

Consistency of Law No.25/2007 on Investment with Article 33 of the 1945 Constitution of the Republic of Indonesia in Realizing Social Justice and People's Welfare (A study with a Positivism-Normativism approach)

¹Aladin Sirait, ²Adjie Samekto, ³Joko Priyono

¹*Doctoral Program in Law Science, Diponegoro University, Indonesia, aladin.sirait@gmail.com*

²³*Doctoral Program in Law Science, Diponegoro University, Indonesia*

Abstract

Investment is very important for development with the aim of growing the national economy and improving people's welfare. Investment in Indonesia is regulated in Law No. 25 of 2007 concerning Investment (UUPM) which is a regulation that was launched with a policy of attracting large investments. However, there has not been a significant increase in people's welfare, even though Indonesia's natural resources have enormous potential and should be more than sufficient. The state regulates the economy through the economic constitution, Article 33 of the 1945 Constitution of the Republic of Indonesia, therefore regarding investment in the field of natural resources related to the Investment Law, this legal factor needs to be investigated to find out the factors that become obstacles in its objectives. The study was conducted by studying and analyzing the structure, principles, and objectives of the Investment Law. Economic Constitution of the Republic of Indonesia (Article 33) is the basis and source of the economic legal arrangements under it. Whether the Investment Law is in accordance with Article 33 needs to be proven because through Article 33 the legal norms that underlie the prosperity and welfare of the people through the economy have been determined, called justice. The UUPM normatively must be in accordance with the Article 33, therefore the it needs to be tested. UUPM has principles that are determined as the basis and as a benchmark as well as functioning in conformity assessment with Article 33, tested using the positive-normative approach to conclude its consistency. Findings, in UUPM there is the principle of "togetherness", the principle is almost the same as "together with the principle of kinship" in Article 33 but the meaning is different so that through positive-normative testing the value is different because it is different in its goals and policies, so it will be different in its implementation. In conclusion: UUPM only textually in accordance with the principles of Article 33; but the values are different, normatively inconsistent and therefore unable to realize the prosperity and welfare of the people. It is recommended to implement the UUPM in accordance with the principles and values contained in Article 33.

Keywords: Economic Constitution, Consistency, Principle, Rational, Justice.

INTRODUCTION

Auditing is part of the assurance service, so it is Investment certainly is very important for development with the aim of growing the national economy and improving people's welfare. Investment in Indonesia is regulated in

Law No. 25 of 2007 concerning Investment (UUPM) which is a regulation that was launched with a policy of attracting large investments. However, there has not been a significant increase in people's welfare, even though Indonesia's natural resources have

enormous potential and should be more than sufficient.

The state regulates the economy through the economic constitution, Article 33 of the 1945 Constitution of the Republic of Indonesia, which was born since the time of independence and became the norm of the economic constitution as the basis of all economic operations. This economic constitution is formed from the values and ideals of the Indonesian nation which aims to create social justice and the welfare of the people and is believed to be achieved through the economic constitution. However, in the field of investment in the management of natural resources and production, which affect the livelihood of many people, it seems that social justice and people's welfare are not showing the expected results.

Therefore, it is necessary to investigate and examine the factors that caused it, especially those related to the laws, so that the problem is formulated for legal consistency, whether the investment law number 25 of 2007 (UUPM) is in accordance with Article 33 of the 1945 Constitution of the Republic of Indonesia in realizing social justice and the welfare of the people.

The state regulates the economy in the economic sector based on the economic constitution, Article 33 of the 1945 Constitution of the Republic of Indonesia which is formed from the values and ideals of the Indonesian nation, has been determined to be the basis and reference for all economic operations, aimed at realizing social justice and people's welfare. The Investment Law (UUPM) which regulates the economic sector must refer to and comply with Article 33. Seeing the problem that social justice and people's welfare have not been realized through this field, it is necessary to investigate the factors that are thought to be obstacles, therefore the purpose of this study is to examine the consistency of Investment Law with Article 33, especially covering the principles and objectives, related to social justice and people's welfare.

Briefly, the step to achieve that purpose are to conduct testing the consistency of UUPM with Article 33 of the 1945 Constitution of the Republic of Indonesia in the aim of realizing social justice and people's welfare.

Methods

The author conducts research with a paradigm guide, which is an approach method based on a philosophical frame of mind as a basic belief that underlies a way of seeing a reality. The paradigm used is the Positivism Paradigm, which is based on something real, tangible, concrete, visible, not based on a metaphysical system and does not want to explain essence, because essence is something abstract.

