

QUALIFYING BUSINESS COMPETITION-BASED NORMATIVE INTERPRETATION OF ARTICLE 33 CONSTITUTION 1945 REPUBLIC OF INDONESIA ABOUT THE WELFARE STATE

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Abstract

The Constitution of Indonesia who set about social welfare is correlated with the normative legal basis of competition efforts. The provisions of article 33 Constitution of 1945 when associated with the concept of the welfare State showed a strength of intact over the normative basis in order to realize the welfare State Indonesia. The existence of a correlation normatifisasi with competition as a consequence of the existence of legal interpretation that developed in line with market developments. Article 33 of the Constitution of 1945 of the substantive charge republic of Indonesia who correlated with the charge that competition business competition law thereby encouraging further accomplishing the welfare state. the ideas and ideals of unification between concepts of competition business with welfare had already been thought of by the founders of the country of Indonesia. It also shows that the nation has made the concept of the welfare State as a powerful legal basis in the Constitution of Indonesia which should be realized by correlated with business competition law competition law the ratification of the business in Indonesia.

Keywords: Article 33 Constitution 1945, Qualifying Business, Competition-Based, Welfare State

I. Introduction

Indonesia as a welfare state that has been built in the normative by the founders of the nation has laid the Foundation for the people of Indonesia towards the welfare State Indonesia. The setting of the welfare State concept categorized as normative qualifications the founders of the nation to become a reference for the next generation or at least referred to as the first idea of the welfare State proceed on an ongoing basis. That's the so on so that the provisions of article 33 of the Constitution the Republic of Indonesia, 1945 from the fourth to first change the Constitution does not change because it is a normative gave should be done on an ongoing basis as normative for the qualification of Indonesia. Therefore, it is in the development of the Furthermore, normative the qualification will be interpreted in sustainable also in all dimensions of life State including interpretation within the framework of building a legal competition effort that can embody the ideals of the nation of Indonesia as a welfare State (the welfare state). Achievement of the objectives of the country in perfective business competition law has become a necessity for the whole nation especially for all the efforts made the offender provisions of article such as the Foundation normative and interpreted in a variety of legal products and behavior of businessmen in Indonesia.

II. Discussion

1. Interpretation of article 33 of the Constitution the Republic of Indonesia, 1945 in building the economy in Indonesia was

1. The Notion of Legal Interpretation

In the Large Indonesian Language Dictionary, the word "interpretation" defined as: the giving the impression, opinion, or view the theoretical against something; the interpretation. The Word equivalent of the interpretation is interpretation. When is associated with legal science, then the interpretation of the law is activities done by a Court of law or experts in giving something the meaning of legal norms. According to Sudikno Mertokusumo, the interpretation is one method of legal discovery provide clarification explicit regarding the text of the Act so that the scope of the rule can be assigned in connection with certain events.

Jimly Asshiddiqie, while according to the interpretation of the is an activity important in the law and legal science. The interpretation of the is the method to understand the meaning contained in the law texts to complete cases or decisions over it faced in concrete.

2. The Cornerstone of Legal Interpretation

Any legislation is both abstract and passive. Abstract due to its passive public, and because it does not cause legal consequences if no concrete events occur. Nature abstract regulations that require stimulation in order to be active. Therefore, the any provision of legislation need to be explained, need to be interpreted in advance to be applied to the events.

Even the text of the legislation was never clear and always need interpretation. This is never mentioned by Achmad Ali:

"Whoever says that the text of the Constitution of the law is already very clear, so it does not need interpretation again, actually stating so, has done own interpretation. His statement about the details of the text, is already a results interpretation against the text "

What was said by Achmad Ali made similar with mentioned by a. Pitlo, that "any words were never clear. He always requires interpretation. " This is the old that mention in view of the dispute the claris non est interpretation (the rules are clear does not require interpretation).

The existence of views in claris non est interpretation or rules certainly does not require interpretation that was born from the continental European system of law (civil law) that prioritizes the existence of law as the Foundation of the law.

In the doctrine of the Trias Politica Montesquieu, State power It was split into 3 main sections, namely the legislature as lawmaker's law comes from the sovereignty of the people; Executive run law; and the judiciary as an institution that resolve disputes that arise in a country with a written law concrete. The judge only acted as a chimney.

However, in the development of history, the views of the judge as chimney the positioning legislation has been considerably eased. This shift occurred because the judge is seen as an important change in the law agent. Then there was born the term freedom and independence of judges. Even the judge should not reject the lawsuit because the Court of or the Court is the last resort or the last bastion of seeker of Justice, because the judge deemed to know the law. It is as evidence of that the codification of the law is never perfect.

In addition, in the field of State administration law, the interpretation of this in the event of judicial interpretation (interpretation by judges), it can also method changes the Constitution in the sense of add, subtract, or fix the meaning of a text contained in Laws of The Basic Legislation. As expressed by K.C. Wheare, the Constitution of can be modified through: (i) formal amendment, (ii) judicial interpretation, and (iii) constitutional usage and conventions.

