

**Article History***Received: 30 July 2025**Reviewed: 27 Jan 2026**Accepted: 02 Apr 2026**Published: 10 Apr 2026*

# The Indonesian economic Constitution from the perspective of Franz Böhm and Walter Eucken for a just Market

**Nurul Fazri Elfikri<sup>1\*</sup>, Muhamad Khairun Kurniawan Kadir<sup>2</sup>, Mohamad Hidayat Muhtar<sup>3</sup>, Sofyan Piyo<sup>4</sup>, Fitran Amrain<sup>5</sup>, Zainal Abdul Aziz Hadju<sup>6</sup>**

<sup>1,2,,4,5,6</sup> Faculty of Law, Universitas Negeri Gorontalo, Indonesia

<sup>3</sup> Research Associate Faculty of Law, United Arab Emirates University, United Arab Emirates

\*correspondence email : [Nurulfazri@ung.ac.id](mailto:Nurulfazri@ung.ac.id)

## Abstract

**This study aims** to reconstruct the implementation of Article 33 of the 1945 Constitution through the framework of Ordnungspolitik developed by Franz Böhm and Walter Eucken. The study is grounded in the existence of imbalances in the normative, institutional, and functional dimensions of Indonesia's economic system, which hinder the realization of the principles of solidarity and social justice.

**This study uses** a normative legal methodology with a conceptual and comparative approach to legal thought. The analysis examines the comprehensive text of the amendments to the 1945 Constitution, sectoral regulations (such as the Job Creation Law and the Mining and Energy Law), as well as Constitutional Court rulings related to the economy. Data is analyzed qualitatively to align the principles of the German economic order (Ordoliberalism) with the values of the Indonesian Constitution.

**The novelty** of this study lies in offering a new interpretive model for Article 33 of the 1945 Constitution by positioning the state as the architect of the market order (rather than merely a passive actor or regulator). Its innovation lies in integrating the substantive rule of law of Ordnungspolitik to limit the concentration of private economic power, which often distorts the constitutional mandate.

**The results** show that Ordnungspolitik provides operational instruments for Indonesia to achieve distributive justice through two main channels: (1) strengthening the independence of competition oversight agencies to the level of constitutional institutions, and (2) codifying economic laws that guarantee market access rights for small businesses. This interpretation shifts the paradigm of Article 33 from mere symbolism regarding "cooperatives" to a binding norm that obligates the state to undertake structural interventions to maintain market integrity.

**The conclusion** is that integrating the principles of Ordnungspolitik into the national legal system can serve as a solution to Indonesia's economic institutional failures. This study recommends restructuring economic public policy to prioritize healthy competition and the protection of social rights as an inseparable legal order.

**Keywords:** Economic Constitution; Ordnungspolitik; Social Justice

## **Abstrak**

**Penelitian ini bertujuan** merekonstruksi implementasi Pasal 33 UUD 1945 melalui kerangka *Ordnungspolitik* yang dikembangkan oleh Franz Böhm dan Walter Eucken. Studi ini berangkat dari adanya ketimpangan pada dimensi normatif, institusional, dan fungsional dalam sistem ekonomi Indonesia yang menghambat pencapaian asas kekeluargaan dan keadilan sosial.

**Metode Penelitian** ini menggunakan metode yuridis normatif dengan pendekatan konseptual dan perbandingan pemikiran hukum. Analisis dilakukan terhadap naskah komprehensif perubahan UUD 1945, regulasi sektoral (seperti UU Cipta Kerja dan UU Minerba), serta putusan Mahkamah Konstitusi terkait ekonomi. Data dianalisis secara kualitatif untuk mensinkronkan prinsip tatanan ekonomi Jerman (*Ordoliberalisme*) dengan nilai-nilai konstitusi Indonesia.

**Kebaruan** ini menawarkan model interpretasi baru terhadap Pasal 33 UUD 1945 dengan memosisikan negara sebagai arsitek tatanan pasar (bukan sekadar pelaku atau regulator pasif). Kebaruannya terletak pada integrasi supremasi hukum substantif *Ordnungspolitik* untuk membatasi konsentrasi kekuatan ekonomi privat yang seringkali mendistorsi mandat konstitusi.

**Hasil Penelitian** menunjukkan bahwa *Ordnungspolitik* menyediakan instrumen operasional bagi Indonesia untuk mewujudkan keadilan distributif melalui dua jalur utama: (1) penguatan kemandirian lembaga pengawas persaingan usaha yang setingkat lembaga konstitusional, dan (2) kodifikasi hukum ekonomi yang menjamin hak akses pasar bagi pelaku usaha kecil. Penafsiran ini mengubah paradigma Pasal 33 dari sekadar simbolisme "koperasi" menjadi norma pengikat (*binding norm*) yang mewajibkan negara melakukan intervensi struktural guna menjaga integritas pasar.

**Kesimpulan** integrasi prinsip *Ordnungspolitik* ke dalam sistem hukum nasional dapat menjadi solusi atas kegagalan institusional ekonomi Indonesia. Penelitian ini merekomendasikan restrukturisasi kebijakan publik ekonomi yang berorientasi pada persaingan sehat dan perlindungan hak sosial sebagai satu kesatuan tatanan hukum yang tidak terpisahkan.

**Kata Kunci:** Konstitusi Ekonomi; *Ordnungspolitik*; Keadilan Sosial

## **1. INTRODUCTION**

The Constitution is not only the highest source of law in the constitutional system, but also a reflection of the value structure that forms the character of a nation.<sup>1</sup> Article 33 of the 1945 Constitution is not merely a technical rule, but an ethical mandate to realize distributive justice and the protection of vulnerable groups. This Constitution affirms that the national economy must be based on the principle of family and public interest, not merely subject to market mechanisms.<sup>2</sup> In the article, the spirit is reflected to create an economic structure that ensures common prosperity and does not facilitate the domination of a few elites.

Indonesia's economic system, in reality, is not fully capable of realizing these constitutional ideals. Inequality in the distribution of wealth, monopolistic practices by large

---

<sup>1</sup> Nugroho Noto Diharjo et al., "Human Rights and Constitutional Sovereignty in The Context of The Struggle for Legal Justice," *Bacarita Law Journal* 4, no. 2 (2024): 174–84.

<sup>2</sup> Sudarmo Sudarmo et al., "Critical Study of the Implementation of the Right of Self-Determination in Protecting Indonesia's Environmental and Economic Sovereignty," ed. S. Ta Wee et al., *E3S Web of Conferences* 611 (January 24, 2025): 05002, <https://doi.org/10.1051/e3sconf/202561105002>.

economic entities, including state-owned enterprises, as well as weak access of micro and small business actors to economic resources, indicate a crisis in the implementation of economic constitutional values.<sup>3</sup> The uncontrolled dominance of economic power arises from the state's failure to bridge constitutional norms with practical policies, creating regulatory ambivalence and post-reform market exploitation. The absence of this institutional design, limiting the accumulation of power, demanded the application of the framework of thought of Franz Böhm and Walter Eucken (Freiburg School). This approach is relevant for reorganizing Indonesia's economic structure because it offers an institutional balance: rejecting absolute free markets while preventing total state domination.<sup>4</sup>

Within the framework of ordoliberalism, the economic Constitution is the normative basis that governs the market order to operate ethically, competitively, and fairly. The state has the responsibility of creating *Ordnungspolitik*, that is, a policy of structuring the market order that ensures that there is no unlimited economic power, whether it comes from the state or the private sector.<sup>5</sup> However, in the context of Indonesia, this principle has not gained a proper place in the formulation of the National Economic Policy. This is the normative as well as institutional issue: how to create an economic Constitution design that prevents structural domination and ensures competitive justice in the market.

