

## STATE-OWNED ENTERPRISES AND ECONOMIC CONSTITUTIONS: A CASE STUDY OF JUDICIAL REVIEW OF LAW NO.19 OF 2003

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### **Abstract**

The purpose of this study seeks to uncover the meaning of Law No. 19 of 2003 and Article 33 of the 1945 Constitution of the Republic of Indonesia, and identify the essence of the roles and functions of SOEs in implementing the economic constitution. The study of SOEs in the realm of constitutional economics is seen as very important as a reflection of the rapid change in national and global economic development. The findings of the study lead to the philosophical understanding of economic constitution for the Republic of Indonesia by the role of state companies in national economic development. The theoretical description of the results of this study contributes to the knowledge of political economy and political democracy. The benefits practically have implications for the practice of public management about the governance of state enterprises, as well as corporate management for SOEs or other state-owned companies.

*Tujuan penelitian ini berupaya mengungkap makna UU No. 19 tahun 2003 dan Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, dan mengidentifikasi esensi peran dan fungsi BUMN dalam mengimplementasikan konstitusi ekonomi. Studi BUMN di bidang ekonomi konstitusional dipandang sangat penting sebagai cerminan dari perubahan cepat dalam pembangunan ekonomi nasional dan global. Temuan penelitian mengarah pada pemahaman filosofis konstitusi ekonomi untuk Republik Indonesia oleh peran perusahaan negara dalam pembangunan ekonomi nasional. Deskripsi teoritis dari hasil penelitian ini berkontribusi pada pengetahuan ekonomi politik dan demokrasi politik. Manfaat praktis memiliki implikasi untuk praktik manajemen publik tentang tata kelola perusahaan negara, serta manajemen perusahaan untuk BUMN atau perusahaan milik negara lainnya.*

**Keywords:** state-owned enterprises, economic constitutions, Law No.19 of 2003, case study, judicial review

## Introduction

State-owned enterprises are expected to have a role and function as corporate pioneers who carry out the mandate of Indonesia's economic constitution. State companies in Indonesia, namely State-Owned Enterprises (SOEs) and Regional-Owned Enterprises, including Village-Owned States (VOEs).<sup>1</sup> The definition of the constitution includes written rules, practices in state administration, functions and composition of state and regional state organs, and reciprocal relations between state organs and citizens.<sup>2</sup> Understanding of the definition of this constitution gives an understanding that an economic constitution is a regulation and legislation carried out by state administrators in regulating the national economic system along with elements of society as citizens.

Academic reviews in the field of constitutional economics in Indonesia still rarely appear on the surface as material for discussion in the world of education in the fields of economics and business management. Therefore, this phenomenon can be criticized that the formulation of Indonesia's economic debate has not yet been found in the actual formulation. In fact, constitutional economic knowledge can be developed using an economic system based on the Indonesian Economic Constitution, namely Article 33 of the 1945 Constitution of the Republic of Indonesia.<sup>3</sup> The previous literature on SOEs indicates

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<sup>1</sup> R. Agus Trihatmoko and Y. Sri Susilo, "The Concept of Indonesia Raya Incorporated Conforms the Constitution of Economics: Studies of Grounded Theory on State Asset Ownership Management", *Business and Economic Research*, vol. 8, no. 1 (2018), p. 136. See also, Donald C. Clarke, "Corporate governance in China: An overview Donald C. Clarke, Corporate Governance in China: An Overview", *China Economic Review*, vol. 14 (2003), p. 494; Yu Keping, "Governance and Good Governance: A New Framework for Political Analysis", *Fudan Journal of the Humanities and Social Sciences*, vol. 11, no. 1 (2018), p. 2.

<sup>2</sup> Jimly Asshiddiqie, *Konstitusi Ekonomi* (Jakarta: PT. Kompas Media Nusantara, 2016), p. 1.

<sup>3</sup> See, R. Agus Trihatmoko and Y. S. Susilo, "The Concept of Indonesia . . .," p. 136; R. A. Trihatmoko and Y. S. Susilo, "The Conceptual Framework of Indonesia Raya Incorporated (IRI): Extending Relationship between the Economic Constitution and the Roles and Functions of State Companies", *Global Journal of Management and*

that researchers still seldom address the issue of SOEs related to the economic constitution that applies in each country.<sup>4</sup> For this reason, the paper was compiled to fill the study space on SOEs, because the position of SOEs was seen as more inclusive in the field of constitutional economics compared to private corporations with “privately owned” businesses.