The importance of the interpretation of the law in legal science and the impact that can be extensive as it can be a means of modifiers, enhancer, or deduction on the meaning of the Constitution, requires that interpretation of the law is done wisely and consider a variety of factors both inside and outside the law. Jimly Asshiddiqie, according to our interpretation of the law if the will do (written) then the first It should be done is researching what intention (intensi) from constituting. A similar opinion also delivered by United States Attorney General in times Ronald Reagan, Edwin Meese III, that "the only way the Court to interpreted the Constitution in order to be legitimate is to follow intensi (intentions) the original of the compilers and ratified it.

So, an important task of the judge is to adjust laws-invitation with real things in the community. When laws invitation cannot be started according to the sense he said, judges should interpret it. In other words, if the rule militate invitation does not clearly, the judge is obligated to interpret it so that he a fair decision and in accordance with the intent of the law legal certainty. Therefore, on the basis of interpreting laws-invitation is a legal obligation of the judge.

Though interpretation is a legal obligation of the judge, existing some restrictions on the independence of judges to interpreting rules legislation. Logemann says that judge should be subject to told the lawmakers. In the case of wills that cannot be read from the words of the legislation, the judge must look for it in those words. The judge is obligated to search for the requirements of the lawmakers, since he should not make the interpretation that not in accordance with the will of lawmakers. on the basis of It's the judge is not

allowed to interpret the Act in arbitrary detention. The judge should not construe a binding rule, interpretation of the except only in accordance with the intentions of lawmakers just who into the proper interpretation.

Doctrinal basis or legal experts, authorities judge to do legal interpretation can be traced from the opinion of Paul Scholten and Rescoe pounds. Scholten stated that: "the law of There are indeed in the legislation, but it remains to be found." It This shows that the intent of the legislation that does not can only be understood through reading the text of the legislation, but also the definition or meaning of the granting text is written. While Pound mentions "Law is a tool of social engineering." The phrase Pound constructed the law acts as an Engineering social tool. Even more than that, thus on the shoulders of the law also has the Mission in order to the legal sector can actively modernize society. The law (law) what is meant by the above is not a Pound means law, but rather the decision of judges.¹

3. Interpretation of Article 33 Of the Constitution the Republic of Indonesia, 1945

a. The Arrangement of The Economy

Article 33 paragraph (1) States, the economy developed as joint venture based on the principle of family. What is with the word (i), (ii) arranged a joint venture, and (iii) the principle of family. By stating that the economy is structured, necessarily mean that the economy is the order of is that the, a systematic and thorough policies that order, starting the arrangement is National until order of in areas province and counties/cities across Indonesia. Arrangement of the economy it is on the basis of a joint venture basis. A joint venture on the basis of family that It can be seen of the three establishments i.e. micro sense, understanding macros, and joint venture as a principle or the soul. In that sense the micro and narrow joint venture, understanding it can certainly be attributed to the cooperatives as form joint venture. However, in the sense that the narrow is used, then the overall understanding of the verse will be raises the weirdness and confusion, as if the overall arrangement of with cooperatives as a form of business entity.

More precise understanding on a joint venture that in article 33 Ayat to (1) the constitution of the republic of Indonesia 1945, it can also be seen in terms of a broader systematic arrangement of a about Indonesia's economy above. In this case, we can accept the interpretation the notion that when the joint venture with totally with regard to the interpretation of the above provisions of article 38 paragraph (1) The While Constitution

¹Firman Muntaqo, *Meretas Jalan Bagi Pembangunan Tipe Hukum Progresif melalui Pemahaman Terhadap Peranan Mazhab Hukum Positivis dan Non Positivis dalam Kehidupan Berhukum Di Indonesia*, dalam Satjipto Rahardjo, *Membedah Hukum Progresif*, Penerbit Buku Kompas, Jakarta, 2006, hlm. 166.

1950 which is none other than copy paste from article 33 paragraph (1) of the constitution of republic of Indonesia in 1945. A joint venture is there is no other all the people of Indonesia in the field of economy. Therefore, the economy is structured as a joint venture it does not to understanding a system economy with all the elements of the people of Indonesia., not only with regard to the concept of a business form, is much related to the concept of economic principals do not by waking up the company.

In general literature, we know wake up corporations and companies. Waking up is the structure or form of or bouw and vorm. If the wake is defined as a structure, then is an economic venture referred to by and this is the one form cooperatives, building is not the only form of wake-up Coop, thus other such as PT, CV, Firm, State-Owned Companies, wake up cooperatives, carrying out the spirit of the cooperative. Does that mean its internal and operating networks and basic family who then Edi Triple, Co.

Triple dimension – Co above is the existence of a coownership between with internal and external elements; co-determination, it means determine the policies and the direction of business entities internally in public domain (Member-members of the public); and co-responsibility, meaning that internal elements specifically in General, join the responsible for the life of the company.

Form the soul of cooperatives contained in the individual or business entity State. A corporate State does not of itself definitely cooperative nature just because the owner is where ownership cannot be made regarding the size of about soul it. Moreover, if the State as the owner of, which means people are also continuously being harmed. Similarly, the management pattern and the pattern of the relationship between the of the company, or about public access towards company. If corporate profits just by or the ranks of the company President, obviously, such a State cooperative. If the State concerned does not have a company program of corporate social responsibility.

If the employee's participation in the ownership of the shares of the profits or income of the company unknown, State enterprises can be said to be spirited cooperation. In contrast, although a private company owner is an individual, but if his corporate social responsibility program is going well, employees participate have a portion of the company's shares, or given the chance to get a bonus or part of the profits of the company, then the capitalist companies of the sort are and therefore can be said to be soulless of cooperatives as a joint venture based on the principle of family.

