ABSTRACT

Objective: This research aims to find arguments (theories) to ensure that foreign direct investment does not conflict with but is in accordance with the values of Pancasila and the provisions of the 1945 Constitution of the Republic of Indonesia.

Conceptual foundation: Each country in the world cannot isolate itself but must establish relationships and work together to achieve the good of those countries. Robert Jackson and Georg Sorensen said that each other's countries are independent and have sovereignty. But they are not estranged from each other. They are adjacent to and influence each other and side by side and opposite each other. Therefore, complete separation of one country from another is not an option. A country that is isolated and disconnected from other countries will usually suffer.

Method: This research is normative juridical using conceptual, statutory, and historical approaches. The legal materials used are primary legal materials and secondary legal materials, which are collected systematically according to the issues of concern in this research and the collection technique uses literature study, then the problems are analyzed qualitatively.

Result and conclusion: Foreign direct investment has a position as part and complement of the Indonesian economic system because its existence is in accordance with the values contained in Pancasila and the 1945 Constitution of the Republic of Indonesia.

Contribution: The results of this research convince and invite the Indonesian people that the presence of foreign direct investment in the Indonesian economic system no longer needs to be debated, but accept foreign direct investment as a complement and encourage growth and realize the welfare of the Indonesian people in accordance with the Preamble to the Constitution of the Republic of Indonesia.

Keywords: position, foreign investment, Pancasila, Indonesian constitution.

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A POSIÇÃO DO INVESTIMENTO ESTRANGEIRO NO SISTEMA ECONÔMICO INDONÉSIO BASEADO EM PANCASILA E A CONSTITUIÇÃO DE 1945 DA REPÚBLICA DA INDONÉSIA

RESUMO

Objetivo: Esta pesquisa visa encontrar argumentos (teorias) para garantir que o investimento direto estrangeiro não entra em conflito com, mas está de acordo com os valores de Pancasila e as disposições da Constituição de 1945 da República da Indonésia.

Fundamento conceitual: Cada país no mundo não pode isolar-se, mas deve estabelecer relações e trabalhar em conjunto para alcançar o bem desses países. Robert Jackson e Georg Sorensen disseram que os países uns dos outros são independentes e têm soberania. Mas eles não se afastam uns dos outros. Eles são adjacentes e influenciam um ao outro e lado a lado e opostos um ao outro. Por conseguinte, a separação total entre países não é uma opção. Um país que é isolado e desconectado de outros países geralmente sofrerá.

Método: Esta pesquisa é jurídica normativa usando abordagens conceituais, estatutárias e históricas. Os materiais legais utilizados são materiais legais primários e materiais legais secundários, que são coletados sistematicamente de acordo com as questões de preocupação nesta pesquisa e a técnica de coleta usa estudo de literatura, em seguida, os problemas são analisados qualitativamente.

Resultado e conclusão: O investimento direto estrangeiro tem uma posição como parte e complemento do sistema econômico indonésio porque sua existência está de acordo com os valores contidos em Pancasila e na Constituição da República da Indonésia de 1945.

Contribuição: Os resultados desta pesquisa convencem e convidam o povo indonésio de que a presença de investimento estrangeiro direto no sistema econômico indonésio não precisa mais ser debatida, mas aceitam o investimento estrangeiro direto como complemento e incentivam o crescimento e percebem o bem-estar do povo indonésio de acordo com o Preâmbulo da Constituição da República da Indonésia.

Palavras-chave: posição, investimento estrangeiro, Pancasila, constituição indonésia.

1 INTRODUCTION

From an economics perspective, Paul M Johnson said that investment is all income spent by companies or government institutions on capital goods that will be used in productive activities (Harjono, 2012). Investment can come from within the country and can come from abroad, which is often called foreign direct investment (FDI). FDI means investors from certain countries invest by establishing and operating companies in other countries. For example, investors from Brazil invest their capital in Indonesia. So it is not an investment in the form of a portfolio (shares or other securities) in the capital market.

FDI is a form of relationship and cooperation between one country and another country in the world, namely international cooperation. Relations between one country
and another are a necessity because in fact each country cannot isolate itself from one another but must establish relations (cooperation) to achieve the good of those countries. Robert Jackson and Georg Sorensen said that each other's countries are independent and have sovereignty. But they are not isolated or separate from each other. They are actually close to each other and influence each other so they have to be side by side and face each other. Therefore, complete separation of one country from another is not an option. In a country that is isolated and cut off from other countries, either because of the will of its government or because of foreign powers, the people of that isolated country will usually suffer. This situation has occurred in Burma, Libya, Iraq, and Iran (Jackson & Sorensen, 2005).

Various studies conducted by economic experts show that investment is essential to encourage a country's economic growth. In the 1950s, economists agreed that large increases in investment needed to be made in developing countries to escape the shackles of backwardness and poverty. Because, with increased investment, economic growth will be accelerated and people's prosperity will increase. This thinking is influenced by the Harrod-Domar theory which says that the higher the level of investment, the higher the level of economic growth (Sukirno, 2006).