Böhm and Eucken's perspective asserts that markets need the rule of law to neutralize lame power relations. However, the effectiveness of the law in Indonesia is still weak in overcoming market distortions (such as cartels) because it is not based on the principles of the economic Constitution. This condition is exacerbated by the narrow interpretation of Article 33 of the 1945 Constitution, which is often stuck in etatism (state domination), thus ignoring its main mandate to ensure distributive justice for all people.<sup>6</sup> The deficit of theoretical foundations in the interpretation of the Constitution causes economic policy to lose its justice orientation. The Atmaja and Erliyana (2024) study reinforces this premise through the Critical Legal Studies approach, which reveals that the phrase 'efficiency with justice' in Article 33 paragraph (4) is actually a gap in the entry of neoliberal ideology.<sup>7</sup> However, in contrast to the approach of ordoliberalism, which prioritizes the restriction of market and state power in a balanced manner through *Ordnungspolitik*, the CLS in this article emphasizes the inequality of power relations and the dismantling of ideological structures in

---

<sup>3</sup> Zamroni Abdussamad et al., "Constitutional Balance: Synchronizing Energy and Environmental Policies with Socio-Economic Mandates," ed. R. Febrina, Z. Harirah, and T. Puspita, *E3S Web of Conferences* 506 (March 25, 2024): 06006, <https://doi.org/10.1051/e3sconf/202450606006>.

<sup>4</sup> Kenneth Dyson, *Conservative Liberalism, Ordo-Liberalism, and the State* (Oxford University Press/Oxford, 2021), <https://doi.org/10.1093/oso/9780198854289.001.0001>.

<sup>5</sup> Federico Bruno, "Ordoliberalism as an Ideology: A Conceptual Analysis," *Journal of Political Ideologies* 29, no. 2 (May 3, 2024): 212–35, <https://doi.org/10.1080/13569317.2022.2065421>.

<sup>6</sup> Ashabul Fadhli, Recy Harviani Zurwanti, and Vivi Puspita Sari, "Konstruksi Pasal 33 UUD 1945 Dalam Menangkal Pengaruh Sistem Kapitalisme Di Indonesia," *Journal of Civic Education* 6, no. 1 (June 12, 2023): 48–58, <https://doi.org/10.24036/jce.v6i1.974>.

<sup>7</sup> A.P. Edi Atmaja and Anna Erliyana, "Affirming the Democratic Economic System After the Amendment of Article 33 of the Indonesian Constitution: A Critical Legal Studies Perspective," *Jurnal Bina Mulia Hukum* 8, no. 2 (March 31, 2024): 158–76, <https://doi.org/10.23920/jbmh.v8i2.1084>.

the law itself. This article makes an important contribution to dismantling the epistemic contradictions hidden in the formulation of National Economic Laws. However, it lacks the direction of institutional reconstruction that can bridge constitutional idealism and economic reality.

Meanwhile, Suhardirman's thesis at Griffith University (2020) presents a more juridical and institutional approach. This study examines the dynamics of interpretation and implementation of Article 33 paragraph (4) through a case study of the natural resources sector, by highlighting the role of the Constitutional Court in affirming as well as obscuring the constitutional mandate of the state. This thesis raises the problem of inconsistency between the interpretation of the Constitution that emphasizes state control and liberalization practices carried out through privatization policies.<sup>8</sup> In the framework of Böhm and Eucken's thinking, this thesis indicates the failure of the Indonesian state to establish a consistent *Ordnungspolitik* structure, the state did not manage to establish firm legal limits on private economic power, and at the same time was trapped in a dual role as an economic actor and regulator. This is in line with criticism about the weak rule of law in market regulation and the absence of an economic legal system capable of maintaining structural justice. This thesis reinforces the idea that the constitutional crisis of the Indonesian economy is not merely a matter of policy, but a result of weak integration between the normative principles of the Constitution and the institutional apparatus that runs it.

Agusalim's research (2021) highlights the implementation of Article 33 of the 1945 Constitution at the village level through the role of cooperatives and local businesses. Without the framework of ordoliberalism, the study nevertheless shows that the absence of redistributive policies and the weak structural support make the constitutional values of the economy difficult to realize in practice.<sup>9</sup> Agusalim et al's study corroborates empirical evidence that the market in Indonesia is dominated by large economic actors, while small actors have difficulty accessing resources. The state failed to perform a corrective function to market distortions, whereas in the framework of Böhm and Eucken, this should have been addressed through a fair *Ordnungspolitik*. This study confirms that without institutional and regulatory support, economic constitutional norms remain non-operational.

The above conditions lead to fundamental questions about the functioning of the Indonesian economic Constitution. Has the Constitution served as a controlling beacon in national economic life, or has it been reduced to a normative symbol powerless against the reality of market inequality? Is the state really carrying out its mandate to ensure distributive justice, or is it instead engaging in practices that reinforce inequality? These problems are not only structural, but also epistemic: about how economic theory and legal theory converge to establish a humane economic order.

---

<sup>8</sup> S. Suhardiman, "The Application of New Article 33, Section 4 of Indonesia's Constitution: Rivalry between State Control and Market Control over Natural Resources" (Griffith University, 2020), [https://research-repository.griffith.edu.au/bitstream/handle/10072/397945/Suhardiman\\_Suhardiman\\_Final Thesis\\_redacted.pdf](https://research-repository.griffith.edu.au/bitstream/handle/10072/397945/Suhardiman_Suhardiman_Final%20Thesis_redacted.pdf).

<sup>9</sup> L. Agusalim, N. Nurhayati, and A. Indrayani, "Ekonomi Kerakyatan Yang Dilindungi Oleh Pasal 33 UUD 1945: Implementasi Di Tingkat Desa," *Jurnal Masyarakat Dan Desa* 3, no. 2 (2021): 75–88.

It is necessary to have a deep theoretical reflection to reconstruct the national economic system based on the principles of the economic Constitution as understood in the thought of Böhm and Eucken. This arrangement must touch the normative, institutional, and functional dimensions at the same time. Affirmation of the economic Constitution as an ethical and legal framework for market regulation is a must if Indonesia wants to get out of the trap of dualism between economic liberalization and uncontrolled state domination. The main problem in this context is the absence of an economic legal system that is able to maintain market order, remain ethical, fair, and free from power distortion.

## 2. METHOD

This study uses the method of normative juridical Law Research, which is research that focuses on the analysis of legal norms, legal principles, and legal doctrines that develop in the academic literature. This method is used to study and reconstruct the implementation of Article 33 of the Constitution of the Republic of Indonesia in 1945 as the basis of the Indonesian economic Constitution through the Ordnungspolitik perspective developed in the tradition of German ordoliberalism. Normative approach allows this study to examine the law as a system of norms aimed at finding coherence between the principles of economic Constitution and the practice of National Economic Policy.<sup>10</sup>

This study uses several approaches, namely: conceptual approach (conceptual approach), statutory approach (statute approach), and comparative legal thought approach (comparative legal thought approach). Among them:

1. The conceptual approach is used to examine the theoretical concepts of economic Constitution, economic democracy, as well as the principle of Ordnungspolitik, which places the state as a market-forming order that ensures healthy competition.<sup>11</sup>
2. The legislative approach is carried out by examining various regulations related to the implementation of Article 33 of the 1945 Constitution in the Indonesian economic law system, including sectoral regulations and Constitutional Court decisions related to state control over branches of production that are important to the country and that control the livelihoods of many people.<sup>12</sup>
3. The comparative approach of legal thought is used to compare the principles of economic order in German ordoliberalism with the concept of economic democracy contained in the Indonesian Constitution.<sup>13</sup>

Types of legal materials used in this study consist of primary, secondary, and tertiary legal materials, namely:<sup>14</sup>

---

<sup>10</sup> Mark Van Hoecke, *Legal Doctrine: Which Method(s) for What Kind of Discipline?* Methodologies of Legal Research (Oxford: Hart Publishing, 2011), 1–18

<sup>11</sup> Walter Eucken, *The Principles of Economic Policy* (Freiburg: Walter Eucken Institut, 2004), 254–260.

<sup>12</sup> Mahkamah Konstitusi Republik Indonesia, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Buku VIII Warga Negara dan Penduduk, Hak Asasi Manusia, dan Perekonomian Nasional* (Jakarta: Mahkamah Konstitusi, 2010), 453–460.

<sup>13</sup> Thomas Biebricher, "The Ordoliberal Concept of the State," *Journal of the History of Economic Thought* 33, no. 3 (2011): 323–341.

<sup>14</sup> Terry Hutchinson, "Doctrinal Research: Researching the Jury," *International Journal of Law in Context* 9, no. 1

1. Primary legal materials include the Constitution, legislation, and decisions of the Constitutional Court relating to National Economic Policy. Secondary legal material consists of books, scientific journal articles, and academic publications that discuss economic constitutions, ordoliberalism, and market order theory.
2. Tertiary law materials in the form of legal dictionaries and encyclopedias are used to clarify legal concepts and terminology used in research.