Nevertheless, the basic sense of family that certainly compromised or family system containing a negative connotation as the Republic of Indonesia, 1945 Constitution, published by the Ministry of information 1946 or in the practice of the new order. The principle of family chapter 33 subsection (1) indicates to understanding, soul, and mutual cooperation. In, it can develop the understanding that is less precise.

The cooperative system context i.e. which prioritizes cooperation psychotherapy based on the principle of togetherness and family. The world has two twin power in the process of, the first, is cooperation (cooperation) and is the competition (competition). In the literature of science neo-classical economics assume understand economic liberalism, then the paradigm of competition predominantly coloring, approaches, and methods of analysis in the thought of the development of economic science.

Indonesia's economy which is based on a system of mutualism take precedence in the economic system of Indonesia. it is an economic system, including the economic system of Indonesia, competition. In the nature of cooperation, then means that competition as a race. In a race, no in-free-exit- (rolled), there is also a must in-free-the race should not be arbitrarily switched off, but still built. In the nature of cooperation, then free-fight was rejected. Competition is reduced or be (cooperation set up fair competition). In other words, hiking cooperation then competition is a friendly.

Efficiency is the result of a competition. But the efficiency of give rise to injustice. Because of the words one breath in the formulation of Article 33 paragraph (4) of the Constitution the Republic of Indonesia 1945tersebut. In relation to Article 33 paragraph (1), then the principle of "efficiency-justice" in article 33 paragraph (4) it can be so that refining joint venture principle with efficiency, and refining the principle of open competition or competition.²

b. Production Branches

Article 33 paragraph (2) of the Republic of Indonesia, 1945 Constitution specifies, "branches of are important to the country and the life of his master by the State. In this verse, what is up with (i) the words "branches of production which is important for the country (ii) that ruled his life much, and (iii) possessed.

The words mastered not interpreted specifically, making it possible to do interpretation and scope of understanding. To understand the sense of the State, then first made in epistimologi. countries (passive sentence) has the equivalent meaning State ruled country (active sentences). Understanding the word master over (something), holds power over (something), the word means mastering process, how to master deed,

In the sense of mastery were associated with the right, then the right hence fixed to the State as a subject of law (having rights and obligations). From such a relationship, it is understood that State in it there is a and responsibility be public 35 Moreover Jimly Asshiddiqie in his book titled "economic Constitution" which was by the State is none other than mastery of a broad in the sense of ownership in the sense of sense of the public

² Jimly Asshiddiqie, *Loc.cit*

and of the civil code, including the power to control and manage it directly by Governments or authorities- who saddled specific tasks. However, we between the sense of which is the principle that become the owner and the trade issue with management in field.

In principle, the Government must be business owners, so that the operations of the company can be mastered, controlled, and can be by the Government apparatus. However, in the process, the company's shares that can be sold directly or through, but in quantities such that the control there are in the hands of the Government. That is, although most of its shares by the Government, but the company remained the Government.

Besides, which must be controlled by the State, according to 33 subsections (2) of the Republic of Indonesia, 1945 Constitution is a matter of production branches for the country and take control of his life. A can include categories is not important for the country and not his life many people for example: hospitality business. According to Sri Edi Swarsono branch of production which is important for the country interpreted in relation to State responsibility, protected the blood spilled and the whole Indonesia promote the general welfare, the intellectual life of the join the world order carry out based on freedom, eternal peace and social justice. May briefly be said for the country is that its branches this, State enterprises is not in relation to understand previous currently polluting the thought, considering the Article 33 of the Constitution the Republic of Indonesia, 1945 in antiliberal.

Many State firms founded paragraph 2 of article 33 of the Constitution of This Republic of Indonesia 1945, there are indeed some who does not relates to paragraph 2. Yet it must be noted that the efforts of State (business or non-business) not or otherwise reproduced, traded for the country and his life (basic needs).

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c. The wealth of natural resources

Article 33 paragraph (3) of the Republic of Indonesia, 1945 Constitution determine the Earth's Water, and contained therein is controlled by the State and people's prosperity. In this text, there is also an important are: (i) Earth water and natural Wealth (ii) controlled by country (iii) used for registration- people. Called here is the Earth's water, air and space is not called. However, this can be interpreted land, sea, air and all the riches that for example is contained in, under, or on top of it.

³ Ibid.

In the above formulation called only Earth and water its contents only, while the airspace is not called. On right now, the airspace as well as many contain a wealth of economical for example telecommunications networks, lines of transportation. So too quality air pollution contained in it cause losses – losses that are economical. that when the Constitution of The Republic of Indonesia 1945 formulated, that kind of thing.

However, in the development of now as a result of science and modern technology, things are associated with the airspace must also understand the provisions of article 33 paragraph (3) of The Constitution of Republic of Indonesia 1945 It. Therefore, the basic law formulated the past must be seen the living ("living constitution), and the content of its meaning and developing (constitution).