The author's stand point consistent with the positivism paradigm which contains basic values taken from the natural law science tradition which places the phenomenon under study as an object that can be controlled, generalized so that future phenomena can be predicted. With this position, researchers can objectively see the issue of investment law in Indonesia because there is no interest or direct involvement with the object.

In this legal study, the author uses the pure legal theory of The Pure Theory of Law, Hans Kelsen who formulates that law is a system of norms and tiers according to Stufenbautheorie, so the approach that is taken is more specifically emphasizing the Positivism-Normativism approach, where the positive meaning refers to the notion that there are rules in positive law (in this case UUPM No.25 of 2007); and the normative meaning in the positive-normative approach is that what has been determined in the regulations must be carried out exactly according to the rules in the sense that their implementation must be appropriate.

In the positivism-normativism approach method in accordance with The Pure Theory of Law the application is to look for legal foundations as a basis for validity, not on meta juridical principles, but through a juridical hypothesis, namely a basic norm built with

logical analysis based on a way of thinking. actual jurisprudence. This theory is more consistent in using its methods related to the problems of basic concepts, legal norms, legal rights, legal obligations and the relationship between the state and law. The application of the positive-normative method approach a positive law is declared fair if it is carried out in accordance with written norms and it must be remembered that the norms already contain the values of justice. Therefore, this study determines the level of consistency or synchronization between the articles of the 1945 Constitution of the Republic of Indonesia and the principle and objective of Investment Law (UUPM).

Briefly, conducting a literature study on Legal-Positivism Philosophy with a positive-normative approach, UUPM No.25 of 2007, and exploring the process of forming Article 33 and analyzing the UUPM through its principles and objectives.

Basic Theory

Relevance to the study of law, many legal theories discussing about law, justice and society are based on different philosophies. The basis of these philosophies and theories were born in different parts of the world, different cultures and different challenges certainly have different values and understandings, although in terms of justice there are universal similarities but still not the same, it is necessary to choose the right theory or closest, to ensure the right choice. In this case, choose the philosophy of positivism with a positive-normative theory approach to look for legal factors that are suspected to be the cause of problems in justice and related welfare which are the objectives of UUPM No.25 of 2007 concerning Investment.

Positivism-Normativism Approach in Positivism Legal Philosophy

Positivism is a school of thought that developed in Western Europe which is based on empirical experience not on belief. All symptoms can be declared true if they have been verified

repeatedly. Positivism philosophy is based on something real, tangible, concrete, visible, not based on a metaphysical system. The philosophy of positivism does not want to explain essence, because essence is something abstract. Essence can be related to value or interpretation, something that is not visible to the eye. Therefore positivism does not explain the essence. The philosophy of positivism-again-only based on reality and only uses the scientific method.

Positivism-Normativism, related to the pure legal theory of Hans Kelsen (The Pure Theory of Law) is an approach method that was born from the Legal Positivism Philosophy. Positive-normative approach method where positive meaning refers to the understanding that there are rules in positive law (in this case UUPM No.25 of 2007); and the normative meaning in the positive-normative approach is that what has been determined in the regulations must be carried out exactly according to the rules in the sense that their implementation must be appropriate. Therefore, it is necessary to study whether there is a level of synchronization between the articles in the 1945 Constitution of the Republic of Indonesia and the articles in the Investment Law in terms of text and implementation.

Legal positivism is a school of legal thought originating from the development of the philosophy of positivism in law (science). Legal positivism conceptualizes law as applicable provisions binding the community because it is issued by the highest power, contains orders and sanctions [1].

Before forming or creating of the law, at first there was deliberative human thought with considerations of good morals and values, which were still meta-juridical and *das sollen* (supposedly) would become the forerunner of the norm. Furthermore, with a will, good values are made into a norm in law, written, containing orders and issued by an authorized institution so that it binds the community.

The process of forming positive law, modified from basic source Samekto elaboration is as below [1]:

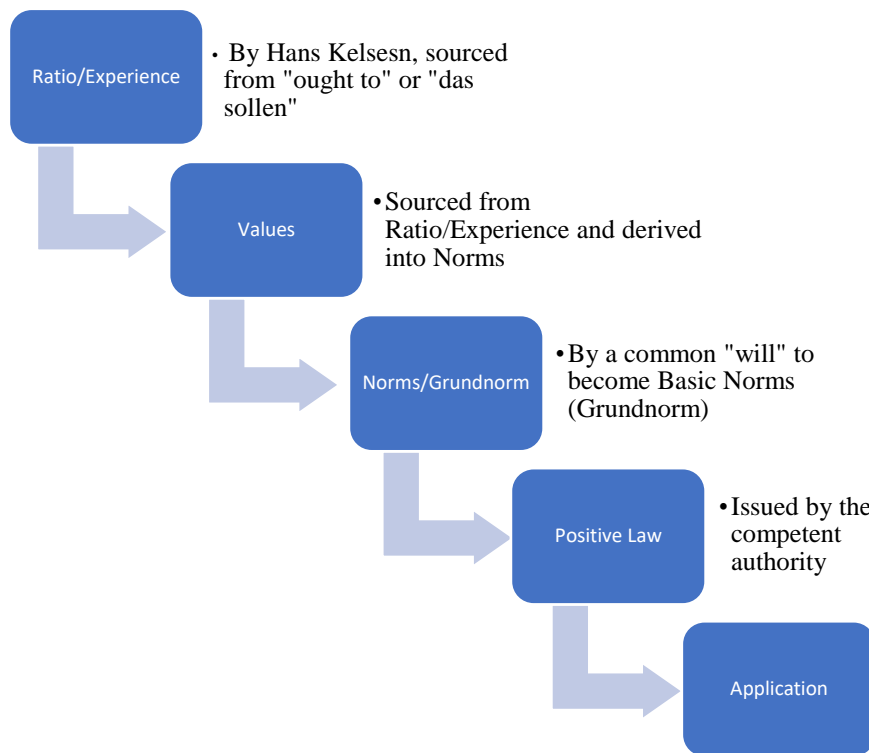


Figure 1. *Law Formation Process (modified from Samekto's reference)*

Law is a system of norms, a system based on imperatives (what should be or *das sollen*). For Hans Kelsen, norms are products of deliberative human thought. Something becomes a norm if it is desired to become a norm, the determination of which is based on morality and good values. So the considerations that underlie a norm are meta juridical. Something that is meta-juridical in nature is *das sollen*, and has not yet become a law that applies to bind the community. In short for Hans Kelsen, legal norms are always created through the will. These norms will become binding on the community if these norms are desired to become law and must be stated in written form, issued by an authorized institution and contain orders.

In accordance with Hans Kelsen's The Pure Theory of Law related to positive-normative theory, in the formation of a positive legal system it must be in accordance with the norms that exist in the highest norm, namely Grundnorm. The norm in Grundnorm is the highest norm that contains the underlying values that are fixed. Furthermore, with Stufenbau Theory, as a legal hierarchy theory it is determined that the lower law normatively

must follow the higher norm and so on must be in accordance with the highest norm, namely Grundnorm. The basic norm or grundnorm is the highest foundation and presupposes the validity of the norms below it hierarchically in a hierarchy of legal norms, starting from the highest to the lowest hierarchy.

The basic norm or grundnorm is the highest foundation and presupposes the validity of the norms below it hierarchically in a hierarchy of legal norms, starting from the highest to the lowest hierarchy. The pure theory of law refuses to be a metaphysical study of law. This theory looks for legal foundations as a basis for validity, not on meta juridical principles, but through a juridical hypothesis, namely a basic norm built with logical analysis based on actual juridical thinking. The pure theory of law differs from analytical jurisprudence in that the pure theory of law is more consistent in using its methods related to basic concepts, legal norms, legal rights, legal obligations and the relationship between the state and law [2].

Hans Kelsen's opinion indicates his thought that legal positivism considers the discussion of morals, values to be finished and final when it

comes to the formation of positive law. Therefore, the very famous quote from Hans Kelsen: the law is obeyed not because it is judged to be good or fair, but because the law has been written and passed by the ruler [1].

Justice is a subjective judgment of value, can not be answered by means of rational cognition. It is determined by emotional factors, and is therefore, subjective in character, valid only for the judging subject and therefore relative. The subjective judgment of value is usually presented as an assertion of an objective and absolute value, a generally valid norm [3].

“Justice” means the maintenance of a positive order by conscientious application of it. If the statement that certain behaviour corresponds or does not correspond to a legal norm is called a judgement of value, then it is an objective judgment which must be distinguished from a subjective judgment of value by which a wish of feeling of the judging subject is expressed [3].

Justice can be interpreted as legality. It is fair if a rule is applied to all cases where according to its content it should be applied. It is unfair if a rule is applied to one case but not to another similar case [2]. Justice in the sense of legality is a quality that is not related to the content of positive rules, but to their implementation. According to legality, the statement that an individual's action is fair or unfair means legal or illegal, i.e. the action is in accordance with or not with valid norms to judge as part of a positive legal order. It is only in this sense of legality that justice can enter the science of law [2].

Thus, that law is a system of norms, which contains value in that norm and is formed with a lower legal hierarchy normatively following higher norms and so on until the highest norm and which after the law is passed it becomes binding on society. The implementation of the law becomes the implementation of norms that contain the values exist in the legal norms, if carried out in accordance with the legality it is called fair. The basic principle of positive-normative, is the application of positive law

that contains the values forming the norm and not just interpreting it textually.