The study of SOEs related to economic constitution in Indonesia has emerged as a new thought, namely known as Indonesia Raya Incorporated (IRI).<sup>5</sup> The idea of IRI is intended to connect the interests of state administrators with the interests of the people as intended by the notion of an economic constitution that applies in Indonesia. The conception of IRI was in accordance with Indonesia’s economic constitution as outlined in Article 33 of the 1945 Constitution of the Republic of Indonesia. The concept of IRI was in response to the purpose and composition of state organs between the center and regions, and between state administrators with the people, by means of the inclusion of the ownership of SOEs and ROEs. The pattern of incorporation between SOEs and ROEs is conceptualized as an

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*Business Research (B)*, vol. 7, no1 (2018), p. 15; Jimly Asshiddiqie, *Konstitusi Ekonomi...*, p. 10; M. Ismail, D. B. Santosa and A. E. Yustika, *Sistem Ekonomi Indonesia – Tafsir Pancasila dan UUD 1945*, (Jakarta: Penerbit Erlangga, 2014), p. 1.

<sup>4</sup> R. Agus Trihatmoko and Susilo (2018). “The Conceptual Framework...”, p. 15. See also, Salah Uddin Rajib, Emil Sudath Kumara and Luo Fan, “Investigating the Failure of State Owned Enterprises (SOEs) of an Emerging Economy: A Comparative Case Study”, *Studies in Business and Economics*, vol. 11, no. 2 (2016), p. 115; R. Kloivene and V. Gimžauskiene, “Performance measurement model formation in state-owned enterprises”, *Procedia-Social and Behavioural Sciences*, vol. 156 (2014), p. 594; Alexander Radygin, Yuri Simachev and Revold Entov, “The state-owned company: State failure or market failure?”, *Russian Journal of Economics*, vol. 1, no. 1 (2015), p. 55; Anwar Sanusi, “State Owned Enterprises (SOEs), The Problems and Solutions in Financial and Asset Management”, *Scholedge International Journal of Multidisciplinary & Allied Studies*, vol. 3, no. 02 (2016), p. ; Tatiana Arkhipova, Artem Dibrov, Ludmila Beskrovnaya, and Alexandra Shchukina, “Functions of state-owned corporations in the structure of the public sector of the Russian Federation”, In *SHS Web of Conferences*, vol. 28 (2016), p. 0100; Hao Liang, Bing Ren and Sunny Li Sun, “An anatomy of state control in the globalization of state-owned enterprises”, *Journal of International Business Studies*, vol. 46, no. 2 (2015), p. 223; Wendy Dobson, “China’s state-owned enterprises and Canada’s foreign direct investment policy”, *Canadian Public Policy*, vol. 43, no. S2 (2017), p. S29.

<sup>5</sup> A.M.P. Prabantoro, *Migas the Untold Story*, (Jakarta: Gramedia Pustaka, 2014), p. 1.

embodiment of the roles and functions of SOEs and ROEs in carrying out the mandate of the economic constitution. The SOEs share ownership is not only with regional companies (ROEs), but also provides opportunities for affiliation with VOEs, national and foreign private parties.<sup>6</sup>

The idea of IRI did emerge since 2014 by Prabantoro<sup>7</sup>, however, it only became popular at the end of 2016, and continued in 2017 through mass media coverage of discussion activities by Indonesian Economists. The concept of IRI was included in a discussion forum with the government, namely the Presidential Advisory Council. The recommendation of the IRI study proposes to the Government (executive) and the Parliament (legislative) ranks to take new initiatives in the form of government policies or legislation so that they can be served by SOEs and ROEs. In particular, recommendations are prioritized for SOEs engaged in the oil and gas sector, as well as other natural resources. However, until now there has not been a serious response by the organizers of the country.

