joint ownership of land (communal rights) was taken expertly by the colonial government for the business interests of the Government and foreign investors. Second, the involvement of the communal villagers who participated in the two economic policies was forced to make them unable to carry out socio-economic obligations in the lives of indigenous peoples who have been governed by customary law.

It is this historical background of colonialism that underlies the founders of the Indonesian nation in the preparation of constitutional provisions concerning the national economy. Post-independence economic policies must guarantee the economic transformation of the colonial economic system towards a national economic system that is democratic and in accordance with the values and culture of the Indonesian people. In the Indonesian constitution, the national economic system will be realized based on familyhood principles and cooperative ideas.

Although the familyhood principle and the cooperatives idea have been regulated imperatively in the constitution, the dynamics and development in the history of Indonesian economic policy are highly dependent on the political will of economic policymakers. The economic policy makers after the era of the Founders of the Nation came to power, in general they always tried to integrate the global economic order into the local economic order. Economic policies as outlined in the form of these laws and regulations are in many ways contrary to the spirit of the familyhood principle and cooperative ideas.

However, when a democratic political system gave birth to the Constitutional Court, there were very interesting developments in Indonesia. The judicial review of the Cooperatives Law is an example in which a constitutional court judge has returned the familyhood principle and the cooperatives ideas as the bases for regulating the national economy. This decision is a historical task pending to ensure that economic policies as outlined in the legislation must be in accordance with the familyhood principle as the soul and spirit of the rules.

7. References

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