Sangeetha D. said that to achieve a strong economy, people must work towards it and the main activity they should do is concentrate on investing (Sangeetha, 2015). Kevin Williams explained that one of the agendas of developing countries in spurring development is to create policies that are profitable for foreign investment (FDI) because the potential for FDI is very beneficial for their economy. Apart from driving economic growth, FDI is also seen as a channel for the transfer of technology, managerial knowledge, access to foreign markets, and others. Kobrin also stated that during the 1992-2001 period, 95% of the economic reforms carried out by developing countries were more oriented towards attracting FDI (Williams: 2015).

The results of research conducted in the 2001-2010 period by Qaiser Abbas, Salman Akbar, Ali Shan Nasir, Hafiz Aman Ullah, and Muhammad Akram Naseem, which investigated the influence of foreign investment on economic growth in South Asian Association for Regional Corporation (SAARC) countries, a regional economic cooperation organization in the South Asia region (Pakistan, India, Bangladesh, Nepal, Bhutan, Maldives, Sri Lanka and Afghanistan), concluded that a country's growth depends on investment, increased assets and infrastructure. Foreign direct investment
(FDI) in an economy shows that there is a good investment trend that encourages economic growth and increases GDP (Abbas et al., 2011).

In the view of scholars in Indonesia, also see that investment has a significant influence on economic growth and the human development index. Meanwhile, economic growth has a significant influence on welfare (Suprapto, Sumaryoto, and Saleh, 2022). Setyo Tri Wahyudi also mentioned that although in the literature there is an ambiguous relationship between foreign investment (FDI) and economic growth, several studies show that FDI can influence economic growth directly because it contributes to capital accumulation and the transfer of new technology to the host country (Wahyudi, 2004).

However, there is also a view that believes that foreign investment is a new form of colonialism-imperialism that will only encourage dependence and exploitation of the host country’s natural resources, which will ultimately be detrimental to the host country. The results of Paul Baran’s study of the impact of colonialism in India, which he outlined in his book The Political Economy of Growth, show that the touch of capitalist countries in underdeveloped pre-capitalist countries causes underdeveloped countries to have their progress hampered and will continue to live in backwardness. The presence of strong foreign capital from Western countries to developing countries has created surpluses in Western countries. Foreign investors come to developing countries to look for cheap raw materials to bring home, look for workers with cheap wages to employ in the factories they set up, and then industrialized countries that have developed sell their industrial goods (Budiman, 2000), including developing countries. Meanwhile, developing countries are only able to produce and sell (export) raw materials to advanced industrial countries. In this situation, the one who benefits from a higher value than the selling price of the product is of course the capitalist country. As a result, those who enjoy a surplus in trade relations between advanced industrial countries (capitalist) and developing countries are of course capitalist countries (advanced industrial countries).

Ideologically, the presence of foreign investment is even seen as contrary to the constitution of the host country, especially in countries that do not adhere to a liberalism-capitalism economic system such as Indonesia. Elli Ruslina, based on the results of her dissertation research which was later recorded and published, stated that foreign investment which is widely opened and can easily enter Indonesia will lead to the liberalization of the Indonesian economy, which of course is contrary to the principles of togetherness and kinship adhered to by the Indonesian nation and state based on Article
33 of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). He also stated that the principle of equal treatment between foreign investors and domestic investors as regulated in Article 3 paragraph (1) letter d of Law Number 25 of 2007 concerning Investment, actually creates injustice because in economic democracy Indonesia does not fully apply the principle of equal treatment. Because, the aim of realizing social justice for all Indonesian people as one of the ideals of the Indonesian state, implies taking sides towards the weak, the poor, and special treatment towards empowerment (Ruslina, 2013).

Sri Edi Swasono also believes that the principle of equal treatment in Article 3 of Law Number 25 of 2007 concerning Capital Investment is a form of discriminatory treatment towards domestic investors. He is of the view that the same treatment of different powers (domestic investors are still weaker than foreign investors) is a discriminatory action against the country's children. So, Law Number 25 of 2007 concerning Investment "pretends" to admire "human rights", but is inhumane towards national entrepreneurs (Ruslina, 2013).

Two different poles of view in looking at the position and presence of foreign investment in the Indonesian economic system based on Pancasila and the 1945 Constitution as mentioned above, have been experienced or occurred in the practice of the Indonesian economy. The history of the political history of foreign investment law in Indonesia has proven this. This is reflected in the legal politics of Indonesian foreign investment (which is outlined in law) that has been and is currently in force.