Government policies or new legislation are highly expected, if indeed SOEs are oriented to run an economic constitution. Some circles consider that Law No.19 of 2003 concerning SOEs needs to be reviewed, because it is alleged that economic policy is not in accordance with the meaning of Article 33 of the 1945 Constitution of the Republic of Indonesia. Meanwhile, economic constitution regulates policies that will be used as umbrella and giving direction in various state economic development activities.<sup>8</sup> Old economic policies encouraged economic liberalization, resulting in a gap in ownership of state assets between SOEs, ROEs, and national or foreign private sector.<sup>9</sup> In 2018, two Indonesian citizens namely Putut Prabantoro and Kiki Syahnakri submitted a judicial review request for Law No. 19 of 2003 concerning SOEs to the Constitutional Court (No. 14/PUU-XVI/2018). However, the Constitutional Court finally rejected the request to revise or cancel the law. Apart from the results of the Case in the Constitutional Court, this study question is how the relevance between the meaning of the phrases of Law No. 19 of 2003 concerning SOEs with Article 33 of the

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<sup>6</sup> R. Agus Trihatmoko and Susilo, "The Conceptual Framework...", p. 15

<sup>7</sup> A.M.P. Prabantoro, *Migas the...*, p.11

<sup>8</sup> Jimly. Asshiddiqie, *Konstitusi Ekonomi...*, p. 25

<sup>9</sup> R. Agus Trihatmoko and Susilo, "The Concept of Indonesia...", p. 136

1945 Constitution of 1945, and how the current business characteristics of SOEs are comparative reviews and become dialectical considerations in the academic world. The purpose of this study seeks to uncover the meaning of Law No. 19 of 2003 and Article 33 of the 1945 Constitution of the Republic of Indonesia, and identify the essence of the roles and functions of SOEs in implementing the economic constitution.

### **Critical Point of Constitutionalization of State-owned Enterprises**

The results of the study identified the critical points of constitutionalization of SOEs in the case of Judicial Review Law Number 19 of 2003 (“Law 19/2003”), namely: Article 2, The purpose and purpose of establishing SOEs: Paragraph 1 (a) contributes to the development of the national economy in general and state revenues in particular; (b) pursue profit; and Article 4, paragraph (4) any changes to state capital participation as referred to in paragraph (2), whether in the form of additions or deductions, including changes in the structure of state ownership or limited liability companies, are determined by government regulations. Review of paragraph (4) relating to paragraph (2) every participation in state capital in the framework of establishing SOEs or limited liability companies whose funds come from the State Revenue and Expenditure Budget is stipulated by Government Regulation. The critical view of this paper is to interpret between the cases of Article 2 and 4 of Law No. 19 with a substantial phenomenon or implementation of Article 33 of the 1945 Constitution of the Republic of Indonesia by SOEs in Indonesia.

The observations of the testimonies of the Expert Witnesses from the Petitioners and the Government identified the implications of the Judicial Case Review of SOEs business practices relating to the mandate of the Indonesian economic constitution Article 33. The findings of this study provide a critical view of the economic, economic development goals, the system and working patterns of economic activities, as well as the characteristics of SOEs. The study themes are described textually to construct structural descriptions of the characteristics of SOEs in the records of the national economic system. The results of the study to establish the characteristic conception of SOEs are presented in the next sections.

### **Economic Constitutionality and Economic Principle**

The results of the study identified that the birth of Law 19/2003 was motivated by consideration of the objectives of economic democracy to realize people's welfare through the role of SOEs in the national economy. Meanwhile, the role of SOEs is considered not optimal in realizing public welfare, so it needs professional management and supervision to optimize the role of SOEs. The consideration of Law 19/2003 is stated in the Act in the scope of the introduction. The description of public welfare has the same meaning as the meaning of the direction of Article 33 paragraph (3), namely that the state's control over natural wealth is intended for the greatest benefit of the people's prosperity. Interpretation of the meaning of Law 19/2003, namely the organizers of the state economic constitution through existing laws, namely the 2003 Law and the 1945 Constitution. In the focus of this study it was found that SOEs carry out their roles and functions based on economic constitution regulated by Law 19/2003 and Article 33 paragraph (3).

One of the main points of the Judicial Review Case is the phrase chasing profit which is contained in Article 2 paragraph (b) and Article 1 paragraph (2). On the other hand the role of the state in carrying out economic development is not stated/found in the pursuit of profit by the phrase Article 33. However, Article 33 paragraph (5) gives authority to state administrators to regulate the country's economy through legislation. The state's authority in stipulating Law 19/2003 constitutes economic constitutionalization, so that the Act is considered constitutional. Nevertheless the findings of the phrase pursuing profits are not identified on the Article 33 phrase. The phrase public welfare in Law 19/2003 and people's prosperity in Article 33 illustrates that the Law and the Constitution have harmony. The phrase "SOEs" pursuing profits in Law 19/2003 integrates/blurs the essence of Article 33 which states as much as possible for the prosperity of the people. Even so, both of these laws constitute the "present" economic constitution in force in the national economic system. The perspective of the relationship between Law 19/2003 and Article 33 in the textual discretion results in the first theoretical review, namely that the economic constitution consists of two, namely the Law and the Constitution have reciprocal relations, the Law has implications for the Constitution, and the Constitution controls the Law.