Earth water and the wealth contained therein prosperity of the people of the people's sovereignty, asserts a substantial people's (main). justification democracy here, namely that the interests of the community and the interests of the people. The reaction of the community strong constitutive lately, specifically from the younger generation campus) validation Washington de prosperity, accomplishing the Government state enterprises to implement the ideals of paragraph (3) of article 33 of the Constitution the Republic of Indonesia 1945, both corporate management as well as in terms of the laws applicable to the company should not be justification against privatization., waste management is otherwise resolved. Economic liberalization may be (business growth and profit), but and extending towards the social efficiency of society.

The choice of giving priority to economic efficiency through Washington against our country's companies, then dampen the burden with the capitalist corporate socialresponsibility will only reduce people's main position of (substantially) will sideline (redusial). It is not at all bearti must, both in terms of humanistic or philanthropic in terms of current done in the branches of production other than subsection (2) of article 33 of the Constitution the Republic of Indonesia in 1945, the CSR must be very important to support social.

The content contained in the mastery of the production branch of natural resources is include; (a) with regard to and energy; (b) with regard to the availability and masses on minerals (mining).

Business development and utilization of natural resources in efficient will have an impact on increasing the overall, either directly or indirectly. Efforts improve the welfare of the communities, such as the energy sector. The construction of the power plants available electricity network as an energy source and the stairs, can directly improve the quality of life of the community.

The required minerals society, but or limited production branches including the live crowds. Although it is consumed by the multitudes, well as many or little build-up

(limited), by a small percentage of citizens have not been as production branch that ruled his life.

Based on the above restrictions, then it could happen happened to certain minerals which is a vital raw material, very vital for a processing industry which will finally be exploited the people. In such case the size is directly consumed, but also as a raw material for a the other.

Therefore, the concept of production branches is important and master his life crowd is very dynamic size, level of availability than support to the needs, expectations and the market demand.

The purpose of the mastery of the State over the objects above to avoid using it as a potential, as a tool of oppression and sucking of others. In addition, at the same time to ensure the use and utilization of all, really intended the people's prosperity.⁴

d. Principles of Economic Democracy

Article 33 paragraph (4) of the Republic of Indonesia, 1945 Constitution specifies "The National economy based on economic democracy. With efficiency-justice, sustainable, environmentally, independence, as well as by maintaining a balance of national progress and. Here there are some concepts that need to be or together, namely that the economy of the on the basis of economic democracy and its principles: (i) the togetherness; (ii) the efficiency of Justice; (iii) sustainable (iv) environmentally; (v) self-reliance; (vi) the balance of progress; (vii) national Economic Union.

Economic democracy idea stated either in the explanation of constitution of republic of Indonesia 1945 nor article 33 paragraph (4) of the constitution of republic of Indonesia 1945 post-war reforms. constitution of the republic of Indonesia 1945memang contains the notion of political democracy and the economic democracy. This means that in our country the highest powers of the holder of the either in politics or the economy. All resources politics and economy ruled by the sovereign people. In the system is certainly not all of them directly controlled by the society, some parts of the principal represented to dealing in this case to (i) the People's Consultative Assembly, the House of representatives, the regional representative Council and the President in the bow and the formulation of the official policies of the State (ii) to the President of and institution-executive agencies-other Government Affairs carry out bow-bow and the policies of the State (iii) indirectly to the judiciary in violation of State policy. policy detour

⁴Abrar Saleng, *Ibid*

Economic democracy Indonesia doesn't have to completely the enactment of "equal treatment" in absolute. aspires to embody social justice for the whole (social justice, fairness, equity, equality) to (, special favour) against a weak, poor retarded to get attention and treatment of empowerment. against this left that let alone that being "sara", but rather a positive on the basis of the doctrine of togetherness in. This is the starting point for us to insist that the social interests of the prolific.

The word justice has changed the overall efficiency of the to place the view of economic neo-liberalism (towards capitalism and new) to Article 33 of the constitution the republic of Indonesia 1945. The word efficiency in -oriented (in Indonesian economy) and maximum satisfaction (economic-a). This is, as has been expressed, understood as a form of neoclassical economic neoliberalism operating through free market (laissez-faire). According to market Street to, placing market poor people, not displacing poverty.

With being the word efficiency fairness the people it represents is turned into a, individual preference is transformed into a social preference (Arrow's impossibility theorem) then the pareto efficiency of our Fox be pareto social-efficiency dynamic where avisible hand (the government) set the realization of socio-economic justice. economic transformation of the economic system based on the into an economic system based on mutuality.

In this social market economy system, the motivation of the individual the principle of shared interests. market economic activities are efficient, but justice (efficiency-justice) as referred to Article 33 paragraph (4) of the constitution of republic of Indonesia in 1945. Ownership of produced is limited by law, customary law, norm, public ownership, and the interests of the communal. The role of the private sector during is not associated with the branches of production countries and ruled his life. The role of limited only as a regulator, but also doing even become perpetrators directly in a negative has occurred, a failure in the market mechanism, or social disparities. A value system imposed moral and social responsibility. All of that is indicated for the empower all economy in a balanced way towards a quality economic growth, ensure equitable economic fair. Its that is exactly what is seen as a populist economic traits Republic of Indonesia, 1945 Constitution.⁵

III. Article 33 of the Constitution the Republic of Indonesia in 1945 In the concept of the welfare State

1. Theory and concept of the welfare State

⁵*Ibid*, hlm 357

Simply put the State welfare (welfare state) is a State system that operates on an attempt to consider the welfare of its citizens. The goal of the welfare State is not to eliminate differences in the economic community, but the economic gap and minimize its fullest eliminate poverty in society. The presence of the wide gap between the rich with the poor communities in a country not only demonstrates the failure of the State in managing social justice, but acute poverty with the striking difference in the mastery of the economy will cause a bad impact in all facets of community life. The impact will be felt starting from the sense of the poor, until the bad impact on democracy, which consists simply of poor people receive a bribe (selling his vote in elections), due to of the economy, as many of the allegedly occurred in Indonesia in recent times the general election and the election of the head of the region. Even the existence of the frustrations of the poor will be easy spurred on to do acts of, which resulted in counterproductive for the development of democracy.