Law Number 78 of 1958 concerning Foreign Investment as the first law, was issued during the enactment of the 1950 Provisional Constitution (UUDS 1950) which adhered to liberal democracy and a parliamentary system. Nugroho Notosusanto said that Indonesia has implemented liberal democracy since the enactment of the RIS Constitution on December 27, 1949 (Mahfud MD, 2001). Even though during the 1950 UUDS Indonesia adopted liberal democracy with a parliamentary system of government, the Indonesian economic system contained in the 1950 UUDS adhered to the concept of economic democracy with the exact formulation as stated in regulated in Article 33 of the 1945 Constitution of the Republic of Indonesia.

The consideration for the formation of Law Number 78 of 1958 is that capital is very necessary to accelerate economic development, increase national production, and improve people's welfare. However, domestic capital at that time was not sufficient, so
foreign investment needed to be encouraged to invest in Indonesia. On the other hand, in Law Number 16 of 1965 concerning the Revocation of Law Number 78 of 1958 concerning Foreign Investment, foreign investment is considered only to extract maximum profits and exploit the Indonesian people so that it will hinder the progress of the Indonesian Revolution in completing the national stage. democracy to realize Indonesian Socialism based on Pancasila. This is the reason for the repeal of Law No. 78 of 1958 concerning Foreign Investment.

Based on the description above, an interesting issue as a problem in this research is regarding the position of foreign direct investment in the Indonesian economic system based on Pancasila and the 1945 Constitution. Whether foreign investment is in accordance or not in accordance with Pancasila and the 1945 Constitution. This is important because Indonesia as one of the countries in the world has not escaped the flow of globalization which requires open interaction with countries in the world and which has the aim of becoming a developed country.

China, whose political system is under a single-party government and has a communist ideology, has even changed its economic system to a market (liberal) economic system, which has opened wide the presence of foreign investment in their economic system. Therefore, China has become one of the countries with the largest economic power in the world. Since 1979, through economic reform policies, foreign investment was invited to participate in the Chinese economy so China developed into the second largest country in receiving foreign investment after the United States and even the largest among developing countries. During twenty years (1979-1999) the investment value of foreign investment into China reached US$ 306 billion, which means it reached 10 (ten) percent of direct investment worldwide and 30 (thirty) percent of all investment in China, developing countries (OECD, 2000).

This research aims to answer the truth of the existing thesis, both the results of previous research conducted by Eli Ruslina and that put forward by Indonesian economic expert Sri Edi Swasono who said that foreign investment which is widely opened and can easily enter Indonesia will liberalize the Indonesian economy which is contrary to the principle of togetherness and the principle of kinship adopted by the Indonesian nation and state based on Pancasila and the 1945 Constitution.
2 METHOD

This research is normative juridical research using a conceptual approach, a statutory approach, and a historical approach. Through a conceptual approach, problems are analyzed using the principles and doctrines of legal science. Through a statutory approach, the problem is seen by looking at the laws that regulate investment in Indonesia. Meanwhile, through a historical approach, problems are seen using the history of the Pancasila agreement as the basis of the Indonesian state.

The legal materials used are primary legal materials and secondary legal materials. Primary legal materials are statutory regulations starting from the constitution and statutes. Meanwhile, secondary legal materials are books, journals, or other media, and the opinions of scholars. These legal materials were collected systematically according to the issues of concern in this research, with collection techniques using literature study, then the problems were analyzed qualitatively.

3 RESULT AND DISCUSSION

3.1 ECONOMIC SYSTEMS IN THE WORLD

Basically, in a good society whose lifestyle is still very traditional (which is far from being touched by technology), a society that is experiencing development and has been influenced by the touch of technology, and a modern society that is in full contact with technology (advanced industrial countries), a cycle of activity takes place. economy supported by economic actors, namely households (consumers), companies (producers), and governments as well as foreign households (especially for people in developing and industrially advanced countries).

However, in reality, in this world, there are several types of economic systems. In general, economic systems in the world are distinguished by fundamental differences in two things, namely: (1) ownership of production factors and (2) methods of coordinating economic activities. Based on these two principles, McConnell and Brue stated that there are two types of economic systems, namely pure capitalism and command or guided economic systems (McConnell and Brue, 1990). Kwik Kian Gie also explained that in theory, the economic system (including the economic system used by a country) is determined by the extent of government intervention in the economic sector. Starting from this basic principle, there are two very extreme or different economic systems (Gie, 2016), namely the market economic system initiated by capitalism-liberalism and the
central planning economic system initiated by socialism (Rachbini, 1990). Then there is also a mixed economic system.

Both economic systems generally have the aim of improving the welfare of the people within the system. In a market economic system with capitalism and prioritizing the principle of individual freedom initiated by Adam Smith (the pioneer of capitalism), the aim is to achieve economic efficiency which will lead to prosperity and prosperity for the people as a whole. Likewise, the centralized planning economic system (socialism) driven by Karl Mark, also aims to create prosperity and prosperity for society (Trialdi et.al., 1999).