Philosophy and History of the Economic Constitution (Article 33 of the 1945 Constitution of the Republic of Indonesia)

In Chapter XIV of the 1945 Constitution, entitled "Social Welfare", Article 33 of the 1945 Constitution emphasizes that national economic development must be based on increasing social welfare. Increasing social welfare is a parameter of the success of fully equitable human development, not merely the rate of economic growth, or fiscal economic development only. Article 33 of the 1945 Constitution is an article that prioritizes the interests of the common people, without neglecting individual interests. Article 33 of the 1945 Constitution states that; (1) The economy is structured as a joint venture based on the principle of kinship; (2) Production branches which are important to the state and which affect the livelihood of the people are controlled by the state; and (3) Land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

The elaboration of Article 33 of the 1945 Constitution as long as the question of state control over the land, water and natural resources contained in it is interpreted as a legal product which is very responsive in its alignment with the people, and is full of national insight, is a legal product mandated to break the colonialist character that still gripping the Indonesian nation in the structure of oppression from year to year to become a truly independent nation and state, then in Chapter XIV of the 1945 Constitution Article 33 (4th Amendment 2002) entitled "National Economy and, Social Welfare" is considered to be one of the most fundamental articles, because it is the pillar or gate of the national foundation of the Republic of Indonesia. However, a further legal interpretation is needed and a firm rule of law is how the mechanical intent and meaning of the clause "controlled by the State" is needed, because recently there have been differences in interpretation.

The process and history of the formation of Article 33 of the 1945 Constitution cannot be separated from the formation of the 1945 Constitution before and at the beginning of independence, where the founders of the nation and national figures held large meetings in order to realize the economic foundations of an independent Indonesian state.

According to E. Sumaryono in the study of the birth of a law, in this case the birth of Article 33 of the 1945 Constitution, cannot be separated from and is formed from a historical condition that surrounds the Republic of Indonesia, as well as certain psychological conditions experienced by the founders of our nation. in pouring the meaning and understanding of the article and its derivatives. The method used is to use legal hermeneutics as a new discovery method with text interpretation, which is able to raise a condition where the condition is the background for the birth of a law.

This interpretation method can assist in finding an implementation in real terms and does not obscure every content, definition, meaning, and historical condition contained in an article. This is further expanded not only to the discovery of law but at the same time the formation and creation of law.

And its capacity to become an interpreted "object". Therefore, the author will use the "legal hermeneutics" method as an alternative method of finding new laws (in addition to the "legal interpretation" and "legal construction" methods) to look further into the substance, in reviewing the discussion, because legal hermeneutics is not a method that only to see a legal regulation or the sound of the law alone. but more concerned with, how to find and form a new legal value in accordance with the existence and conditions of the law [4].

The essence and existence of the definition of legal hermeneutics is a philosophical teaching regarding understanding/understanding something, or a method of interpretation (interpretation) of the text. The word "something/text" which is meant here, can be in the form of: legal texts, legal events, official

state documents, ancient texts, ahkam verses in the holy book, or in the form of opinions and results of ihtijad legal experts (doctrine), because the starting point of hermeneutics (law) is human life and its cultural products (including juridical texts). The methods and techniques for interpreting them are inseparable from the sound of law and the spirit of the law, which are systematized within the framework of the linkages between text, context, and contextualization [4].

It is proven in the history of all ages, that the greatness of the nation and prosperity have never fallen free from the sky. The greatness of the nation and prosperity always "crystallize" sweat. This is a law, which we discover from studying history. Indonesian nation, draw this moral and law. The Chairman of the Constitutional Court of the Republic of Indonesia on April 15, 2004 stated that in the preparation of a written constitution, the basic values and norms that live in society and in the practice of state administration also influence the formulation of a norm into the text of the Constitution.

The background of the birth of Article 33 of the 1945 Constitution brings us closer to understanding the birth of the constitution. In fact, the debate before the inclusion of Article 33 in the constitution had been discussed by the "Founding Fathers" of the Indonesian nation. Through the meeting of the Indonesian Independence Investigating Committee, the Founding Fathers issued various opinions and statements, the point of which was to find the right formulation in making an article on the economy in the content of the constitution. During the 6th Commemoration of the Proclamation of Independence of the Republic of Indonesia, Mr. Soekarno spoke about Law and Morals, namely History is very useful. From studying history, one can discover the laws that govern human life.