Based on various considerations, then developed the concept of the welfare State (welfare state), which is a State system that seeks to minimize the gap between the rich with the poor through various efforts of the Ministry of welfare of its nationals. There are five important principle which is the underlying principle (and simultaneously become) a system of welfare State, which therefore should be strived for by the State system of welfare State in the framework of its efforts to achieve the goal of reducing the economic gap and improve the welfare of its citizens. The first, an important production branches regarding people living in urination is controlled by the State. The purpose of the mastery of production branches are important to people's lives many people's needs is that of production of the goods in question may be obtained by the people at affordable prices, no damning folk life. Examples of production branches are important to the interests of the people at least are electric, gas and petroleum, clean water, and public transportation is cheap.

The second, private efforts outside branches of production that concerns his life people are allowed, but do the settings, so there happen to build oligopoly or monopoly that would distort the market, or other forms of harm the welfare of the people. Thirdly, the State was directly involved in the efforts to his people, such as directly provides various forms of health care and educational services. A wide range of services, with the various systems are applied, must be accessible by everyone without exception. Of course, the number of those types of services that should be provided by the State depend on the development capabilities of countries, but both types of services (health and education) is an imperative that cannot be abandoned. In addition, the State also provides social security and guarantee of the old days for any of its nationals. In fact, many thinkers and the practice of the State which has a welfare State looked at that country's role in providing welfare services its citizens would have to include the lives of the people "from the cradle to the grave" (from the cradle to the grave). In this case, it is to be noted that, although in a welfare State system in addition to an

important production branch controlled by State and country also provides a range of services for the benefit of its people, especially the ministries of health and education services, and could be also cheap public transport, provision of cheap inexpensive fertilizer, rice, but along with that of the private businesses are also allowed. Therefore, in the welfare State, people can choose to obtain services from which side. Those who can afford not prohibited to get health care and education from the private sector that may cost very expensive, but their point of view better. Fourth, developing a progressive tax system, i.e. a tax system that taxes in wear also the higher the (enlarged) for people who are getting rich and for businesses that are increasingly large. Through the tax system and security system which was developed by the State, it is expected the difference between those who are rich and poor in the country concerned will be reduced, and the poor will also be reduced. The fifth principle, public policy making should be done democratically. This means that welfare State embraced a democratic system in the management of the country.

However, since in the concept of a welfare State gave priority to maintain the welfare of the people directly, then consequently, the welfare state into a country that entered the very many facets of people's lives, ranging from the question of education, social security, health coverage, and so on. Thus, the welfare State will be a giant country with the number of bureaucrats who very much and at the same time, where countless entered the many facets of people's lives. As a result, there arose the problem of control and control by the people.

In relation to the issue of the implementation of the system of modern State of democracy, the problem will be compounded with the fact that modern State Government works are already in such a complex, in such a complicated and convoluted, involving many (especially the advanced) run by professional people who has specialized skills, knowledge and skills in their jobs respectively. The problems that arise in connection with the, the, and the increasing complexity of the workings of the modern State, the question is, do people still have the ability to supervise and control the Government or the elite rulers holding power of Government? Many experts who doubt the ability of the people, not just to engage in the Government directly or to control it (from a distance), even it has been very difficult to just pick a Vice, do oversight of Government works, and do an assessment of what has been done by their chosen representatives. In the circumstances, it seems that the statement regarding system weaknesses of representative democracy in the United Kingdom deserves to be quoted here and seems to apply to all of the democratic system of the modern State: The United Kingdom believe that they are free people; they are sincerely wrong, because they're only free during the election of members of Parliament, and in the time between the two, the people are in bondage, they do not mean anything. In short time from their freedom, those United Kingdom use it in such a way that they indeed deserved to lose their freedom