The technique of collecting legal materials is carried out through library research by reviewing legal documents, scientific literature, and academic publications relevant to the research theme. Legal materials that have been collected are then analyzed using qualitative analysis with methods of legal interpretation and conceptual analysis. The analysis was carried out through several stages, namely identifying constitutional norms in Article 33 of the 1945 Constitution, analyzing normative and institutional gaps in the national economic system, and synchronizing the principles of *Ordnungspolitik* with the values of the Indonesian economic Constitution.<sup>15</sup> The results of the analysis are used to formulate a model of interpretation of the economic Constitution that places the state as the architect of a market order that ensures fair competition, prevents the concentration of economic power, and ensures fair economic access for all business actors.

### **3. DISCUSSION**

#### **3.1. The relevance of the *Ordnungspolitik* framework of Franz Böhm and Walter Eucken in the affirmation of the principles of the economic Constitution Article 33 of the 1945 Constitution**

The economic Constitution is not just a legal framework that governs the economic life of the nation, but also a representation of the fundamental values that live in the soul of the Constitution of a country.<sup>16</sup> In the context of Indonesia, Article 33 of the Constitution of the Republic of Indonesia in 1945 has confirmed the constitutional foundation of the national economy by carrying out the principle of kinship and state control over important branches of production that concern the livelihood of many people. The formulation of the norm illustrates the constitutional ideal of creating an economic order that favors social justice, not just economic growth.<sup>17</sup>

Article 33 of the 1945 Indonesian constitution imperatively demands that the state act as the architect of the market that ensures social justice, not just a passive regulator. However, the post-reform reality shows a constitutional disorientation in which economic policy is often co-opted by a logic of market efficiency that ignores aspects of distributive justice. This tension was not merely a matter of technical implementation, but rather a fundamental failure in

---

(2013): 1–17.

<sup>15</sup> David J. Gerber, *“Constitutionalizing the Economy: German Neo-liberalism, Competition Law and the ‘New’ Europe,”* *American Journal of Comparative Law* (working paper open access version), 25–30.

<sup>16</sup> Dariusz Adamski, *“Economic Constitution of the Euro Area after the Gauweiler Preliminary Ruling,”* *Common Market Law Review* 52, no. Issue 6 (December 1, 2015): 1451–90, <https://doi.org/10.54648/COLA2015129>.

<sup>17</sup> Weny Dunga, Mohamad Hidayat Muhtar, and Lucyane Djaafar, *“The Assessment of Indonesia’s Religious Courts in Resolving Shari’ah Banking Disputes According to the Principles of Justice,”* *Manchester Journal of International Economic Law* 19 (2023): 179–93.

designing an 'economic Constitution' capable of disciplining market behavior and limiting state power. Therefore, a precise theoretical framework is needed to dissect this impasse. The thinking of Franz Böhm and Walter Eucken offers a relevant Ordnungspolitik perspective, as it specifically provides an institutional design to prevent the two extremes that Indonesia now faces: private cartelization on the one hand and distortive state intervention on the other.

Article 33, as a pillar of the economic Constitution, was never designed to be a justification for state domination in the form of rigid monopolies, nor as a justification for uncontrolled market liberalization. The normative will contained in it requires the presence of the state as a fair regulator, not as a major player that inhibits competition, nor is it a passive spectator subject to the logic of the market. It is in this tension between the state and the market that the need arises to re-explore the theoretical and normative foundations that can strengthen the principles of the Indonesian economic Constitution.<sup>18</sup> The thought of Franz Böhm and Walter Eucken of the Freiburg School presents the Ordnungspolitik framework as a reflective alternative capable of bridging the classic dilemma.<sup>19</sup>

The main relevance of Franz Böhm's thought lies in the concept of *Privatrechtsgesellschaft* (Private Law Society), which requires that economic freedom is only legitimate if it is subject to an economic Constitution. If contextualized with Article 33 of the 1945 Constitution, Böhm's view strongly criticizes the practice in which the state allows the accumulation of economic power (such as oligarchies or cartels) to dictate public policy. Meanwhile, Walter Eucken's *Regelpolitik* Principle provides a sharp criticism of the state intervention model in Indonesia. Eucken stressed that the state should focus on establishing fair 'rules of the game' such as strict enforcement of competition laws rather than conducting ad hoc interventions that are often discriminatory (such as granting monopoly rights to state-owned enterprises or subsidies that are not targeted). This synthesis of ideas asserts that the 'state-controlled' mandate in Article 33 should not be interpreted as a permit for the state to become a predatory market player, but rather a mandate to establish an order (*Ordnung*) that ensures healthy competition for the prosperity of the people.

The market in sociological and political reality is an arena prone to distortion due to the excessive concentration of economic power. Under such conditions, the state should not position itself as a neutral entity or passive spectator. However, it should take the position of forming an institutional order that allows the market to operate within the framework of ethics, law, and the balance of power.

Franz Böhm, one of the central figures in the Freiburg school, asserted that economic freedom can only be meaningful if the rule of law protects it. Law, in his view, is not merely a repressive norm. However, a limiting structure that is *strukturierende Gewalt*, that is, a force that shapes and rearranges behavior in society so that it is orderly and ethical. Without laws that guarantee the openness of markets to honest and equal competition, Economic Freedom

---

<sup>18</sup> Siti Hamidah et al., "THE ANALYSIS OF ISLAMIC ECONOMY IN THE CONSTITUTION OF INDONESIA," *Brawijaya Law Journal* 4, no. 1 (March 31, 2017): 59–76, <https://doi.org/10.21776/ub.blj.2017.004.01.03>.

<sup>19</sup> Charles Goodhart and Rosa Lastra, "Populism and Central Bank Independence," *Open Economies Review* 29, no. 1 (February 26, 2018): 49–68, <https://doi.org/10.1007/s11079-017-9447-y>.

will transform into economic power that dominates and kills other freedoms.<sup>20</sup> In other words, the law must limit the room for maneuver of economic actors who tend to be oligarchic or monopolistic in order to ensure that the principles of market freedom are not transformed into an instrument of accumulation and exclusion.

Walter Eucken complemented Böhm's views by establishing the theory of economic order (*wirtschaftliche Ordnung*), which emphasizes that the state is constitutionally responsible for creating market structures that promote healthy competition and the sustainability of the system. He rejected the ad hoc or manipulative model of state intervention against price and distribution mechanisms, as it only created systemic dependence and undermined economic efficiency. Instead, he proposed the principle of *Regelpolitik*, which is a policy that does not regulate results, but rather regulates the structure of the game. The state must not establish who wins, but must guarantee that each performer has an equal opportunity to compete in a transparent and consistent system.<sup>21</sup> In this context, *Ordnungspolitik* becomes the institutional basis that allows the state to build a market ecosystem that is law-abiding, open to competition, and immune to the dominance of power either from the state or private actors.

This paradigm proceeds from the criticism of two extremes: first, a command economy that creates state dominance over all instruments of production and distribution, and second, *laissez-faire* capitalism that submits the entire economic order to market mechanisms without restrictive normative structures. These two extremes are equally problematic because they both ignore the need for institutional limits that guarantee pluralism of economic power and prevent abuse of power. In this context, law has an essential epistemic role as an instrument of constitutional restraint against the tendency of economic absolutism.<sup>22</sup> The rule of law, thus, concerns not only the supremacy over political action, but also over the entire configuration of economic power that has a direct impact on the distribution of welfare and social justice.

The ideas of Böhm and Eucken emphasize that a market governed by public law principles will give birth to an economic order that is not only efficient but also ethical. Economic freedom cannot be separated from social responsibility and legal restrictions that ensure fair treatment of all subjects of the economy. The state, according to them, is a rational institution that has the legitimacy to design market structures without having to be involved as a market participant. The function of the state in *Ordnungspolitik* is as an architect who establishes a common policy framework and regulative devices that prevent systemic distortions as well as nourish productive competition.<sup>23</sup>

---

<sup>20</sup> Dimitrios Xeferis, "The Political Economy of Constitutional Restraints," *Constitutional Political Economy* 22, no. 3 (September 7, 2011): 221–37, <https://doi.org/10.1007/s10602-010-9104-6>.