Therefore, the atmosphere of spirit (*geistlichen hintergrund*) which forms the philosophical, sociological, political and historical background for the juridical formulation of a provision of the Constitution needs to be carefully understood in order to best understand

the provisions contained in the articles of the Law. Basic, because it cannot be understood only through the text alone. To really understand, we must understand the philosophical, socio-historical, socio-political, socio-juridical, and even socio-economic contexts that influence its formulation [5].

In this sense, it is very wise and relevant to trace the history of Article 33 of the 1945 Constitution which is the National Identity since when the Indonesian Founding Fathers initiated an independent Indonesia.

Regarding economic democracy, in 1931, Mr. Hatta coined the term "People's Sovereignty" in the Daulat Ra'jat magazine, then in 1932, described People's Sovereignty in the brochure Towards an Independent Indonesia. The Western version of People's Sovereignty only includes the notion of Political Democracy, while Bung Hatta's version of People's Sovereignty (Volkssouvereiniteit) includes the notions of Political Democracy and Economic Democracy at the same time and stems from

the nature and attitude of life of the Indonesian people themselves. Mr.Hatta also emphasized that for Indonesia, the interests of the community were more important than the interests of individuals. In 1933, Bung Karno confirmed that the existence of Genuine Indonesian Democracy was in Achieving an Independent Indonesia by giving birth to the term Socio-Democracy. In 1943, KRT Radjiman Wediodiningrat, Chairman of the Investigative Committee for Preparatory Work for Independence, had stated that Adam Smith was a clever man who did not regard "self-interest" or "self-interest" as a disease of democratic society. Western Economic Theory is indeed guided by the personal interests of individuals as the soul of capitalism, and that is what the Founding Fathers of the Republic of Indonesia rejected.

In the period of preparation for Indonesian independence, speeches and notes from Indonesian figures are tabulated as follows:

Table 1. *The Period of Preparation for Indonesian Independence, Speeches and Notes from Indonesian*

No.	Nation's Figures	Opinion	References
1	RMTA Sorjo (Member of BPUPK)	- The goal of a new country that must be fertile and prosperous requires a healthy and practical economy.	Stenographic notes
2	A.M. Dasaad (Member of BPUPK)	- Advancing work plans in the field Political economy	Notes May 29 1945
3	Mr.Soesanto Tirtoprodjo. (Member of BPUPK)	The pillars of the independent state of Indonesia: - An organized and limited economy according to people's needs, discards the stance of 'liberalism'.	Speech May 29 1945
4	R.Abdoelrahim (Member of BPUPK)	The economy in the broadest sense needs to be expanded and deepened in all fields; (1) Nationalization of companies; (2) Abolish the rules of communal land rights and return them to the people.	Notes May, 31 1945

5	Mr.R.Hindromartono (Member of BPUPK)	Strengthening the sources of livelihood of the population and the needs of the state so that they are not dependent on foreign countries, but also guaranteeing justice in the distribution of community assets (billijke verdeling van het maatschappelijke inkomen) and then ensuring the orderly course of justice for the inner and outer life of the people.	Speech, May 31 1945
---	---	---	---------------------

Furthermore, on May 31, 1945, Prof. MR DR Soepomo, a member of the BPUPK (Committee for Investigation of Preparatory of Independence) gave a speech about the relationship between the state and the economy. In an integralistic-based state based on unity, in the economic field, the system of "State Socialism" (staats-socialism) will be used.

Important companies will be managed by the State itself, but in essence the State will determine where and at what time and what companies will be run by the central government or by the regional government or which will be handed over to a private legal entity or to a person. depending on the interests of the State, the interests of the people as a whole [6]. In the new Indonesia, according to the current situation, companies as traffic, electricity, forest companies must be managed by the State itself. The same goes for land matters.

In essence, the state controls the land entirely. Mines that are important to the State will be managed by the State itself. Seeing the nature of Indonesian society as an agricultural society, agricultural land naturally becomes the livelihood of the peasants and the State must keep the agricultural land held by the peasants. In the economic field, the State will be familial as well because kinship is the nature of eastern society, which we must maintain as well as possible. The mutual help system, the cooperative system should be used as one of the economic bases of the Indonesian state. The totalitarian basis of the unified nation-state has consequences in other fields, but it will be lengthy if I discuss questions from these other fields.