A mixed economic system is a system that combines a market economic system and a command economic system. In a mixed economic system, economic activities are left to market mechanisms but are balanced by the government's role in intervening in the economy, namely by making regulations, establishing fiscal and monetary policies, as well as assisting and supervising private activities. The aim of this government intervention is none other than (a) maintaining the stability of economic development; (b) guarantee a more equal distribution of society and avoid unjust oppression; (c) providing complete goods to improve the welfare and prosperity of society; (d) monitoring external competitors and preventing monopolies that are detrimental to society (Latumaerissa, 2015).

The mixed economic system is a contribution to the thinking of John Maynard Keynes, a leading economist from England. In 1936, Keynes warned that market mechanisms were not always able to ensure that at all times everyone could be involved in full economic activity. A gap will emerge between the need for labor from ongoing economic activity and the availability of existing labor, thereby encouraging an increase in the number of unemployed because labor cannot be fully absorbed by the labor market. Therefore, Keynes emphasized the need for the state's role, within certain limits, to be involved in regulating economic governance in the operation of market mechanisms (Purnomo, Khurun’in, and Ardianti, 2017).

3.2 ECONOMIC SYSTEM IN THE PANCASILA PERSPECTIVE

So what about the Indonesian economic system, whether it adheres to a market economic system or a socialist system, a mixed system, or has its own system? Among experts or thinkers in Indonesia, there are quite a variety of views regarding the economic

system of the Pancasila ideology. Agung Rifqi Pratama stated that because Pancasila is an ideology, it gave birth to an economic system, namely the Pancasila economic system for Indonesia (Pratama: 2018).

Several prominent Indonesian figures and economists also mention the Pancasila economic system, such as Emil Salim, Sumitro Djoyohadikusumo, and Mubyarto. According to Emil Salim, the choice of economic system used by a country will be influenced by environmental factors, the history experienced by that nation, the society's philosophy of life, society's perception of its future, and so on. Therefore, the economic system adopted by a nation does not have to be static in the position of a pure market economic system or a pure command economic system. Many countries with their economic systems mix market economic systems with command economic systems. For Indonesia itself, the developments that occurred in the period 1939-1979 were marked by a mix between the market economic system and the command economic system which moved towards a position of equilibrium. According to Emil Salim, the mixture of the market economic system and the command economic system which moves to an equilibrium position can be identified as the Pancasila economic system (Nugroho: 2016).

So, the characteristics of the Pancasila economic system according to Emil Salim is a system in which there are characteristics or elements of a market economic system accompanied by planning elements known as a command system. Thus, the Pancasila economic system tends to be in the middle between the market economic system and the command economic system in an equilibrium position. That is Emil Salim's view.

The values contained in Pancasila direct the implementation of the Indonesian nation's economic household so that it will be known whether the values of Pancasila have indeed given rise to a separate economic system (the Pancasila economic system), or whether they are in line with the capitalist economic system (market) or the command economic system (socialist). Based on the values of Pancasila, it will also be known whether Pancasila rejects or accepts the presence of foreign investment in the Indonesian economy.

In Pancasila, there are five precepts, each of which reads: "Belief in One Almighty God; Just and civilized humanity; The unity of Indonesia; Democracy led by wisdom in deliberation/representation; and social justice for all Indonesian people."

The five principles of Pancasila do not explicitly mention the economy or economic system of Indonesia. There is also no legal instrument that interprets the values
of Pancasila about the Indonesian economic system. Even the articles in the 1945 Constitution do not state that the entire state system (government system, economic system, legal system, etc.) is regulated therein as a form of actualization outlined by or according to the values of Pancasila. Pancasila values only animate or form the basis of the values of these state systems. For example, the government system that currently uses the presidency is not a problem from a Pancasila perspective. Likewise, for example, if this nation agrees to use a parliamentary system, it is also not a problem from a Pancasila perspective. Because as a value, Pancasila only provides the basis for values in the administration of government, both presidential and parliamentary systems.

At the Investigation Agency for Preparatory Efforts for Indonesian Independence (BPUPKI) session on June 1, 1945 (Aning, 2019), with the agenda of the session discussing the basis of the state for an independent Indonesia, Sukarno gave a speech and conveyed the basic ideas of the state consisting of five principles, which he later named Pancasila. The Pancasila presented by Sukarno at the BPUPKI session consisted of five precepts, namely:

1. Indonesian Nationality.
2. Internationalism or humanity.
3. Consensus or democracy.
4. Social welfare.
5. Belief in the Almighty God.