This condition is difficult dilemma for modern democracies has a welfare State (welfare state). Let the market work itself in regulating the economy and people's welfare will issue can cause lack of social inequity, which consequently is not only morally State will lose their validity, but may also give rise to rebellion and that would destroy the State itself. Meanwhile, in connection with the issue of the implementation of a democratic system of modern countries, due to the fact that modern State Government works are already in such cleared on many facets of human life (the people) so it is a very big government, which deal with such complex, in such a complicated and convoluted, involving many parts that require employee administration by people who have specialized knowledge, by those professionals who have specialty skills knowledge and skills in their field, respectively, then it deserves to be questioned, whether the democratic system which literally means rule of the people, is still a feasible system that is to be practiced, especially in democracies that embraced the welfare State system? Develop a Government that the scope of his work covers a wide area that includes the very many facets of people's lives does not mean it will be increasingly difficult works of the democratic system? even in a country so, worthy of a real democracy is still doubtful whether there are? It seems, to build a balance between the role of the State in establishing the people's welfare and people's chances to control the implementation of the Government of the country is a matter of urgency for the modern democratic society. There are two reasons for maintaining and developing the State system of welfare (welfare state), which is the State intervene in the Affairs of the welfare of his people, but at the same time retaining the most democratic system. First, although the development of the welfare State or at least State involvement in various facets of people's lives by supplying a growing increase in the Government (and bureaucratic) State and the increasing complexity of Government Affairs, which could lead to the involvement of the people in the Government will increasingly have difficulty (even to supervise the operation of the Government or choose their representatives who will sit though, cannot be separated from a lot of trouble), but the reality of widespread Government Affairs in modern countries didn't seem unavoidable. The Government of modern States entered most of the life of the community, ranging from international affairs, nuclear safety, defense issues, the well-being to manage if you have parenting you properly or not.

In the new mass society, the role of Government – which is a group of institutions that holds the monopoly of the use of force organized for the Affairs of domestic and foreign – forced. The State as a political community organized a certain level of stability requires in its social system to maintain balance. To achieve this, not only required adjustment to each other from opposing assertions, which were brought forward by various groups in the social economy and the new ones, but also required the creation of directional basis of social welfare conditions required by the doctrine of the new equation. Thus, the Government as a

tool of the State, the longer the more forced to accept positive responsibilities upon the creation and distribution of wealth. In this way, the Government is almost all over the world, has been a big government, whether in space in scope, as well as in the number of employees necessary to develop responsibility, however, along with the increasing number of civil servants, meaning also the increasing number of people (the employees) who can be victims of coercive regime emphasis something arbitrary.

In the United States, where the idea that the Government should only constitute a referee apply the rules among the other society forces competing, his supporters more than in the United Kingdom and France – they apparently agree on the existence of government activities such as TVA, supervision of credit, or direct intervention from the Government to tackle problems such as the modernization of facilities and transport in urban area and to get rid of the so-called poverty amidst prosperity.

Growth towards the giant Government continues as if the unstoppable, and there are people who want to stop it. This began to take place when the United States has been transformed through the development of science, technology and industrialization, the Government has changed in line with these changes. The Government has expanded and grown to become more complex, Governments were asked to carry out tasks that the longer the more.

The Government can impact the lives of students or other citizens by sending them out of State to fight, or launch a nuclear attack, where they might be killed. Less obvious, perhaps, is the way in which the Government entered into the many facets of everyday life, sometimes up to the detail on the. For example, the federal Government regulates the amount of (extents) that should be covered by the fan car glass (wiper) and even the speed of the fan is the glass (in condition fast glass, fan must run with a speed of at least 45 rounds-per-minute).

Such development is the development of modern society. A century ago, the federal Government does not provide social security, health insurance for millions of citizens, the extensive help on public and private educational institutions, or billions of dollars for financing the welfare. Also, none of the institutions that regulated independently to observe the various economic groups in society.

When the American public has grown increasingly complex, when the population has increased, the task of managing the national Government has been enlarged. The people are demanding more services and in the process the Government grew increasingly large. Five Ministry Department – Housing and urban development; Transport; Energy; Health and community service; and education – the newly formed since the 1950s.

The power to tax and spend it appealing to general well-being is a function of a national Government has expanded with very unusual in the twentieth century. Government's role in trade issues between States and foreign countries have also been increasing widely.

Most of the growth of big government and federal social welfare programs take place during the "New Deal" in the 1930s and during the "Great Society" programs of President Lyndon Johnson in the 1960s. Although conservative circles periodically attacked these programs as "crawling towards socialism," major programs in such far away continues to be shaped so that no Government in Washington that might be able to.

However, President that began to occupy the post in 1981, insisted to do just that. He insisted the cuts meant to do on federal spending in the field of social welfare. She has been repeating with promises to do just that in his campaign to occupy the Chair of the Presidency a second time.

As it known, Ronald Reagan was elected President for the first time in 1980 based on his promise to reduce the range and scope of the federal Government in people's everyday lives, along with the United States that would increase the power of the United States military and cut taxes.

During the first four years of the Reagan became President, welfare programs have been cut, along with income tax; and the defense budget has increased. But the percentage and number of people living in poverty has also increased, and oddly enough federal budget has increased at an unprecedented level in his inauguration speech as President of the latter in January 1985, Ronald Reagan emphasized the theme that is already very well-known who helped return him and his party to the White House: "... This will be a year in which Americans have been repairing trust himself and his progress tradition; When the values of faith, family, work, and community environment back to modern times; When our economy was ultimately freed from the grip of the Government⁶

In 1984, some supporters of Reagan viewed a huge election victory as a mandate to carry out the policy of, while other analysts who translates the return of white more as a reflection of the personal popularity of Reagan.

The Reagan Administration has declared cutting off billions of dollars for domestic spending, in social welfare and food programs that are designed to help the poor, as well as in a broad coverage of other programs aimed at helping low-income families, including health assistance (medicaid), housing subsidies, and loans for students. Overall spending cuts is known in popular as "Reagan Revolution."