Although economic liberalization in some degrees is still considered constitutional, because economic policy is based on an economic constitution, it is need for criticizing the meaning of the old law needs to be changed as an effort to harmonize the economy in a constitutional manner. Changes or updates to the SOEs Act is needed to overcome the gap in ownership of state assets, between SOEs, ROEs, and the private sector. This is very possible, because in the history of economic constitutionalization from time to time changes have changed to adjust the economic and political democracy of each country.<sup>10</sup>

### **Economic Principles and Government Policy**

In the Case of Law 19/2003, it was identified by an Expert Witness that Article 2 paragraph (1) is contrary to the principle of Indonesian economy in Article 33 paragraph (1), which is based on family. It is like the point of view of classical economic theory that the pursuit of profit is a feature of capitalistic behavior in a liberal economic system. Meanwhile, the philosophy of family principles is the practice of mutual cooperation in economic empowerment activities. The meaning of mutual cooperation is togetherness between individual communities as a representation of citizens, or not individualistic.

“Article 2 paragraph 1 (a) stated that revenues in particular: that in fact the state has an orientation to exploit the economy through the role of” SOES “which is equal or not unlike the group of individualistic *homo-economicus*” the government namely the APBN “. At this point it is contrary to the nature of emancipation and the participation of every element of economic actors of “society” philosophically on the principle of kinship and togetherness “(I.1).

The phrase of pursuing profits in paragraph (b) together with state revenue in paragraph (a) gives a supporting signal to government policy to treat SOEs as subjects of capital. It was shown that the mandate of Law 19/2003 Article 1 paragraph (12) concerning the General Conditions of expanding share ownership by the community, had not been implemented by SOEs. SOEs that have been publicized are

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<sup>10</sup> Jimly Asshiddiqie, *Konstitusi Ekonomi...*, p. 40.

considered by Expert Witnesses not as a form of community-owned shares but are still controlled by large capitalist groups.

“Article 2 paragraph 1 (b): pursuing profits...: that the SOEs itself prioritizes its orientation on profits on capitalist” capital “through the ownership of the government” group “business. At this point it is contrary to the nature that is oriented towards public ownership “people”.... pursuing profits and then focusing on the government’s own finances “APBN” philosophically is not a common interest. Conclusions from the perspective of the economic paradigm are quite clear that Article Law No. 19 the a quo has deviated from the philosophical substance of the Indonesian Economic Constitution which has a paradigm of cooperation in accordance with Article 33 of the 1945 Constitution of the Republic of Indonesia (I.1).

The description above gives an illustration that the existence of Law 19/2003 and Article 33 is the government’s step in making policies on SOEs. The family principle is the paradigm of Article 33, while the individualistic principle is clearly defined by Law 19/2003. That is, these two principles are now legally and constitutionally recognized and used by the government in regulating SOEs. For that there are two views of economic philosophical values, subjectively both of which are the choices of the government that have the authority to regulate the management of SOEs. This interpretation leads to the proposition that the Law and the Constitution give authority to the Government in setting policies on SOEs governance. Furthermore, Government policy has implications for the two choices of economic values in SOEs governance, namely between individualistic or familial.

The characteristics of economic behavior that prioritizes individuals is in accordance with a liberal economic system, while prioritizing mutual cooperation or kinship of all elements of the citizenry is in accordance with the people’s economy. That is, the findings of this study reaffirm that “up to now” economic policies tend to be liberal for the power of certain large business groups, mainly by the private sector and SOEs themselves.<sup>11</sup>

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<sup>11</sup> R. Agus Trihatmoko and Susilo, “The Concept of Indonesia...”, p. 140



## **Characteristics of SOEs and Economic Systems**

In the Constitutional Court hearing with the Case of Law 19/2003, it was stated that SOEs tend to be capitalistic. This does not conflict with the economic constitution because the Government is given the space to choose an economic approach that prioritizes the individual government itself or participates in family participation in a family manner. Community participation in SOEs share ownership is actually intended by Article 33 paragraph (1) of the Constitution and Article 1 paragraph (12) of Law 19/2003 SOEs. The direction is for SOEs to continue to adhere to the principle of family, not in dualistic to the government “SOEs-center or ROEs-only”. However, the phenomenon of government policy on SOEs holding shows capitalism individualistic centralized SOEs on the part of the government, or ignores community participation, and the participation of local governments. The capitalist system is applied by the government to SOEs as well as private groups oriented to individualistic nature.