Sukarno explained the meaning of each precept. The five precepts complement each other so that they contain a comprehensive meaning to serve as the basis of the state as a guide in the administration of the Indonesian government, as well as in efforts to create prosperity for the Indonesian people. From Sukarno's explanation, there are at least two principles in the Indonesian National Principles. First, respect all groups including ethnicity, religion, skin color, and so on in Indonesia. He said that Indonesian nationality is "a unified Indonesian nationality! Not the Javanese nationality, not the Sumatran nationality, not the Bornean, Celebes, Balinese or other nationalities but the Indonesian nationality, which together form the basis of one national state." Second, independent Indonesia is not just for Indonesia which is alone among the association of other nations but leads to a family of nations. This means that Indonesia must realize that it is part of other nations so it must associate and be friendly with other nations in the world.
As part of the big family of nations in the world, Sukarno came to the second principle, namely internationalism or humanity. Indonesia must position itself towards world unity, and world brotherhood. According to Sukarno, this principle of internationalism is related to the first principle (Indonesian nationality). He explained: "Internationalism cannot thrive if it is not rooted in the earth of nationalism. Nationalism cannot thrive if it does not live in the garden of internationalism."

The third principle or precept is democracy, as the basis for representation, the basis for deliberation. All matters relating to nationality can be discussed and decided in representative bodies so that all elements in society can be accommodated or accommodated. He said "Indonesia is not a country for one person, not a country for one group, even if it is a rich group. But we founded a country of "all for all", "one for all, all for one". I believe that an absolute requirement for the strength of the Indonesian state is deliberation and representation."

The fourth principle offered by Sukarno is social welfare. With this principle, according to Sukarno, there is no poverty in Independent Indonesia. Thus, all state administration must be directed at achieving people's welfare or eliminating poverty in Indonesia.

The fifth principle is Belief in One Almighty God. With this principle, Indonesia is a country with God. As a nation that believes in God, every Indonesian should believe in God according to their respective religions and beliefs, Christians worship God according to the teachings of Jesus, Muslims worship God according to the instructions of the Prophet Muhammad SAW, and Buddhists carry out their worship according to book instructions. Every religious follower can worship their God freely and in a civilized manner. Freedom means no "religious egoism". Meanwhile, worshiping God with civility means respecting each other among all adherents of different religions.

Based on Sukarno's explanation, it can be seen that the Indonesian economic system from the Pancasila perspective does not touch on matters of a regulatory nature such as the role of the government in the economy and likewise regarding individual rights, let alone ownership rights, which are already included in matters that concrete-individual. Pancasila only contains basic and general values. So, as a collection of values, Pancasila will not be transformed into a system, either the Pancasila economic system, the Pancasila political system, the Pancasila legal system, and so on. Pancasila only functions as a foundation for all aspects of life in the state. Concretely, Pancasila is the
basis for economic, political, legal, cultural, and other life. Meanwhile, the choice or model of the state system is then outlined or regulated in the constitution.

Therefore, both the political system and the economic system and so on will only be known in the constitution or basic law which is explicitly formulated. However, the systems in the constitution must not conflict with or deviate from the values contained in Pancasila. So, regarding two questions (a) whether Pancasila values recognize (individual) ownership of production factors (including land and natural resources); and (b) whether the values in Pancasila require the administration of the state's economy to be carried out in a planned/centralized manner (command) by the government or left to market mechanisms, must be seen in the text of the basic law (constitution) as an elaboration of Pancasila itself, namely the 1945 Constitution of the Republic of Indonesia.

In the history of Indonesia's journey, using Pancasila as the basis of the state, Indonesia's economic policies have experienced ups and downs with alternating emphasis on the market economic system (liberal) and the command economic system (socialist). Rahardjo stated that in the period 1945-1966, three stages had developed in the trend of economic policy. Firstly, in the period 1945-1950, there was a mixture of liberalism and socialism in a situation at a crossroads. Second, in the period 1950-1959, the Indonesian economic system tended towards a liberal-market economic system which allowed society to develop the economy, without much state intervention, so that during this time the private sector (including small businesses) had the opportunity to develop. During this period the local economy was also characterized by the development of monopoly. Third, in the period 1959-1966, the Indonesian economic system tended towards socialism, namely Indonesian socialism, which was characterized by three symptoms, namely (a) government intervention in economic life; (b) the development of state-owned enterprises (BUMN), and (c) fostering cooperatives and empowering the people's economy.

3.3 INDONESIAN ECONOMIC SYSTEM BASED ON THE 1945 CONSTITUTION

The 1945 Constitution is the highest economic policy foundation which is the basis for making economic policies, which are regulated in Article 33 of the 1945 Constitution of the Republic of Indonesia. It is the economic foundation, the highest legal basis, and economic politics for Indonesia. The formulation of Article 33 of the 1945 Constitution of the Republic of Indonesia after the Fourth Amendment in 2002 is as follows:
(1) The economy is structured as a joint venture based on the principle of kinship.
(2) Branches of production that are important for the state and which affect the lives of many people are controlled by the state.
(3) Earth and water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.
(4) The national economy is organized based on economic democracy, togetherness, fair efficiency, sustainability, environmental insight, and independence, and by maintaining the balance of progress and unity of the national economy.
(5) Further provisions regarding the implementation of this article are regulated in law.