<sup>21</sup> Stefan Kolev, Nils Goldschmidt, and Jan-Otmar Hesse, "Debating Liberalism: Walter Eucken, F. A. Hayek and the Early History of the Mont Pèlerin Society," *The Review of Austrian Economics* 33, no. 4 (December 19, 2020): 433–63, <https://doi.org/10.1007/s11138-019-0435-x>.

<sup>22</sup> Patrick Reimers, "An Austrian School View on Eucken's Ordoliberalism. Analyzing the Roots and Concept of German Ordoliberalism from the Perspective of Austrian School Economics," *REVISTA PROCESOS DE MERCADO*, February 22, 2020, 13–53, <https://doi.org/10.52195/pm.v17i1.4>.

<sup>23</sup> Raphaël Fèvre, *A Political Economy of Power* (Oxford University Press New York, 2022),

The conception basically demands the rule of law, which is not only procedural but also substantive. The law must be a reflection of the values of Public Justice and rationality, and be able to intervene structurally when there are inequalities that threaten market integrity and social cohesion. The rule of law, in this view, not only guarantees the predictability and certainty of contracts but also creates an ethical arena that enables all economic actors to act within the limits of their social responsibility. The rule of law in Ordnungspolitik is an expression of distributive justice formulated in a concrete institutional form.

A fair market structure can only be realized when the state actually performs its constitutional function as a guardian of economic justice. Article 33 of the Indonesian Constitution of 1945 provides a firm mandate that the earth, water, and Natural Resources contained therein, as well as the branches of production that are important to the state and which control the livelihood of the people, must be controlled by the state and used for the greatest prosperity of the people.<sup>24</sup> This provision cannot be interpreted narrowly to the extent of formal ownership by the state through state-owned enterprises, since the spirit that the norm contains reflects the responsibility of the state in ensuring the substantive distribution of economic justice. In practice, the interpretation of the term "state control" is often reduced to the mere ownership of shares by SOEs, without regard to the principles of governance that are transparent, accountable, and in favor of the public interest on an ongoing basis.

The Constitutional Court of the Republic of Indonesia has consistently affirmed that the state control referred to in Article 33 of the 1945 Constitution is not sufficient only in the form of formal ownership, but includes five substantial functions, namely the policy function (beleid), regulatory function (regelendaad), management function (bestuursdaad), management function (beheersdaad), and supervisory function (toezichthoudensdaad). This is confirmed in the Constitutional Court decision number 002/PUU-I / 2003, which became an important milestone in expanding the meaning of state control from formal aspects to structural-constitutional aspects.<sup>25</sup> In this framework, only if the five functions are carried out in an integrated way, state control can be said to be constitutionally valid and have strong normative binding power as a guarantee that vital sectors are managed for the benefit of the people, not for the benefit of a few parties.

The decisions of the Constitutional Court regarding the water resources sector further clarify the direction of the constitutional affirmation. In the case of judicial review of the Water Resources Law, as in decisions No. 058-063/PUU-II/2004, 008/PUU-III/2005, and 85/PUU-XI / 2013, the court affirmed that the state retains full authority over water resources despite giving space for private participation. However, the involvement of the private sector should not

---

<https://doi.org/10.1093/oso/9780197607800.001.0001>.

<sup>24</sup> K.A Noviansyah, "KAJIAN YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 111/PUU-XIII/2015 TENTANG KETENAGALISTRIKAN TERHADAP PASAL 33 UNDANG-UNDANG DASAR 1945," *Jurnal Kepastian Hukum Dan Keadilan* 3, no. 1 (December 10, 2021): 1, <https://doi.org/10.32502/khdk.v3i1.4523>.

<sup>25</sup> Fatma Ulfatun Najicha, "Konstitusionalitas Pengelolaan Migas Dalam Mewujudkan Kedaulatan Energi Indonesia," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 19, no. 2 (December 31, 2020), <https://doi.org/10.31941/pj.v19i2.1305>.

eliminate the public's right to water, and should not reduce the function of the state in regulating and supervising the distribution of water for the public interest. The court stressed that water is a public good that should not be left entirely to market mechanisms, and therefore, the state must be present as a normative entity that ensures fair access, equitable distribution, and affordable prices as part of its constitutional responsibilities.<sup>26</sup>

The consistency of the constitutional interpretation is also seen in the electricity sector. In the decision of the Constitutional Court Number 001-021-022/PUU-I/2003 and Decision number 111/PUU-XII / 2015, the court overturned several provisions in the Electricity Law that allowed the practice of unbundling and liberalization of the electric power market without adequate state control. The court considered that the release of electricity generation, transmission, and distribution functions to the private sector without full state control was contrary to Article 33 of the 1945 Constitution.<sup>27</sup> The state is considered to have neglected to carry out the functions of control as referred to in the five functions. Electricity is a sector that concerns the livelihood of many people and cannot be completely submitted to the logic of business competition. The state is obliged to keep the entire electricity supply chain within a regulatory framework that favors the public interest, especially in ensuring the availability of electricity that is fair, sustainable, and accessible to all levels of society.

Affirmation of the principle of state control is also seen in the Constitutional Court Decision No. 36/PUU-X/2012 on testing the constitutionality of the Oil and Gas Act. The court affirmed that the oil and gas sector is part of an important branch of production whose management cannot be separated from substantive state control. Private participation, including foreign, cannot be a reason for the state to renounce its constitutional responsibility. The court stated that the state remains obliged to be the holder of control over the direction of national energy policy, contract arrangements, product distribution management, and supervision of oil and gas business so as not to conflict with the principle of maximum prosperity of the people.<sup>28</sup> The court firmly rejects the logic of neoliberalism, which wants to shift the role of the state into a mere market facilitator in the oil and gas sector.

The decisions of the Constitutional Court crystallized the understanding that the state control referred to in Article 33 is a form of structural responsibility that cannot be delegated or compromised in market transactions. The constitutional interpretation of the court suggests that the state should act as the architect of the market order and not a competing market participant. Within the framework of the *Ordnungspolitik* thought developed by Franz Böhm and Walter Eucken, the role of the state should be focused on establishing a legal structure

---

<sup>26</sup> Golorya Br. Manalu, "Politik Hukum Pengusahaan Sumber Daya Air Setelah Disahkannya Undang-Undang Cipta Kerja," *Binamulia Hukum* 13, no. 1 (July 18, 2024): 55–69, <https://doi.org/10.37893/jbh.v13i1.693>.

<sup>27</sup> Mexsasai Indra, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945 Di Indonesia," *Jurnal Konstitusi* 20, no. 2 (2023): 279–99.

<sup>28</sup> Dola Riza and Boiziardi AS, "Penerapan Prinsip Kemakmuran Rakyat Dalam Pengelolaan Minyak Dan Gas Bumi Pasca Putusan Mahkamah Konstitusi Nomor 36/PUU-X/2012," *Unes Journal of Swara Justisia* 8, no. 2 (August 5, 2024): 470–78, <https://doi.org/10.31933/dwq1fh37>.

that ensures market freedom within fair legal and moral boundaries. The state must not intervene technically in the market or become a private competitor. However, it must be present in the institutional sphere as a system designer and guardian of the economic structure so that competition is healthy and economic power does not accumulate excessively.

The failure of the state to implement this principle of *Ordnungspolitik* is empirically evident in the case of a shortage of cooking oil in 2022. Although Indonesia is the largest producer of CPO, the oligopolistic market structure and weak enforcement of business competition laws make the country powerless to face price cartels, which directly injure the mandate of Article 33 paragraph (3) on people's prosperity. In addition, in the electricity sector, Constitutional Court decision number 111/PUU-XII/2015 proves the existence of legislation (electricity law) that tries to legalize the practice of unbundling (business breakdown), which has the potential to hand over control of electricity prices to the free market mechanism. This phenomenon confirms the hypothesis that, without a strong economic constitutional framework, such as that initiated by Eucken, the law in Indonesia is vulnerable to becoming an instrument that facilitates the concentration of economic power rather than preventing it. Therefore, *Ordnungspolitik* urges that KPPU (Business Competition Supervisory Commission) strengthen its position on a par with other independent state institutions to oversee such market distortions effectively.