Mr. Soekarno, a member of the BPUPK, in his speech on June 1, 1945, stated that if we seek democracy, it should not be Western

democracy, but deliberation that gives life, namely "politiek economische democratie" which is able to bring social welfare. this matter. What is the Queen of Justice? What is meant by Queen of Justice's understanding is "sociale rechtvaardigheid," the people want to prosper. The people who previously felt that they did not eat enough and lack clothes, created a new world in which there was justice, under the leadership of Queen of Justice. Therefore, if we truly understand, remember, and love the Indonesian people, let us accept the principle of this sociale rechtvaardigheid principle, which is not only political equality, brothers and sisters, but also in the economic field we must hold equality, meaning mutual prosperity. the best. Brothers and sisters, the deliberative body that we will create, should not only be a political democratic consultative body, but a body that together with the community can realize the two principles of politieke rechtvaardigheid and sociale rechtvaardigheid (rechtvaardigheid = social justice).

The Soepomo Small Committee worked from July 11, 1945 to July 13, 1945, the results of which were then discussed in the Drafting Committee of the Constitution, Concerning the Social Welfare of the Constitution (Big Meeting on July 13, 1945 Committee for Drafting the Constitution) Article-33 as follows [6]; (1) The economy is structured as a joint venture based on kinship; (2) Production branches which are important to the state and which affect the livelihood of the people are controlled by the government; (3) Land and water and the natural resources contained therein are controlled by the state and must be used for the greatest prosperity of the people.

Article 33 is the embodiment of the values of the Indonesian nation in the economic field and

is called economic democracy, and is normatively stated as the basis of the Indonesian economy in the 1945 Constitution. The values of togetherness, kinship for social welfare become the norm of economic democracy, Article 33 of the 1945 Constitution.

Jurisdical of Investment Law No.25 Year 2007 (UUPM)

Regulations related to investment are regulated in Law Number 25 of 2007 concerning Investment (UUPM). To form UUPM, following a sequence, namely the objectives, principles and contents of the Act, which is based on Article 5 of Law no. 10 of 2004 concerning the Assistance of Legislative Regulations, which states that in forming laws and regulations, it must be based on the principles of establishing good laws and regulations, including: (a) clarity of purpose (b) appropriate institutions or forming organs; (c) conformity between types and cargo materials; (d) can be implemented; (e) usability and effectiveness; (f) clarity of formulation; and (g) openness.

In the consideration of the Investment Law, it is stated that: point c considering this UUPM that the purpose of investment is to accelerate national economic development and realize Indonesia's political and economic sovereignty; point d creates a conducive investment climate, promotively provides legal certainty, justice and efficiency. The basic investment policy is to: (a) encourage the creation of a conducive national business climate for investment to strengthen the competitiveness of the national economy and (b) accelerate the increase in investment.

Results and Discussion

Justice is widely interpreted and interpreted with "feelings" or "emotions", because justice is very relative, depending on the time, place, situation, by whom and for whom, so the measure is difficult to apply practically. Many theories have been proposed, one of which is the theory of justice in the West, such as John Rawls's theory of justice which has the

principle of "fairness" [7]. John Rawls's theory of justice is one of the most prominent in the world, although there are similarities with justice that lives in the Indonesian nation as an example in helping the poor and weak, these values are still different from the justice of the Indonesian nation [8].

The justice of the Indonesian nation must be in accordance with the values that are the spirit and way of life of the Indonesian nation contained in Pancasila [9]. Pancasila as the ideological foundation of the Indonesian nation, of course, the values of social justice are the main ones. The value of social justice for the Indonesian people is different from the justice of other nations because the value of social justice for the Indonesian people is in the form of togetherness and mutual cooperation while as a comparative example, justice based on John Rawls is individual justice with the principle of fairness, in accordance with the individualistic culture in which John Rawls' theory was born. Therefore, the main and final principle will be determined by Pancasila as the Grundnorm and the 1945 Constitution Staatsfundamentalnorm. Furthermore, in the economic field, the embodiment of Pancasila values is stated in Article 33 as an economic democracy based on togetherness, kinship and mutual cooperation.

According to Gustav Radbruch's theory, in achieving its objectives, the law must fulfill three basic values that must be integrated into law, namely: The value of justice (philosophical aspect); certainty value (juridical aspect) and expediency value (sociological aspect). Every legal regulation must be able to return its validity to these 3 (three) basic values [1].

First of all, it will be tested regarding the legal justice value of this investment using the positive-normative theory of Hans Kelsen. This test will not discuss justice because according to Hans Kelsen, justice lies in being legal or illegal. The method, if it is normatively consistent, is called fair. Normatively consistent means consistent with the values contained in the norm.

In accordance with Hans Kelsen's The Pure Theory of Law as a positive-normative theory, in the formation of a positive legal system it must be in accordance with the norms that exist in the highest norm, namely Grundnorm. Grundnorm is the highest norm that contains the underlying values that are fixed. Furthermore, with Stufenbau Theory, as a legal hierarchy theory it is determined that the lower law normatively must follow the higher norm and so on must be in accordance with the highest norm, namely Grundnorm. The higher norm becomes the basis for the validity of the lower legal norm.