Article 33 of the 1945 Constitution of the Republic of Indonesia does not explicitly or concretely regulate the Indonesian economic system. Al Muizzuddin Fazaalloh said that the formulation of the Indonesian economy based on Pancasila and the 1945 Constitution of the Republic of Indonesia is still too general, giving rise to multiple interpretations by each regime (Fazaalloh: 2018). Agung Rifqi Pratama also mentioned that the Indonesian economic system is always influenced by the interpretation of Pancasila and the 1945 Constitution of the Republic of Indonesia, so every time of leadership, leaders always have different interpretations of the Indonesian economic system Pancasila and the 1945 Constitution (Pratama: 2018). This means that every leader in each era assumes that the economic policy he is pursuing is an Indonesian economic system that is by Pancasila and the 1945 Constitution of the Republic of Indonesia.

In the Soekarno era 1957-1965 (guided democracy era), Article 33 of the 1945 Constitution of the Republic of Indonesia was implemented using the ideology of socialism which he called Indonesian socialism, namely by implementing a command economic system. This idea began during Soekarno's speech on February 21 1957 entitled "Saving the Republic of Proclamation". In his speech, President Soekarno stated that Indonesia was not compatible with a liberal economic system. The parliamentary pattern implemented at that time was also declared unsuitable for the Indonesian government system because it created instability, so the choice was a guided economic system (Indrajat: 2021).

Then, in the Soeharto era (1966-1998), Article 33 of the 1945 Constitution of the Republic of Indonesia was implemented with the understanding of liberalism to
encourage economic growth by spurring industrialization. The command economic system implemented in the Sukarno era was changed to a market economic system. Since the new order of neoliberalism or economic liberalization began to take effect in Indonesia, it was marked by government policies that opened up opportunities for foreign companies to invest capital in Indonesia, especially in the fields of mining, plantations, and forest management. However, it is very unfortunate that the process of unbalanced use of natural resources during the Soeharto era resulted in the community receiving less benefits in managing natural resources. People tend to only be used as manual workers (Indrajat: 2021). Meanwhile, in the reform era, two ideologies were implemented at once, namely liberalism (representing capitalism which prioritizes competition as part of a free market mechanism) and a people's economic system which prioritizes the spirit of collectivism in every business in the economic sector (Lestarini: no year).

According to Tom Gunadi in the formulation of Article 33 of the 1945 Constitution of the Republic of Indonesia paragraph (1), paragraph (2), and paragraph (3), there is an economic philosophy, namely the principle of family, which is contrary to the individualism adopted in the market economic system and the radical "collectivist" socialism in the socialist economic system (Gunadi: 1995). However, Rahardjo reminded us that the principles of joint effort, the principle of family, and the tradition of cooperation or mutual help are inherent among the Indonesian people, especially in rural areas. The principle of kinship is stated in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia as a principle in the structure of the Indonesian economy. However, in reality, this principle mostly only applies or is practiced in social activities, for example, in building houses, building roads, or overcoming natural disasters. Meanwhile, in the economic sector, this principle can be seen in the tendency to cooperate which since the end of the 19th century was encouraged on a large scale by the government during the New Order era (Rahardjo, 2009).

Apart from that, the principle of kinship (contained in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia) is in no way contrary to individualism because Pancasila also recognizes the freedom of each person (individual). Still, this freedom must not interfere with the rights and freedoms of other individuals. The recognition of individual rights as regulated in Articles 28A to Article 28I of the 1945 Constitution of the Republic of Indonesia proves the existence of an Indonesian philosophy that recognizes individual freedom (and is in line with Pancasila). Meanwhile,
the provisions of Articles 28A to Article 28I are complemented by the provisions of Article 28J of the 1945 Constitution of the Republic of Indonesia which requires that every person in exercising his rights respects the freedom rights of other people.

Paragraph (2) and paragraph (3) of Article 33 of the 1945 Constitution of the Republic of Indonesia is the political-economic basis that requires the government to play an active role in the Indonesian economy because it contains provisions regarding the state's right to control over a. Branches of production that are important for the country and that affect the lives of many people; b. The earth and water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. This formulation is also a reflection of Indonesian economic nationalism. However, because in practice this formulation often has different interpretations between one regime and another, this has led to the assumption that Article 33 of the 1945 Constitution is a utopian article that is no longer by the dynamics of national and global development which dichotomizes the market economic system with the command economic system. In reality, this has been going on for a very long time (Fadjar: 2006).

Even though individuals or the private sector play a role, the government has the authority to formulate policies, carry out regulations, carry out management, and carry out supervision over branches of production that are important for the state and which affect the livelihoods of many people as well as the earth and water and the natural wealth contained therein, it becomes clear that the government's active role in the Indonesian economy is quite large. In other words, the Indonesian economic system based on the provisions of Article 33 of the 1945 Constitution of the Republic of Indonesia does not fully implement a pure market economic system but also adopts the spirit of a command economic system (although not in its pure form).