When the norm of the economic Constitution is approached purely textually, it loses the philosophical spirit contained in it. Article 33 cannot be understood simply as a juridical instrument, but as a mirror of the broader constitutional purpose of realizing social and economic justice. In the normative juridical approach, the meaning of economic constitutional norms must be associated with the principles of modern constitutional law that emphasize the functioning of the Constitution as a living constitution. This approach allows a progressive interpretation of state control oriented not only to formal ownership, but also to the substantive responsibility of the state to maintain sustainable access to public resources.

The role of the state in the market system should not be framed in the dichotomy between intervention and liberalization. The state should be a normative actor that creates a fair playing field for all economic actors. *Ordnungspolitik* emphasizes the importance of institutional design capable of regulating markets without controlling their contents. This includes the establishment of an antitrust legal framework, fair fiscal and monetary policies, and a regulatory system that favors small and medium-sized businesses. A state that performs ordopolitical functions consistently will not be trapped in the dominance of centralized SOEs, but will also not succumb to neoliberal market logic that undermines the principle of Equalization.

The thoughts of Böhm and Eucken can be placed parallel to the basic spirit of Article 33 of the 1945 Constitution. Both equally reject economic domination of any kind and equally demand the responsibility of the state to maintain fairness in the distribution of wealth. However, the difference is that Indonesia does not yet have an institutional design that explicitly reflects the principles of *Ordnungspolitik*. No independent agency is specifically

mandated to guard the market structure from irregularities. Existing regulations are often reactive, fragmented, and not rooted in constitutional principles. This absence of a consistent normative framework is a loophole for economic oligarchies to undermine market sovereignty and undermine the state's function as a just regulator.

A market that has no constitution is a market that has lost its soul. In the framework of Franz Böhm's thought, the lawless market will turn into a brutal arena of power. In the Indonesian reality, failure to uphold the constitutional principles of the economy causes the market to be controlled by large groups that have access to regulation and politics. This gives birth to an economic structure that is exclusive, not inclusive. Under these circumstances, Article 33 loses its transformative power, and the Constitution is nothing more than a symbolic text with no real impact. The biggest challenge in upholding the principles of the economic Constitution is to build a legal system capable of creating a clean, fair, and Democratic market order.

### **3.2. Inequality in the implementation of the Indonesian economic Constitution in normative, institutional, and functional dimensions**

Inequality in the implementation of the economic Constitution in Indonesia shows a real gap between the ideality of constitutional norms and the practice of their implementation in the legal system, institutions, and National Economic Policy. Article 33 of the Constitution of the Republic of Indonesia in 1945, which should be a normative instrument to ensure social and economic justice, has been degraded in meaning due to failure to organize the legal apparatus and institutional structures that are able to realize the constitutional ideals. The principle of state control over the branches of production that are important to the state and control the livelihood of the people is no longer exercised as a form of constitutional responsibility, but is reduced to formal ownership independent of just and participatory governance.<sup>29</sup>

The first inequality lies in the normative dimension, namely the weak articulation of constitutional values contained in Article 33 of the 1945 Constitution into positive legal norms that live and work in the national legislation system. Article 33, which contains the philosophy of distributive justice, states that control over important branches of production, as well as the principle of kinship in the economic structure, is not consistently spelled out in sectoral laws and regulations derived from it.<sup>30</sup> Constitutional ideals that place the state as the guardian of public interest in the management of natural resources are degraded when the legislative process is more dominated by the orientation of economic efficiency and market liberalization. Provisions that should guarantee substantive state control over vital resources are ignored in

---

<sup>29</sup> Syafwendi Syafiril, "REFLECTION, IMPLEMENTATION, AND CONSEQUENCES OF ARTICLE 33 OF THE 1945 CONSTITUTION (AFTER AMENDMENT) TOWARDS THE ECONOMY OF INDONESIA AND ISLAMIC ECONOMIC CONNECTION," *Airlangga International Journal of Islamic Economics and Finance* 3, no. 2 (December 14, 2020): 68, <https://doi.org/10.20473/aijief.v3i2.23878>.

<sup>30</sup> Nasruddin Yusuf, Faradila Hasan, and Fitria Ayu Lestari Niu, "PEMIKIRAN MUHAMMAD HATTA TENTANG EKONOMI SYARIAH DI INDONESIA," *Potret Pemikiran* 23, no. 1 (November 28, 2019): 36, <https://doi.org/10.30984/pp.v23i1.973>.

the practice of drafting norms, thereby opening up a wide space for the penetration of private and foreign interests.

Many products of legislation born after the Reformation showed systematic symptoms of ignoring the spirit of Article 33. Law No. 22 of 2001 on Oil and Gas is one concrete example. In Article 44, paragraph (3), it is stated that business entities that carry out downstream business activities must be Indonesian Legal Entities and can take the form of SOEs, BUMD, cooperatives, or private companies. This provision opens wide participation for the private and foreign sectors without any guarantee that state control over the oil and gas sector will be maintained substantively. The Constitutional Court in Decision No. 36/PUU-X / 2012 considers that the oil and gas law does not meet the requirements of state control because it hands over management functions to implementing agencies (such as BP Migas) that do not have direct public authority.<sup>31</sup> Norms in the oil and gas law have shifted the role of the state as a manager into an investment facilitator, which is juridically and philosophically contrary to the constitutional mandate.

Other discrepancies can be found in Law No. 30 of 2009 on electricity. Article 10, paragraph (2) states that state-owned enterprises, local, private, cooperatives, and the public can carry out electricity supply activities. This formulation explicitly removes the priority of state management of electricity, even though this sector is a basic need that concerns the livelihood of many people. In Constitutional Court Decision No. 111/PUU-XII / 2015, the court stated that the arrangement allows the practice of unbundling, which is the separation of the functions of generation, transmission, distribution, and sale of electricity, which distances state control over the national electricity distribution chain.<sup>32</sup> The norm in the electricity law contains juridical ambiguity because it opens up full liberalization without placing the function of state control as a regulatory foundation.

Law Number 17 of 2019 on Water Resources also shows a similar trend. Article 46, paragraph (1) provides space for the private sector to manage water resources after the basic needs of the community, people's agricultural irrigation, and religious activities are met. This formulation creates a hierarchy of management that does not guarantee the supremacy of substantive control of the state. The previous Constitutional Court decision, namely decision number 85 / PUU-XI / 2013, has stated that water is a public good that should not be privatized. The court affirmed that the state is obliged to carry out the functions of policy, regulation, management, and supervision in an integrated manner on water. However, in practice, the norms in the law on Natural Resources after the decision of the Constitutional Court still place the private sector as an important actor without strengthening the legal

---

<sup>31</sup> MuhammadYaasiin Raya, Abdul Razak, and Marwati Riza, "THE IMPLEMENTATION OF CONSTITUTIONAL COURT DECISION IN THE JUDICIAL REVIEW OF LAW NUMBER 22 YEAR 2001 CONCERNING OIL AND GAS FOLLOWED BY PRESIDENTIAL REGULATION.," *International Journal of Advanced Research* 6, no. 1 (January 31, 2018): 1325–33, <https://doi.org/10.21474/IJAR01/6344>.

<sup>32</sup> Muhammad Insa Ansari, "BUMN Dan Penguasaan Negara Di Bidang Ketenagalistrikan," *Jurnal Konstitusi* 14, no. 1 (July 24, 2017): 104, <https://doi.org/10.31078/jk1415>.

apparatus that ensures state control over the allocation and distribution of water as a whole.<sup>33</sup>

Normative inequality also occurs in Law Number 3 of 2020 concerning amendments to Law Number 4 of 2009 concerning Mineral and coal mining. In Article 169A, the state guarantees the extension of work contracts and coal mining concession work agreements (PKP2B) without going through auctions.<sup>34</sup> This provision reinforces the dominance of large corporations over the control of National Natural Resources, and directly denies the principle of the greatest prosperity of the people. The state lost the opportunity to reorganize the mine management structure more equitably and inclusively. The norm established in the Mineral and Coal Act indicates the predominance of the power of capital in the legislative process, so the constitutional spirit becomes only rhetoric without compelling legal consequences.