“The facts about what happened to our state-owned enterprises have actually provided us with more than enough information that it is time to research or evaluate why this happened, whether because of rules or legislation that supports it which is not in accordance with the 1945 Constitution. Or, because in its operations, checks and balances cannot be carried out by the public? If the Law of SOEs says that the aim of establishing SOEs is to pursue profits, SOEs will be no different from pure private companies” (I.2).

“The Law of SOEs has been used by the Government through the Ministry of SOEs and Finance in its” subjective “management authority, namely holding a SOES. It is very clear and clear the issue of holding SOEs by the Ministry of SOEs as a strategic policy to increase the capital ratio on a consolidated holding basis. The aim is, among other things, that state-owned companies can compete globally, which refers to large companies abroad. It is quite clear that holding is a capitalistic oriented act of economic exploitation, while the economic constitution “once again” concerns the human element “people” and their

participation and emancipation. In conclusion, the holding is encouraged to be “protected by” or “take refuge in the” Law of the Law of SOEs quo which has been considered to be the root of the problem of the petition in the judicial review in this Session” (I.1).

The interpretation of the description of the implications of government policy has led to the finding of the character of SOEs as a sub-agent of economic development leading to economic capitalism. Government policies regarding SOEs holding should be suspected of using the economic constitution Article (4) paragraph (2 and 4) of Law 19/2003 concerning capital participation in SOEs stipulated by Government Regulations; As well as Article 33 paragraph (5) that the implementation of this article is regulated in law. The phenomenon of strategy by holding SOEs has been applied to the Mining, Cement, Oil and Gas sector, and has led to other sectors with the issuance of Government Regulations. In terms of government regulations it is considered very subjective by certain government regimes, because these regulations are stipulated by a President without having to be approved by the Indonesian Parliament.

The findings of this study of government policy and the economic system can be linked to the formulation of economic principles and government policies (sub-2). In the sub-findings above, it is stated that government policies in terms of SOEs governance have in dualistic, or familial nature. The nature of the individual adheres to liberalism and freedom according to the understanding of the people’s economic system and prioritizes meeting the needs of the people. Government policies regarding governance of SOEs will shape the characteristics of SOEs in their business practices. In addition, the principle of individualistic economy produces capitalistic character, while the principle of family economy produces popular character. The critical finding shows that the character of SOEs reflects the pattern of corporate capitalism. This finding is different from the thinking of Indonesia Raya Incorporate (IRI) which directs equitable distribution of SOEs share ownership between the central government and local governments, as well as with individual and private parties.<sup>12</sup> The IRI conception refers to Article 33 of the economic constitution, but is

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<sup>12</sup> A.M.P. Prabantoro, *Migas the...*, p.20

slightly related to Law 19/2003 on the phrases Case Number 14/PUU-XVI/2018 in the Constitutional Court. Meanwhile the concentration of SOEs share ownership with the holding system relies more on the economic constitution of Law 19/2003, but ignores Article 33 paragraph (1).

### **Characteristics of SOEs and Socio-economic Environments**

The perceptual equation between the phrases of Law 19/2003 and Article 33 has been presented in the first sub-section of this study, which is about the role of SOEs for the welfare of society. Even so, in the implementation, this was still deemed not functioning by the Expert Witnesses. On the other hand the Government's Authority considers that efforts to prosper the people are carried out with social activities (CSR: Corporate Social Responsibility). It was added that the concentration of share ownership and profits of the company "capitalization" in the State Budget was also assumed by the government's authority as a manifestation of SOEs' participation in the welfare of the people.