Anwar Nasution said that an economic system that uses market mechanisms is not a chaotic, anarchic, and ruleless system. In essence, the market economic system contains two main characteristics, namely: a. there is recognition and protection of private property rights over the factors of production of land, labor, capital, technology, and entrepreneurship; and b. the freedom to develop personal initiative and creativity in an atmosphere of healthy market competition. With these two strengths, the market economic system has proven to be a driving force for national development in non-
From communist countries, including the newly industrialized countries in East Asia and ASEAN (Nasution in Rachbini (ed.), 1990).

Therefore, for Indonesia, it is also suitable and necessary to use a market economic system based on the values contained in the Pancasila ideology. Pancasila values must be reflected at least in (a) the philosophy of private property rights, (b) the legal system, and moral values, (c) community motivation and work ethic, and (d) government policies (Nasution in Rachbini (ed.), 1990).

According to Kwik Kian Gie, the reality in Indonesia shows that capitalism, liberalism, and the running of the economy are based on market forces. There is not a single provision in the 1945 Constitution that is anti-capitalism, anti-liberalism, and anti-work of market forces. According to him, what has no place in the Indonesian economic system is liberalism with free-fight liberalism and capitalism which has no social character (Gie: 1994).

Law No. 17 of 2005 concerning the Long Term National Development Plan (RPJPN) also states that Indonesia's economic system is a market economy. This is contained in the RPJPN which stipulates that the government's effective and optimal role is realized as a facilitator, regulator, as well as a catalyst for development at various levels for the efficiency and effectiveness of public services, creating a conducive and competitive business environment, and maintaining the sustainability of market mechanisms (Attachment to Law No. 17 of 2005 concerning the National Long Term Development Plan 2005–2025, Chapter IV, letter B number 10).

Anwar Nasution explained that in economic theory there are various requirements so that the economic system can create prosperity for society fairly. First, there is order and legal certainty. Here the law must provide rules of the game as guidelines for economic actors in the decision-making process. Laws must protect private property rights and their use, maintain market order, and ensure market transparency. Second, there is a government policy that improves the market structure in order to protect the public interest. This is related to neo-classical economic theory which says that the behavior of a company is determined by the market competition it faces. The ideal market form is a perfectly competitive market, but perfect competitive markets are almost never found in the real world, so imperfect competitive markets will open up. For this reason, government intervention is needed by issuing policies aimed at maintaining healthy market competition (Rachbini (ed.), 1990).
Thus, among these three systems, the Indonesian economic system is a mixed economic system because in accordance with the values of Pancasila, in Indonesia freedom is given to everyone, including in doing business, given ownership rights to property, and given freedom to operate markets and competition with the provisions with certain clauses. So, a market economic system that is in accordance with Pancasila is an impure market economic system like the concept initiated by Adam Smith. This is because Pancasila values also require the government to play an important role in the Indonesian economy, for example, certain branches of production that are important and strategic and that control the lives of many people are controlled by the state and used for the prosperity of the people. Thus, the Indonesian economic system contains elements of a market economic system (in the sense of being impure) and a socialist economic system (in the sense of being impure). In this context, as stated by Anwar Nasution above, what is important to maintain is that property rights are protected and the market system is regulated in such a way by the government to avoid unhealthy competition in all its forms through fair policies and legal regulations so that the economy is orderly and there is legal certainty.

3.4 FOREIGN INVESTMENT IN LINE WITH PANCASILA AND THE 1945 UUD

Indonesia is based on Pancasila and is also an ideology for the Indonesian nation in its statehood, including viewing its existence as one country among hundreds of countries in the world. In the context of Indonesia's existence as a world citizen, Bung Karno, when conveying his ideas regarding the foundation of the Indonesian state, which was later called Pancasila and designated as the basis of the state, stated that Indonesia is part of the association of nations in the world so we need to work together with other nations.

The values contained in the principles of just and civilized humanity require Indonesia not to close itself off but to socialize and cooperate with other countries in the world. Mingling and collaborating with other countries certainly includes the economic sector. Mingling and collaborating with other countries in the economic sector is certainly included in investment activities. Investment from other countries certainly includes citizens who are involved as entrepreneurs. Because, as previously mentioned, there is no doubt that foreign investment contributes to the economy of a country (host country) such as increasing the production of goods or services, creating jobs, increasing tax/regional
tax revenues, and so on. So there is no rational reason to say that foreign investment is a form of capitalism-neoliberalism that only harms national interests, let alone being declared not in accordance with the constitution (1945 Constitution).