The formulation of norms in various such laws not only contradicts Article 33 substantively but also indicates the absence of a constitutional vision in economic legislation. National Economic Law represents more investment interests and market logic than an extension of the ideals of social justice. There is no mainstreaming of values such as people's economic sovereignty, environmental sustainability, or national independence in the normative design of economic policies. Legal norms are drawn up without an ideological framework based on the 1945 Constitution as the Supreme source, but subject to technocratic instruments based on the calculation of short-term benefits.

This normative inequality is also aggravated by the absence of protection clauses against public participation in the process of forming strategic sector policies. The resulting legal norms tend to be elitist and do not open up a wide space for public deliberation. In the case of energy management, for example, there is no mechanism in the oil and gas law or the electricity law that expressly requires community involvement in the preparation of cooperation contracts, evaluation of subsidy distribution, or tariff determination. This situation violates the principle of constitutional participation in a democratic rule of law, in which the people as owners of economic sovereignty should be the main subject in decision-making over public resources.

The accumulation of legal norms as an instrument of structural transformation indicates a fundamental failure in making law a mirror of constitutional values. The established norm does not become a tool for correcting inequality, but a means of legalizing the dominance of market forces. The law lost its position as a guardrail in limiting economic power and turned into a value-neutral administrative instrument. Under such conditions, it is not surprising that the economic Constitution does not have a substantive influence on the direction of State Economic Policy.

The second inequality is present in the institutional dimension, namely the fragility of

---

<sup>33</sup> Andi Aswar, A. M. Yunus Wahid, and Hamzah Halim, "IMPLIKASI HUKUM PENGATURAN SUMBER DAYA AIR PASCA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 85/PUU-XI/2013," *HERMENEUTIKA: Jurnal Ilmu Hukum* 6, no. 1 (February 28, 2022), <https://doi.org/10.33603/hermeneutika.v6i1.6758>.

<sup>34</sup> Hasyim Hasyim et al., "Enhancing Socio-Economic Dynamics: Assessing Regional Governance and Mining Community Benefits Post Law Number 3 of 2020 in North Maluku," *ARISTO* 12, no. 2 (March 14, 2024): 575–93, <https://doi.org/10.24269/ars.v12i2.8944>.

the state institutional system in carrying out the functions of the economic Constitution as a whole. Institutional structures that regulate and supervise strategic sectors are not built within a coordinative framework based on the principle of state control. Technical ministries and regulatory agencies such as BUMN, the Ministry of Energy and Mineral Resources, OJK, and KPPU do not have sufficient capacity and institutional integration to organize a fair market order. The fragmentation of authority and the overlap of regulation are precisely the hallmarks of a national economic bureaucracy that is increasingly moving away from the Constitutional direction. One concrete example of this institutional inconsistency is seen in the conflict of authority between the Ministry of Energy and SKK Migas in 2013, which was triggered by the Constitutional Court decision Number 36/PUU-X/2012 which dissolved BP Migas because it was considered contrary to the principle of state control as mandated by Article 33 of the 1945 Constitution.<sup>35</sup> However, after the dissolution of BP Migas, the establishment of SKK Migas as a temporary institution was not followed by adequate legal arrangements, resulting in a clear regulatory authority vacuum and legal uncertainty for oil and gas business actors. The conflict between the supervisory function of the Ministry of Energy and the management of upstream business activities by SKK Migas shows the ineffectiveness of institutional design in maintaining state sovereignty over the strategic energy sector.

Conflicts of interest arise when the state cannot separate its role as a regulator and as an economic actor through state-owned enterprises. BUMN, which should be a state instrument in ensuring access to basic services, actually operates with a business logic that makes profit as the main goal. One example that illustrates this conflict can be seen in the case of PT PLN, which raised the basic electricity tariff in 2017 on the grounds of fiscal efficiency and increased operating margins, even though the increase had a direct impact on the purchasing power of low-income people. When the state acts as the owner of PLN as well as the tariff policy maker, there is a clash between public interests and corporate needs.<sup>36</sup> The state loses the moral authority to regulate the market because its own position is not neutral. This situation gives birth to institutional distortions that obscure the responsibility of the state towards the people. This Model is not in line with the principle of *Ordnungspolitik*, which requires the state to be present as the guardian of the market framework, not the actor with a direct interest in the dynamics of economic competition.

The absence of constitutional institutions that specifically oversee the implementation of economic principles in the Constitution exacerbates inequality in the institutional dimension. There is no mechanism of systemic and constitutional supervision of economic policies that deviate from Article 33. The Constitutional Court does have the authority to test laws against the 1945 Constitution, but the nature of the test is limited to normative aspects

---

<sup>35</sup> Maria R.U.D. Tambunan and Ginda Togatorop, "DUALISME KETENTUAN COST RECOVERY SEBAGAI DASAR PUNGUTAN NEGARA PADA INDUSTRI HULU MIGAS," *Veritas et Justitia* 7, no. 1 (June 28, 2021): 56–90, <https://doi.org/10.25123/vej.v7i1.3740>.

<sup>36</sup> Nabila Syahrani, Ibrahim Ibrahim, and Aqsal Mulia Harahap, "KRISIS IKLIM DAN ENERGI TERBARUKAN DALAM CENGKRAMAN OLIGARKI," *Conference on Innovation and Application of Science and Technology (CIASTECH)* 6, no. 1 (December 30, 2023): 332, <https://doi.org/10.31328/ciastech.v6i1.5278>.

and does not include a holistic evaluation of economic policy. For example, although the Constitutional Court has granted judicial review of the Water Resources law through Decision No. 85/PUU-XI/2013, which states that water privatization violates state control, the implementation of this decision has been slow. It has been hit by institutional resistance from interested parties to private cooperation in water management.

On the other hand, the legislature as a law-making institution often fails to play a role as a guardian of the direction of State Economic Policy. Instead of fighting for the principles of social justice and popular sovereignty over natural resources, the DPR is more often an instrument of the legalization of economic policies that are pro-market and benefit the political-economic oligarchy. This absence of structural oversight creates a vacuum of accountability in the implementation of the economic Constitution, which ultimately erodes public confidence in the state as a protector of people's economic rights.

The third inequality arises in the functional dimension, which reflects the failure of the state in realizing the ideals of social justice as mandated in the Preamble and trunk of the 1945 Constitution, specifically Article 33. The function of the state as an agent of distribution of public welfare was replaced by a market logic oriented to profit and economic efficiency alone.<sup>37</sup> This transformation of the role of the state is not purely administrative in nature, but rather indicates a paradigmatic shift in the way the state positions itself towards its citizens. The state no longer appears as a protector of the public interest, but rather as a facilitator for the expansion of capital and investment, which often runs at the expense of vulnerable groups and people with low incomes.

The ever-increasing growth of the national economy is not always directly proportional to the equitable distribution of welfare. Central Statistics Agency data show that Indonesia's Gini Ratio in the period 2014 to 2023 tends to stagnate in the range of 0.380 to 0.390, which indicates a high level of inequality. In March 2014, the Gini Ratio was recorded at 0.406, then decreased slowly but not significantly, reaching 0.384 in March 2019, before experiencing slight fluctuations during the COVID-19 pandemic, namely 0.385 (March 2020), 0.384 (March 2021), and 0.381 (March 2022). Finally, in March 2023, the Gini Ratio was recorded at 0.388.<sup>38</sup> Although Gross Domestic Product (GDP) continues to grow, income distribution inequality has yet to see significant structural improvement.

This shows that economic growth over the past decade has not been able to encourage fair and sustainable distribution, and emphasizes the urgency of reformulating national economic policies to be more in favor of the principle of distributive justice as mandated in Article 33 of the 1945 Constitution. Access to clean water, electricity, quality education, and health services remains unequal, especially between urban and rural areas, as well as between the upper and lower classes of society. The liberalization of public sectors that were supposed

---

<sup>37</sup> Baqer Khudair Al-Hadrawi, "Mind Intruders: Psychological, Legal, and Social Effects of Human Parasites in the Age of Technological Progress," *Pakistan Journal of Life and Social Sciences (PJLSS)* 22, no. 2 (2024), <https://doi.org/10.57239/PJLSS-2024-22.2.00414>.