Similar to Pancasila and the 1945 Constitution, Pancasila as the basis of the NRI's philosophy contains the highest values as an ideal basis, as the basic norm of the Grundnorm, translated into the 1945 Constitution as the constitutional basis, also called the state's fundamental norm (staatsfundamentálnorm) which contains the same values as in the 1945 Constitution of the Republic of Indonesia. Pancasila is in the 1945 Constitution. All Indonesian laws must comply with and follow, consistent with the 1945 Constitution as a fundamental norm of the state and subsequently in accordance with the highest norms contained in Pancasila as the basic norm (Grundnorm) or the highest norm.

In accordance with Hans Kelsen's theory which is positive-normative that law is a system of norms and Stufenbautheorie law follows a hierarchy or level following from the lowest to the highest norm, namely Grundnorm. The values that exist in the highest norms (Grundnorm) that exist in Pancasila, the same values are revealed in the 1945 Constitution to all laws and regulations in Indonesia. The values contained in Pancasila and the 1945 Constitution, the same values must also exist in all the laws and regulations under them.

Pancasila as the Grundnorm and the 1945 Constitution as the Staatsfundamentálnorm, were revealed in the norm in Article 33 of the 1945 Constitution as the norm of economic democracy, this norm must be complied with by the laws under it. The norm of Article 33 contains these values and then normatively

must be obeyed and implemented consistently by UUPM No.25 of 2007.

The objectives specified in the legislation must be in accordance with the values of social justice contained in Pancasila and the 1945 Constitution, and those values are guided by the principles contained in the legislation.

A positive law must obey the principles that contain values that must exist and be embodied in the law, because the legal principle is the basis that functions to realize the size of the value and at the same time as a test stone for the assessment of a positive law.

To test the purpose of this UUPM, whether it is in accordance with the principles with the values in Article 33, the 1945 Constitution is determined by the underlying principles. Through this principle, it will be assessed whether the Investment Law is in accordance with or consistent with the norms contained in Pancasila and the 1945 Constitution, especially Article 33 directly.

The principle of investment in the Investment Law no. 25 of 2007 is stipulated in Article 3 paragraph (1) which states that investment is carried out based on the principles of: a) legal certainty; b) transparency; c) accountability; c) equal treatment and does not discriminate against country of origin; d) togetherness; e) efficiency with justice; d) sustainable; e) environmentally friendly; f) independence; and g) the balance of progress and national economic unity. In this case, the topic of testing is the principle of togetherness.

According to Hans Kelsen, in his theory the pure theory of law, in a positive-normative approach, that in positive law justice is no longer discussed because it is final when a positive law is formed, so that a law is considered fair [10]. if implemented consistently in accordance with the norms that exist in the positive law. (see the previous theoretical discussion above).

We will analyze how this "principle of togetherness" as the bearer of values is consistent with Article 33 which is for the administration of the economy as a joint

venture with the principle of kinship. The principle of togetherness in UUPM with the principle of kinship in Article 33, both have almost the same meaning, but consistency according to the positive-normative approach is not enough only in textual and understanding, but also in its purpose. Therefore, the values

contained in the norms of Article 33 which aim for the greatest prosperity of the people must be realized through the Investment Law, so they must be tested through the objectives of the Investment Law and its basic policies, as the comparison table below:

Table 2. *The Comparison of the Principles in Article 33 with Investment Law*

	Principle	Purpose	Value	Remarks
Article 33 (Economic Constitution)	Principle of Kinship	Greatest People's Wealth	- Togetherness - Social Justice	
Investment Law (UUPM)	Togetherness Principle	Development of National Economy (Strengthening Competitiveness) Accelerating the increase of Investment	Quantity of Investment	Not comply to the value of principle in Article 33

In accordance with UUPM no. 25 of 2007, the principle of togetherness is the principle that encourages the role of all investors together in their business activities to realize people's welfare. In his explanation that the principle of togetherness is the principle that encourages the role of all investors together in their business activities to realize the welfare of the people.

The consistency that must be met is that the values of togetherness and kinship that exist in the norms of Article 33, are conditions that must exist and be implemented in UUPM No. 25 of 2007, because if they don't, it means that they are inconsistent in those norms and values. The essence of this understanding is that if investors are only certain individuals or groups, then together it is only for those investors, there is no value and is not related to the community at large.

The implementation of the economy in Article 33 of the Constitution, aims to carry out the economy for the greatest prosperity of the people and the welfare of the people with the values of togetherness in a joint venture with the "family principle", meaning that the implementation of investment other than for the greatest prosperity of the people, is declared inconsistent.