Thus, the Indonesian economic system is a mixed economic system, because the Indonesian economic system, both from the perspective of Pancasila and in the 1945 Constitution of the Republic of Indonesia, is indeed a system that adopts the elements contained in the market-liberal-capitalist economic system and the elements contained in a socialist system. British philosopher Bertrand Russell once said that Pancasila is a creative synthesis between the Declaration of American Independence (which represents the ideology of capitalist democracy and a market economic system) and the Communist Manifesto (which represents communist ideology and a socialist economic system) (Kaelan: 2018).

As explained previously, in a market economic system there is individual freedom, recognition of property rights over production factors, and submission of the economy to market mechanisms (so there is free competition and minimal government role). Meanwhile, in a socialist economic system, the opposite is true, namely that there is no recognition of property rights over factors of production, the economy is handed over entirely to the government.

In relation to foreign investment, of course, the same thing applies. In a market economic system, the presence of foreign investment is a necessity as a consequence of the principles of individual freedom, recognition of ownership rights to property as well as market mechanisms and competition which are upheld in the market economic system. Humans generally have a desire or desire to gain or accumulate wealth through the efforts they undertake. When someone has a big business, he tends to develop it in various ways, including looking for and exploiting potential in various corners of the world, which in this case goes beyond the borders of his home country. So, with the principles of individual freedom and recognition of property rights and market mechanisms, he will invest his capital in other countries that he thinks have the potential to gain profits. Meanwhile, in destination countries, countries that accept the presence of investors from different countries are categorized as foreign investment.

The Indonesian economic system contains elements of a market economic system and elements of a socialist economic system, thereby opening up the presence of foreign investment. As an economic system that combines a market economic system and a
socialist economic system, which in economic studies is called a mixed economic system, the elements of the Indonesian economic system include:

a. elements of a market economic system, characterized by:
   1) the existence of individual freedom;
   2) recognition of individual ownership rights to property;
   3) recognition of market mechanisms with healthy competition; And
   4) there is recognition of three business actors in the economy, namely individual businesses, cooperatives, and state-owned enterprises;

b. elements of a socialist economic system, characterized by:
   1) the government's role in regulating the economy;
   2) branches of production that are important and control the livelihoods of many people, as well as the land and water and the riches contained therein are controlled by the state and used as much as possible for the welfare of the people; and
   3) ownership rights to property must not be used freely because they have a social function.

Regarding the recognition of the presence of foreign investment in the Indonesian economic system, in principle, the entry point is the elements of the market economic system. However, according to the author, the principles in the elements of the market economic system do not stand alone but are supported by other principles that are not directly or specifically in the economic field (foreign investment). Because, the elements above are basically for Indonesian citizens, for Indonesian national life. So the entry point for foreign investment in the Indonesian economic system is the basis of the Pancasila state. As previously mentioned, Bung Karno at the BPUPKI Session on June 1, 1945, when explaining the principles of Pancasila as the basis of the Indonesian state, explained that with the Indonesian National Principles, the desire for Indonesia to be independent was not only for Indonesia to be alone among other nations but towards the kinship of nations. This gives a message that Indonesia must socialize and be friendly with other nations in the world.

Associating or being friendly with other nations, as one of the values contained in Pancasila, of course, requires the Indonesian people to cooperate with other nations. Cooperation is certainly possible in all aspects of national and state life, including in the economic field. Meanwhile, cooperation in the economic sector is of course also included
in the investment sector. So, the presence of foreign investment in the Indonesian economic system is something that is legitimate because it is recommended by the values of Pancasila. If the values contained in Pancasila are not "forbidden" but instead encourage openness to the presence of foreign investment (in the context of economic cooperation) in Indonesia, surely the 1945 Constitution also does not prohibit the presence of foreign investment in Indonesia. If we examine the articles, especially Article 33 of the 1945 Constitution of the Republic of Indonesia, there is no explicit or implied rejection of foreign investment entering or carrying out activities in the Indonesian economy.

4 CONCLUSION

Foreign investment has a position as part and complement of the Indonesian economic system because its existence is in accordance with the values contained in Pancasila and the 1945 Constitution of the Republic of Indonesia. The principle of "just and civilized humanity" contains Indonesian nationalism (as stated by Sukarno) giving the message that The Indonesian nation is part of the association and is friendly and cooperates with other nations in the world, including in the form of accepting other nations who want to work together and invest their capital in Indonesia. Benefit as one of the legal objectives is also in line with the values of Pancasila which are further explained in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, so that the legal politics of foreign investment must be directed at efforts to achieve national objectives, namely advancing general welfare, making the life of the nation intelligent, protecting the entire nation and all Indonesian bloodshed, and participate in implementing world order based on eternal peace and social justice.
REFERENCES


Lestari, Ratch. Article 33 of the 1945 Constitution of the Republic of Indonesia and its Application from Time to Time since the Era of Soekarno, Suharto, and the Government
The Position of Foreign Investment in the Indonesian Economic System Based on Pancasila and the 1945 Constitution of the Republic of Indonesia