<sup>38</sup> Badan Pusat Statistik, "Gini Ratio Menurut Provinsi Dan Nasional, 2014–2023.," BPS–Statistics Indonesia, 2023, <https://www.bps.go.id/indicator/23/111/1/gini-ratio.html>.

to be the domain of the state, such as electricity and water, has transformed basic rights into commodities accessible only to those with purchasing power. A concrete example is seen in water management in various post-privatization areas, which led to tariff increases and service quality degradation, as happened in DKI Jakarta after a two-decade private partnership with PAM Jaya and its foreign partners that exacerbated service disparities between social groups.<sup>39</sup>

The increase in the basic electricity tariff by PLN and the policy of eliminating energy subsidies by the central government clarify the direction of economic policies that prioritize fiscal stability over social protection. Meanwhile, higher education is commercialized through a single tuition fee (UKT) scheme that charges students from lower-middle families. The health sector also underwent a process of market medicalization, in which private health services grew rapidly, and public services stagnated in quality. When access to basic needs is determined by the economic capabilities of individuals, then the state has functionally failed to carry out its mandate to ensure collective well-being.

The impact of this functional inequality is most clearly felt by small economic actors, farmers, fishermen, and indigenous peoples living in peripheral and remote areas. Large-scale investment into the region is often met by forced land evictions, revocation of customary rights, and marginalization of traditional economic practices that underpin the survival of local communities. In the case of the construction of strategic infrastructure projects such as industrial estates or mines, there is often a violation of the principle of Free, Prior, and Informed Consent (FPIC) recognized in international law. The state is present not as a fair arbiter, but as a formal legalizer of the deprivation of local communities of their rights by large capital. Actual examples can be found in the construction of the Morowali Industrial Estate and the National Strategic Project in Kalimantan, where agrarian conflicts involved local communities who were not given true participatory space in the planning and implementation process.<sup>40</sup>

Economic empowerment programs designed by the government are generally sectoral and do not touch the root of structural inequality. Programs such as Kredit Usaha Rakyat (KUR), Cash social assistance, and MSME training are only temporary and are not based on structural transformation of the economic distribution system. Economic empowerment of the People runs in very limited spaces because the market structure has been controlled by large economic actors who have political connections and access to regulatory instruments. Subsidy schemes that are supposed to be directed at strengthening the production capacity of small communities often leak to medium- to large-sized business actors who have the administrative means to access state facilities. This gap is further compounded by the lack of oversight and the absence of data-driven policy evaluation of social vulnerability.

#### **4. CONCLUSION**

Disorientation in the implementation of Article 33 of the 1945 Constitution occurs due to the severance of the relationship between constitutional norms and regulatory reality

---

<sup>39</sup> Ahmad Syahrani Fadhill, "POLITIK HUKUM PENGELOLAAN AIR DI PROVINSI DAERAH KHUSUS IBU KOTA JAKARTA," *Jurnal Yuridis* 10, no. 2 (December 31, 2023): 52–65, <https://doi.org/10.35586/jjur.v10i2.7208>.

<sup>40</sup> Sasikirana Anastasia et al., "Implikasi Hukum Agraria Terhadap Konflik Pertanahan Indonesia," *Arus Jurnal Sosial Dan Humaniora* 4, no. 2 (August 19, 2024): 545–53, <https://doi.org/10.57250/ajsh.v4i2.485>.

(Regelpolitik), where post-reform laws legitimize market liberalization without ethical control. The state was reduced to its role of procedural administrator, failing to exercise its substantive 'right to rule' mandate. In this impasse, Franz Böhm and Walter Eucken's Ordnungspolitik Paradigm offers a vital corrective Foundation: the state must transform from a passive facilitator to an active 'architect of order' designing market structures through the rule of law. Consequently, economic law should no longer be viewed as a neutral instrument, but rather as a social engineering tool to ensure distributive justice. Therefore, forward—looking reforms demand the establishment of a solid constitutional institutional design—a system in which market mechanisms work entirely within the corridors of social justice, strictly guarded by the state.

## REFERENCE

- Abdussamad, Zamroni, Amanda Adelina Harun, Mohamad Hidayat Muhtar, Fenty U. Puluhulawa, Vifi Swarianata, and Nurul Fazri Elfikri. "Constitutional Balance: Synchronizing Energy and Environmental Policies with Socio-Economic Mandates." Edited by R. Febrina, Z. Harirah, and T. Puspita. *E3S Web of Conferences* 506 (March 25, 2024): 06006. <https://doi.org/10.1051/e3sconf/202450606006>.
- Adamski, Dariusz. "Economic Constitution of the Euro Area after the Gauweiler Preliminary Ruling." *Common Market Law Review* 52, no. Issue 6 (December 1, 2015): 1451–90. <https://doi.org/10.54648/COLA2015129>.
- Al-Hadrawi, Baqer Khudair. "Mind Intruders: Psychological, Legal, and Social Effects of Human Parasites in the Age of Technological Progress." *Pakistan Journal of Life and Social Sciences (PJLSS)* 22, no. 2 (2024). <https://doi.org/10.57239/PJLSS-2024-22.2.00414>.
- Anastasia, Sasikirana, Rifki Nurohman, Daffa Tegar Nabil Zaidan, and Asnawi Mubarak. "Implikasi Hukum Agraria Terhadap Konflik Pertanahan Indonesia." *Arus Jurnal Sosial Dan Humaniora* 4, no. 2 (August 19, 2024): 545–53. <https://doi.org/10.57250/ajsh.v4i2.485>.
- Ansari, Muhammad Insa. "BUMN Dan Penguasaan Negara Di Bidang Ketenagalistrikan." *Jurnal Konstitusi* 14, no. 1 (July 24, 2017): 104. <https://doi.org/10.31078/jk1415>.
- Aswar, Andi, A. M. Yunus Wahid, and Hamzah Halim. "IMPLIKASI HUKUM PENGATURAN SUMBER DAYA AIR PASCA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 85/PUU-XI/2013." *HERMENEUTIKA: Jurnal Ilmu Hukum* 6, no. 1 (February 28, 2022). <https://doi.org/10.33603/hermeneutika.v6i1.6758>.
- Atmaja, A.P. Edi, and Anna Erliyana. "Affirming the Democratic Economic System After the Amendment of Article 33 of the Indonesian Constitution: A Critical Legal Studies Perspective." *Jurnal Bina Mulia Hukum* 8, no. 2 (March 31, 2024): 158–76. <https://doi.org/10.23920/jbmh.v8i2.1084>.
- Badan Pusat Statistik. "Gini Ratio Menurut Provinsi Dan Nasional, 2014–2023." BPS–Statistics Indonesia, 2023. <https://www.bps.go.id/indicator/23/111/1/gini-ratio.html>.
- Bruno, Federico. "Ordoliberalism as an Ideology: A Conceptual Analysis." *Journal of Political*