⁶Ibid, hlm. 3.

But how big a reduction in domestic spending? The Government stated that it had reduced the federal domestic programs to 232 billion dollars for four years, compared with projected spending by the previous Democratic Government. But in the public debate over budget cuts, there has been "some confusion about the certainty of what has been achieved." In part, this is because the real increases in federal spending on many programs by the Reagan Administration declared has been cut. In most cases, the "cutting" is a reduction over what might have been issued. Nevertheless, the program has had a measurable effect on government spending and about the out-put from system politics. As one study, has stated, "there is one thing that nobody can doubt concerning the result of the policy of the Reagan administration, namely: income in the United States will be distributed in a more uneven between the rich and the poor as compared to before."

The role of the federal Government, particularly in the field of social welfare programs, is likely to continue as the debate in the United States, as occurred in the presidential election campaign in 1984. Although certain Government may reduce part of the bread that is allocated for social programs, but the bread itself – namely the federal budget – is still growing steadily. Most Americans still tend to look on the national Government to resolve national issues. In the end, it seems inevitable, the Government will increasingly grow as giant Government range areas it works in such a broad scope of coverage and areas of work are also very broad so that it resembles the "Leviathan" Thomas Hobbes, as a giant monster is scary, but at the same time is required.

The second reason, from the experience of democratic countries which practice the system of welfare State, in fact, the condition obviously does not always have to be that bad. The experience of many Western European countries that adhere to the system of State welfare (welfare state) demonstrate their ability to maintain a balance between the role of the State in the field of economic democracy (although elitist in nature). United Kingdom for example, since the Government of Prime Minister Clement Ertle of the Labor Party won the general election in 1945, has a welfare State with almost all production tools such as transport, coal, electricity, and water as well as providing social services especially in the field of health. It turns out that the policies already implemented by the Prime Minister Clement Ertle never again by his successors, from any origin of their party, except at the time of Prime Minister Margaret Thatcher, who as a result of the recession reduces some of the social security program and return some industries.

In Sweden, since the Socialist Party came to power in 1932, the efforts to ensure the social welfare of its nationals carried out by the State continue to take place, even in mainland Europe is seen as the most successful welfare State, which gives the Ministry of welfare for his people as if from the cradle until die (from the cradle to the grave).

From the experience of Western European countries, it appears that welfare State system adhered not be too bad for democracy, although democracy in the sense of literal meanings, i.e. the Government of the people, should probably be viewed as meaning "Government for the people."

In the relationship between the democracy with the role of the State in the economy, in particular the magnitude of the role of the State in regulating the economy, where the various businesses that are important to the lives of many in the hold by the State, where the State was involved with was very active in the field of social welfare of its people, Charles Frankel, who called the system as Socialist system, giving her advice:

In countries that socialism might fit well with efforts to preserve fundamental freedoms, origin of course remain private sector in the fields of Economics, only the profession of legal experts, scientists, and journalists stay up, and origin only ideals will equal rights are not turned into goals of uniformity in tastes and conditions.

But it is the conditions are great, and the risk will grow along with the growing desire of going for meaning. Finally, in my opinion, preventive medicine for "temptation " lies in what can be done by the Government-upon democratic, Middle or flow-oriented left, about two things: first, strengthening the social institutions that govern yourself that exist outside the Government; and the second showing the shared objectives and possibilities contained in a liberal society is still not fulfilled. And none of this task is the responsibility of the Government. This is the duty of the private sector, especially the religious leaders and the, if they are able to perform the task.⁷

2. Welfare State of Republic Indonesia

If we study the sound opening of the Republic of Indonesia, 1945 Constitution particularly relating to the issue of the purpose of the country Indonesia, in essence can be formulated as "promoting the general welfare and the intellectual life of the nation based on the principle of social justice for all the people of Indonesia". The purpose of the opening in the loaded later in the trunk of the body Constitution of The Republic of Indonesia 1945 poured in various provisions pertaining to the welfare of the people. Various provisions of the economic problems and people's welfare contained in article-article 27 paragraph (2), 31, 32, 33, and 34. Article 27 paragraph (2) determines that every citizen has the right to a job and a decent livelihood for humanity, article 31 specifies that every citizen is entitled to the teaching. Meanwhile, article 32 determine about the Government's duty to promote national culture, and section 34 determined that poor and abandoned children maintained by the State. Article 33 is being set up on the issue of the economy, which has a family, and determine

⁷Ibid, hlm. 29-30.

that the branches of production that are essential for the people and the Earth and water, and natural resources that exist on it is controlled by the State.

After amending the Constitution Republic of Indonesia 1945, second amendment, especially with articles concerning the economy and people's welfare plus, namely with article 28 h which reads:

(1) every person has the right to live prosperous and inner, live, and get a good environment and healthy and has the right to obtain health services.

(2) every person is entitled to special treatment and ease to acquire the same benefits and opportunities in order to achieve equality and justice.

(3) every person has the right to social security that allows the development of himself intact as a dignified world.

(4) everyone has the right to have private property rights and the property rights should not be taken arbitrarily by anyone.