"Especially with regard to the aims and objectives of SOEs point b. the pursuit of profit needs to be emphasized, that this is to educate the lives of the Indonesian people and all of Indonesia's bloodshed and to advance public welfare. It is true that the phrase "Petitioner", which in this a quo case... said that the purpose and purpose of SOEs pursuing profits is the phrase that is still 'coma' and not 'full stop', and must be followed by other phrases that reflect the direction of the profits of the SOEs flowed (I.3).

"Today, through the judicial review session of the Law of SOEs, ... I want to reiterate that SOEs from the perspective of Indonesian people's development in particular if it is viewed in terms of environmental use, environmental and social maintenance, SOEs has become one of the government's machinery in creating a process of impoverishment for people in producing areas and processors. Why does this happen? I want to reiterate that there is something wrong with our SOEs, whether it is the purpose of its formation or weak supervision so that our SOEs tend to be exploitative and less friendly to

sustainable development. I want to mention that the management of Indonesian SOEs towards our natural resources is very exploitative and short term-oriented” (I.2).

“The role of SOEs as agents of development includes operational activities that are in direct contact with community services and tasks of participation through non-visible business activities, which are not in demand by the private sector, for example the construction of the Toll Road by PT. Hutama Karya is Persero. The increase in the electrification ratio by PLN as of 31 December 2017 reached 93%. One price policy for BBM throughout Indonesia by PT. Pertamina ... In 2017, the contribution of SOEs to the state in the form of dividends is IDR 43 trillion and tax is IDR 194 trillion. The contribution of SOEs to the national economy in the form of Capex is IDR 320 trillion. The contribution of SOEs to the community through partnership programs amounting to IDR 1.943 trillion and environmental development is IDR 1.67 trillion, and through CSR programs amounting to IDR 739 billion, that is only data in 2017 “(I.5).

“... or reflect on the complexity faced by the village community to have a permit for Village Forest, Customary Forest, or Community Forest. The forest management model is an opportunity for the village or community to have access to use the forest and manage the forest, especially to utilize non-timber forest products, but in reality it is still difficult to obtain. This is inversely proportional to how easy private for timber companies are to cut millions of cubic meters of timber per year.... The government must reevaluate the objectives of the establishment of the SOEs as well as the management of the SOEs, so that it is in line with the objectives of the state. SOEs should not be a tool for the entry of foreign capital to exploit Indonesia’s natural resources without making equal contributions to the people and the state “(I.2).

“...the government is held hostage in protection “Article Law No. 19 a quo, namely to invest in restoring the function of

a Sugar Factory (PG), the calculation can be subjective on the profit and loss of PG SOEs, because it only prioritizes “government” capitalism itself.... In accordance with the economic philosophy of the constitution of PG development, for example: (1) PG SOEs “Incorporation” with the Regional Government in forms of “Village-owned enterprises”; (2) Sugar Cane Farmers Groups are given the opportunity to own shares in PG; (3) Non-Sugar Cane Farmers in Karanganyar and Klaten District contribute shares in their local PG, because they are consumers of sugar; (4) The Village Unit Cooperative (KUD) is trusted as an Agent in its operational area, from now on KUD is left “dying”.... (I.1).

Critical opinion by each party in the Constitutional Assembly can be understood that SOEs are intended to play a role in national socio-economic development, in the context of the focus of this study, namely people’s welfare. Indeed, the corruption of the operationalization of SOEs so far can be assessed positively or negatively. This means that the objectives of the economic constitution to contribute to people’s welfare are highly dependent on the characteristics of SOEs in each phase of the national economic phenomenon. So, the end of the findings of this study formulated the relationship between the characteristics of SOEs and the national socio-economic environment.

The characteristics of SOEs in carrying out economic constitutions determine the development of the socio-economic environment. The theorization of that the economic constitution indirectly leads to the roles and functions of SOEs and ROEs. It is also explained in the IRI conception that the role and function of state enterprises is for the welfare of the people and equitable distribution of economic development. In general, the study of this study resulted in a building in the form of a conception of the roles and functions of state enterprises in the national economic system.

Related to the concept of governance of SOEs, the judicial review of Law No. 19 of 2003 ignores or limits the results of the Constitutional Court Decision “approve or reject”. The Constitutional Court Decision is constitutional from the point of view of the assessment of the narrative and the meanings of the terms of the economic constitution for the SOEs and national economies. Theorizing and conception built

in this study gives freedom to constitutional implementers, namely the Government and State Companies to review the results of their operational and management policies. The results of the study note that SOEs in Indonesia are capitalistic, and that they are in accordance with the economic constitution that is valid until now. This critical finding is similar to the description of the system of liberalism and economic capitalism.<sup>13</sup> On the other hand, the paradigm of economic liberalism is different from the approach to popular economy, in this matter it is stated that popular economy is built as a mandate of Article 33 of the 1945 Constitution of 1945 and the implementation of the 5th Precept of the Pancasila.