- Ideologies* 29, no. 2 (May 3, 2024): 212–35. <https://doi.org/10.1080/13569317.2022.2065421>.
- David J. Gerber, "Constitutionalizing the Economy: German Neo-liberalism, Competition Law and the 'New' Europe," *American Journal of Comparative Law* (working paper open access version), 25–30.
- Diharjo, Nugroho Noto, Mohamad Hidayat Muhtar, Erman I Rahim, Sri Nurnaningsih Rachman, Vica Jillyan Edsti Saija, and Arief Fahmi Lubis. "Human Rights and Constitutional Sovereignty in The Context of The Struggle for Legal Justice." *Bacarita Law Journal* 4, no. 2 (2024): 174–84.
- Dungga, Weny, Mohamad Hidayat Muhtar, and Lucyane Djaafar. "The Assessment of Indonesia's Religious Courts in Resolving Shari'ah Banking Disputes According to the Principles of Justice." *Manchester Journal of International Economic Law* 19 (2023): 179–93.
- Dyson, Kenneth. *Conservative Liberalism, Ordo-Liberalism, and the State*. Oxford University PressOxford, 2021. <https://doi.org/10.1093/oso/9780198854289.001.0001>.
- Fadhil, Ahmad Syahroni. "POLITIK HUKUM PENGELOLAAN AIR DI PROVINSI DAERAH KHUSUS IBU KOTA JAKARTA." *Jurnal Yuridis* 10, no. 2 (December 31, 2023): 52–65. <https://doi.org/10.35586/jjur.v10i2.7208>.
- Fadhli, Ashabul, Recy Harviani Zurwanty, and Vivi Puspita Sari. "Konstruksi Pasal 33 UUD 1945 Dalam Menangkal Pengaruh Sistem Kapitalisme Di Indonesia." *Journal of Civic Education* 6, no. 1 (June 12, 2023): 48–58. <https://doi.org/10.24036/jce.v6i1.974>.
- Fèvre, Raphaël. *A Political Economy of Power*. Oxford University PressNew York, 2022. <https://doi.org/10.1093/oso/9780197607800.001.0001>.
- Goodhart, Charles, and Rosa Lastra. "Populism and Central Bank Independence." *Open Economies Review* 29, no. 1 (February 26, 2018): 49–68. <https://doi.org/10.1007/s11079-017-9447-y>.
- Hamidah, Siti, Mochammad Bakri, Abdul Budiono, and Bambang Winarno. "THE ANALYSIS OF ISLAMIC ECONOMY IN THE CONSTITUTION OF INDONESIA." *Brawijaya Law Journal* 4, no. 1 (March 31, 2017): 59–76. <https://doi.org/10.21776/ub.blj.2017.004.01.03>.
- Hasyim, Hasyim, Wirman Syafri, Nurliah Nurdin, and Mansyur Achmad. "Enhancing Socio-Economic Dynamics: Assessing Regional Governance and Mining Community Benefits Post Law Number 3 of 2020 in North Maluku." *ARISTO* 12, no. 2 (March 14, 2024): 575–93. <https://doi.org/10.24269/ars.v12i2.8944>.
- Indra, Mexsasai, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar. "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945 Di Indonesia." *Jurnal Konstitusi* 20, no. 2 (2023): 279–99.
- Kolev, Stefan, Nils Goldschmidt, and Jan-Otmar Hesse. "Debating Liberalism: Walter Eucken, F.

- A. Hayek and the Early History of the Mont Pèlerin Society." *The Review of Austrian Economics* 33, no. 4 (December 19, 2020): 433–63. <https://doi.org/10.1007/s11138-019-0435-x>.
- L. Agusalim, N. Nurhayati, and A. Indrayani. "Ekonomi Kerakyatan Yang Dilindungi Oleh Pasal 33 UUD 1945: Implementasi Di Tingkat Desa." *Jurnal Masyarakat Dan Desa* 3, no. 2 (2021): 75–88.
- Mahkamah Konstitusi Republik Indonesia, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Buku VIII Warga Negara dan Penduduk, Hak Asasi Manusia, dan Perekonomian Nasional* (Jakarta: Mahkamah Konstitusi, 2010), 453–460.
- Mark Van Hoecke, "Legal Doctrine: Which Method(s) for What Kind of Discipline?" *Methodologies of Legal Research* (Oxford: Hart Publishing, 2011), 1–18
- Manalu, Golorya Br. "Politik Hukum Pengusahaan Sumber Daya Air Setelah Disahkannya Undang-Undang Cipta Kerja." *Binamulia Hukum* 13, no. 1 (July 18, 2024): 55–69. <https://doi.org/10.37893/jbh.v13i1.693>.
- Najicha, Fatma Ulfatun. "Konstitusionalitas Pengelolaan Migas Dalam Mewujudkan Kedaulatan Energi Indonesia." *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 19, no. 2 (December 31, 2020). <https://doi.org/10.31941/pj.v19i2.1305>.
- Noviansyah, K.A. "KAJIAN YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 111/PUU-XIII/2015 TENTANG KETENAGALISTRIKAN TERHADAP PASAL 33 UNDANG-UNDANG DASAR 1945." *Jurnal Kepastian Hukum Dan Keadilan* 3, no. 1 (December 10, 2021): 1. <https://doi.org/10.32502/khdk.v3i1.4523>.
- Raya, MuhammadYaasiin, Abdul Razak, and Marwati Riza. "THE IMPLEMENTATION OF CONSTITUTIONAL COURT DECISION IN THE JUDICIAL REVIEW OF LAW NUMBER 22 YEAR 2001 CONCERNING OIL AND GAS FOLLOWED BY PRESIDENTIAL REGULATION." *International Journal of Advanced Research* 6, no. 1 (January 31, 2018): 1325–33. <https://doi.org/10.21474/IJAR01/6344>.
- Reimers, Patrick. "An Austrian School View on Eucken's Ordoliberalism. Analyzing the Roots and Concept of German Ordoliberalism from the Perspective of Austrian School Economics." *REVISTA PROCESOS DE MERCADO*, February 22, 2020, 13–53. <https://doi.org/10.52195/pm.v17i1.4>.
- Riza, Dola, and Boziardi AS. "Penerapan Prinsip Kemakmuran Rakyat Dalam Pengelolaan Minyak Dan Gas Bumi Pasca Putusan Mahkamah Konstitusi Nomor 36/PUU-X/2012." *Unes Journal of Swara Justisia* 8, no. 2 (August 5, 2024): 470–78. <https://doi.org/10.31933/dwq1fh37>.
- S. Suhardiman. "The Application of New Article 33, Section 4 of Indonesia's Constitution: Rivalry between State Control and Market Control over Natural Resources." Griffith University, 2020. [https://research-repository.griffith.edu.au/bitstream/handle/10072/397945/Suhardiman\\_Suhardiman\\_Final\\_Thesis\\_redacted.pdf](https://research-repository.griffith.edu.au/bitstream/handle/10072/397945/Suhardiman_Suhardiman_Final_Thesis_redacted.pdf).

- Sudarmo, Sudarmo, Yenny Febrianty, Viorizza Suciani Putri, Mohamad Hidayat Muhtar, and Salahuddin Salahuddin. "Critical Study of the Implementation of the Right of Self-Determination in Protecting Indonesia's Environmental and Economic Sovereignty." Edited by S. Ta Wee, A. Sanders, N. Long, K.L.G. Chan, A. Gani, T.P. Yazid, and Z. Rafique. *E3S Web of Conferences* 611 (January 24, 2025): 05002. <https://doi.org/10.1051/e3sconf/202561105002>.
- Syafril, Syafwendy. "REFLECTION, IMPLEMENTATION, AND CONSEQUENCES OF ARTICLE 33 OF THE 1945 CONSTITUTION (AFTER AMENDMENT) TOWARDS THE ECONOMY OF INDONESIA AND ISLAMIC ECONOMIC CONNECTION." *Airlangga International Journal of Islamic Economics and Finance* 3, no. 2 (December 14, 2020): 68. <https://doi.org/10.20473/aijief.v3i2.23878>.
- Syahrani, Nabila, Ibrahim Ibrahim, and Aqsal Mulia Harahap. "KRISIS IKLIM DAN ENERGI TERBARUKAN DALAM CENGKRAMAN OLIGARKI." *Conference on Innovation and Application of Science and Technology (CIASTECH)* 6, no. 1 (December 30, 2023): 332. <https://doi.org/10.31328/ciastech.v6i1.5278>.
- Tambunan, Maria R.U.D., and Ginda Togatorop. "DUALISME KETENTUAN COST RECOVERY SEBAGAI DASAR PUNGUTAN NEGARA PADA INDUSTRI HULU MIGAS." *Veritas et Justitia* 7, no. 1 (June 28, 2021): 56–90. <https://doi.org/10.25123/vej.v7i1.3740>.
- Thomas Biebricher, "The Ordoliberal Concept of the State," *Journal of the History of Economic Thought* 33, no. 3 (2011): 323–341.
- Terry Hutchinson, "Doctrinal Research: Researching the Jury," *International Journal of Law in Context* 9, no. 1 (2013): 1–17.
- Walter Eucken, *The Principles of Economic Policy* (Freiburg: Walter Eucken Institut, 2004), 254–260.
- Xeferis, Dimitrios. "The Political Economy of Constitutional Restraints." *Constitutional Political Economy* 22, no. 3 (September 7, 2011): 221–37. <https://doi.org/10.1007/s10602-010-9104-6>.
- Yusuf, Nasruddin, Faradila Hasan, and Fitria Ayu Lestari Niu. "PEMIKIRAN MUHAMMAD HATTA TENTANG EKONOMI SYARIAH DI INDONESIA." *Potret Pemikiran* 23, no. 1 (November 28, 2019): 36. <https://doi.org/10.30984/pp.v23i1.973>.