The question of the existence of various settings problem the people's welfare, even by the Constitution was proposed as a goal the establishment of the Republic of Indonesia is, does it mean that Indonesia has a welfare State? To assess whether Indonesia embraced the principle of the welfare State, can be assessed on the basis of the five principles of the welfare State, as has been described above as a reference. Just repeat, the fifth principle include provisions that the important production branch regarding his life many people ruled by the State; private efforts outside branches of production that concerns his life people are allowed, but do the settings, so there happen to build oligopoly or monopoly that would distort the market, or other forms of harm the welfare of the people; the State was directly involved in the efforts to his people, such as directly provides various forms of Ministry of health, Ministry of education, provides social security and guarantee of the old days for every citizen, and so forth; countries develop a progressive tax system, i.e. a tax system that taxes in wear also the higher the (enlarged) for people who are getting rich and for businesses that are getting bigger; and the fifth, public decision-making should be done democratically.

Judging from the angle of legislation, particularly the provisions of the Constitution of the Republic of Indonesia in 1945, although there are still some notes that need to be fixed, it can be categorized as has a welfare state. But in terms of the welfare State, the most important is not how the sound of the Basic Law of the State concerned. In addition to the provisions of the legislation, the most important fact is how the practice of the State concerned, since the welfare State is not just a State, but the concept is more of a principle which should be applied in State practice. That wretched state practice, we currently are in no way reflects the principle of the welfare state. Various provisions in the constitution was never implemented at all. even the provisions concerning people's welfare in the republic of Indonesia, 1945 constitution which has been in force for more than 50 years, never

implemented at all. we still witness the large number of homeless wandering without any assistance in any form from the country, although article 34 of the constitution affirms that the poor and abandoned children maintained by the State. Although unemployment continued to rise, the Government never provide jobs that become obligations, or at least provide social security as mandated by article 28 h, so that every citizen of Indonesia can live decent.

This could happen because of a provision that is intended to explain and make the general welfare and advance the nation's intelligence as contained in the constitution of the republic of Indonesia 1945 formulated with too simple, with a formulation which is also inadequate. For example, additional articles were formulated as the formulation of any morals. From the third verse, the question is, who is obliged to increase the well-being and providing health care for everyone? Who is obliged to provide convenience and preferential treatment in order to achieve equality and justice? Who is obliged to provide social security? The rights of the various statements without clarity of who is obliged to realize those rights is tantamount to an empty statement.

Perhaps one could quibble that the constitution of the republic of Indonesia in 1945 there have been provisions in article 28i paragraph (4) which is also the result of the second amendment, which states that the protection, promotion, enforcement, and the fulfilment of human rights is the responsibility of the state, especially the government. under article 28i paragraph (4) it appears that indeed the protection, promotion, enforcement, and fulfillment of the rights are formulated as the rights in the constitution became the responsibility of the state and especially the government. but, without special provisions that oblige governments to take tangible steps to uphold and realize the various rights mentioned in the constitution lead to its realization would still float, still relies on government liked likes it or not.

In addition to article 28 h, the other articles are concerned with the obligation of the Government in meeting social welfare also formulated very floating. This can we see in articles 31 (on education) and 34 (about social security and health care). If the framer of the Constitution seriously wants a range of rights embodied in the life of the Union in Indonesia, it will be more evident if the formulation of those rights is accompanied by the formulation of "obligation" should be done by the Government. For example, again just as an example, the third such an obscure article would be clearer if accompanied by additional formula, for example:

In order to realize the rights mentioned in article 28 h, the Government is obliged to:

- a. Provides health services free of charge to people who are less able to.
- b. Providing social security for the underprivileged community, allowing everyone can live in prosperity and inner, live, and get a good environment and healthy that allows everyone to develop himself as a whole as a human dignity.

- c. Developing the social security system so that everyone who is not able to get the ease and special treatment to obtain the same benefits and opportunities in order to achieve equality and justice.

With accompanying the formulation concerning the obligations to be undertaken by the Government or other parties which are seen obliged to make it happen, then people can do its demands if the obligation is not implemented. But, with a formula which is poured in a positive sentence solely, people cannot sue the execution and its protection from the Government.

With the vague formulation of the framers of the constitution amendment, it seems that the republic of Indonesia 1945 still half-hearted to realize people's economic rights in order to ensure the well-being of life for all the people. in fact, not only the articles concerned with human welfare guarantee only, but all the outline of the human rights set forth in the articles of the constitution of republic of Indonesia 1945 formulated in positive sentences without additional provisions are liabilities, so that a variety of such rights be floating. it seems that framers of the constitution amendment formula republic of Indonesia 1945 still not fully want to protect people's human rights and Indonesia did not wholeheartedly in the reciprocity of welfare state. therefore, Indonesia worth mentioning as a welfare state as if.

IV. Conclusion

Based on several descriptions of normatifiasasi Article 33 interpretation of the Constitution when it is associated with the welfare State showed a strength of intact upon norms that support attainment of Indonesia welfare State as a consequence of penafsirani. ran and authentic meaning. Article 33 of the constitution the republic of Indonesia that substantive charge 1845 berkolerasi with loads of ideas competition kontetif effort so that meant that the concept of the welfare state. the 1945 constitution of the republic of Indonesia has substantively which are correlated with the standard concept is already the ideals of the founders of the country Indonesia. It also shows that the nation has made the concept of the welfare State as a powerful legal basis in the Constitution means that Indonesia be correlated business competition law.

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