Theorizing of the roles and functions of SOEs in this study contributes to a new understanding of the economic system of a country based on the country's constitution. In macroeconomic knowledge a review of the theory of the results of this study contributes to the expansion of theories about economic democracy, political economy and/or political democracy. So, the conception of the roles and functions of SOEs has implications for public management, namely about government policy, and corporate management about the management strategies of state enterprises and business law. It has harmony with the IRI conception which illustrates that the policies of the regional and central government and corporate strategies of SOEs, each of which has reciprocal influence. This means that the economic constitution covers economic rules to be implemented vertically and horizontally.<sup>14</sup> The implementation of the economic constitution by the interests of the principal along with agents for the fulfillment of contract efficiency from the agency theory.<sup>15</sup>

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<sup>13</sup> Jimly Asshiddiqie, *Konstitusi Ekonomi...*, p. 45

<sup>14</sup> Jimly Asshiddiqie, *Konstitusi Ekonomi...*, p. 40

<sup>15</sup> Hao Liang, et al., "An anatomy of state control...", p. 223; Mark Bergen, Shantanu Dutta and Orville C. Walker Jr., "Agency relationships in marketing: A review of the implications and applications of agency and related theories", *Journal of marketing*, vol. 56, no. 3 (1992), p. 3; Michael C. Jensen and William H. Meckling, "Theory of the firm: Managerial behavior, agency costs and ownership structure", *Journal of financial economic*, vol. 3, no. 4 (1976), p. 305.

## **Conclusion**

The results and discussion of this study identify aspects that are the essence of the roles and functions of SOEs in the national economic system. The nature of each aspect relates to the meaning of the phrases of Law 19/2003 and Article 33. Based on these findings it is concluded that Law 19/2003 has relevance to Article 33 directly, because the two laws have a lead relationship backwards, which is mutually supporting or integrating each other's meanings. The mutual relations between these laws each have pushed government policies in SOEs governance on two choices, which are family or individualistic. The two characteristics of government policy direct or shape the characteristics of SOEs, namely family, while individual characters form capitalistic, so that each will influence the socio-economic environment.

The research findings and discussion of the phrase the results of victory in Law 19/2003 are in accordance with the flow of liberal economics, namely prioritizing the nature of individualism. So, the conclusion of this study states that SOEs tend to or lead to capitalist economics, because the structure of SOEs shares is controlled by the central government, or ROEs by local governments, or both state companies have not involved public participation. Based on these conclusions it is recommended that the government review its policies on SOEs governance. The choices are policies that are individualistic like the government itself or family together with elements of society. If you want to choose family, the government is recommended to practice the concept of Indonesia Raya Incorporated (IRI). The aim is so that the role and function of popular-character SOEs and prioritize basic needs for the people for the community directly, while there are some views that dividends from SOEs that go into the State Budget and CSR activities are as a manifestation of family nature still need to be discussed again. Because the meaning of share ownership is not only a matter of profit sharing, but the practice of economic empowerment in mutual cooperation by all stakeholders in the Indonesian state. The critical points recommended in studies relate to SOEs corporate management. For this reason, it is recommended to the board of directors and commissioners or Boar of Directors and Commissioners (BOD & BOC) to be active and participatory in the drafting of the Law of SOEs and Government Regulations. Thus in the same case in the field of political economy and law, it is remodeled to the House of

Representatives of the Republic of Indonesia to seek new initiatives in exercising control over the role of government in the management of SOEs. The aim is to restore economic activities by SOEs to conform to Article 33 paragraph (1), which is to fulfill the principle of kinship.

The interpretation of the findings of this study is understood by using an economic perspective and realism in the field phenomenon. Meanwhile, the legal perspective is abstract beyond the economic perspective. The difference in the perspective focus between economics and law provides a gap for researchers in the field of constitutional law and business law to conduct new studies with a focus on Indonesian economic constitution criticism. The hope of this study's suggestion is for legal experts to provide findings to narrow the distance between economic perspectives and legal perspectives.

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