The implementation of investment in UUPM No. 25 of 2007, aims to accelerate national economic development and realize Indonesia's

political and economic sovereignty with basic investment policies to: (a) encourage the creation of a conducive national business climate for investment to strengthen the competitiveness of the national economy and (b) accelerate the increase in investment.

The comparison of the two objectives above between Article 33 UUPM 1945 and UUPM No. 25 of 2007, there is a difference because Article 33 emphasizes the values of togetherness in business based on the principle of kinship for the purpose of people's welfare, while UUPM No. 25 of 2007 is based on togetherness but emphasizes the acceleration of development and strengthening competitiveness by accelerating the increase in investment. Different in the value of togetherness in a joint venture with the principle of kinship.

The principle of togetherness in UUPM No. 25 of 2007 with the principle of "togetherness", is textually almost the same as "joint venture" and "family principle", but the purpose of togetherness and kinship in Article 33 is normative (which must be followed) and the purpose of realizing social welfare that contains the value of togetherness and kinship, in the nature of mutual cooperation, for the purpose of the greatest prosperity of the people, meaning that the people are prioritized, investment is not for certain individuals or groups by accelerating the increase in

investment without including the people as the embodiment of value. togetherness and family.

Therefore, in a "joint economic venture" with "the principle of kinship" togetherness is a value that aims for the greatest prosperity of the people, if in the implementation of investment it is only carried out by certain individuals or groups, on the grounds of pursuing an increase in investment, without including the people, it is not in accordance with the objectives of Article 33 of the 1945 Constitution, because Article 33 of the 1945 Constitution in a joint venture based on the principle of kinship contains the value of togetherness, kinship, and for the greatest prosperity of the people towards the welfare of the people.

Based on the above analysis, the principle of togetherness in UUPM No.25 of 2007, if the implementation of "togetherness" is not in accordance with or different from the values of "the principle of kinship" and "togetherness" which aims at "the greatest prosperity of the people" as is the norm of Article 33 of the Constitution. NRI 1945, the implantation of the UUPM is inconsistent with Article 33 of the 1945 Constitution, because it does not contain the values of togetherness, kinship, and is not in accordance with the values of social justice in Pancasila. Thus, based on the consistency test with the positive-normative approach, UUPM No.25/2007 is inconsistent with Article 33 of the 1945 Constitution. The results of the discussion and analysis in this study using the positive-normative method.

Conclusion

Law No.25 of 2007 concerning Investment (UUPM), in its textual principle and understanding, it is almost the same as the principle in Article 33. UUPM is normatively inconsistent with Article 33 due to differences in values in objectives and policies, therefore cannot realize social justice and people's welfare.

Suggestion

The UUPM positively-normatively must follow and comply with Article 33 of the 1945 Constitution of the Republic of Indonesia, with adjustments to its principles, objectives and policies in accordance with the principles, objectives and values contained in Article 33, and implemented consistently.

Reference

- [1] Samekto, F. X. Adji. Pergeseran Pemikiran Hukum Dari Era Yunani Hingga Post-Modernisme. Jakarta: Konstitusi Press, 2015.
- [2] Asshiddiqie Jimly, Teori Hierarki Norma Hukum, Jakarta: Penerbit Konstitusi Press (Konpress), 2020.
- [3] Kelsen, H. General Theory of Law and State, Translated by Anders Wedberg, Clark New Jersey: The Lawbook Exchange, LTD, 2009
- [4] Sumaryono, E. Hermeneutik, Sebuah Metode Filsafat, Kanisius, Yogyakarta, 1999
- [5] Sukardja. Ahmad Piagam Madinah Dan Undang-Undang Dasar NKRI 1945. Sinar Grafika, Jakarta, 2012
- [6] Yustika, Ahmad E. Pembangunan dan Krisis, Memetakan Perekonomian Indonesia. Jakarta: PT.Grasindo, 2002. hlm. 71
- [7] Follesdal, A. John Rawls' theory of justice as fairness. In *Philosophy of Justice* (pp. 311-328). Springer, Dordrecht. 2015.
- [8] Pogge, T., & Pogge, T. W. John Rawls: his life and theory of justice. Oxford University Press on Demand. 2007.
- [9] Dewantara, J. A., Suhendar, I. F., Rosyid, R., & Atmaja, T. S. Pancasila as Ideology and Characteristics Civic Education in Indonesia. *International Journal for Educational and Vocational Studies*, 1(5), 400-405. 2019.
- [10] Kelsen, H. Pure theory of law. In *Pure Theory of Law*. University of California Press. 2020.