

## THE INFLUENCE OF GLOBALIZATION AND INTERNATIONAL ECONOMIC LAW ON THE DEVELOPMENT OF NATIONAL ECONOMIC LAW

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### ABSTRACT

The current globalisation has influenced many of the various aspects of life of the world community both on aspects of political, social, cultural, economic and law was no exception. Indonesia community as one part of the world community must not be separated from the influence of the globalization. Influence of the globalization of law in Indonesia did not repeat when Indonesia decided to become a member of regional and international trade organizations, such as the GATT, WTO, APEC and AFTA.. Since then, Indonesia entered into the circle of influence and global trading only in the field of trade and at the same time, too often the norm (any method) or regulations (laws) that are like foreign transnational joint venture agreements, franchise, license, agence became a model agreement which is known in the legal system of Indonesia today. In addition, some of the products produced have been assumed as influence the current of this globalization as act No. 41/2004, law No. 22/2001, law No. 25/2007. In the face of the impact of this globalization influence then there is no other way except that Indonesia should re-arrange its economic legal system in order to make generated economic law with the philosophy of the nation based on Pancasila and the 1945 Constitution article 33.

Key words: globalization, international economic law and the construction of economic law of Indonesia.

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### Introduction

The word globalization is taken from the Word global which means universal. Globalization itself does not yet have an established definition, but merely a working definition, because globalization means universal depending on which people interpret it. Anyone sees it as a process of social or natural history or a process that will bring the whole nation and the world more and more tied to each other, realizing a new life order or unity of co-existence with the boundaries of the geographic, economic and cultural community. While on the other side, globalization is seen as a project compiled by the superpower governments so that people could have looked at it negatively.<sup>1</sup>

Nevertheless, in libraries (literature) found some sense of globalization. Globalization is a process of expansion of the scale of human life that his form of multidimensional local and then national to new scales cover the entire landmass of the Earth without exception.<sup>2</sup> Soetandyo Wignyosoebroto gives an overview of globalization as a phenomenon in the developmental process from nation states to a borderless global world. Life has been increasingly evident in the global format, seems to offer an alternative that could change aspects of life before the national law, but also offers a life of global with its international law as if it were about to cast the many localized enclaves everywhere.<sup>3</sup> Similarly, Roland Robertson explained that Globalization is a characteristic of the relationship between the population that goes beyond conventional boundaries such as the nation and the State. In the process of the interaction, the world has been compressed, as well as a community of shared consciousness occurs as one unified whole.<sup>4</sup> Whereas, according to I Gede AB Wiranata interprets globalization as more Union of economic units in various parts of the world into a single economic unit of the world's large and growing over time without limit and position of togetherness in the concept of equality and balance.<sup>5</sup>

On the views of the above generally speaking, that globalization that is actually an interaction between the communities whose nature is multidimensional which crosses extent of country which refers to the union of economic units globally.

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<sup>1</sup> Gunawan Jatmiko, *Peranan Lembaga Pengadilan Dalam Mengintegrasikan Nilai-nilai HAM, Nilai-nilai Global dan Domestic Wisdom Dalam Rangka Pembaharuan Hukum*, dalam *Hukum Bangun Teori dan Telaah Dalam Implementasinya*, Penerbit Universitas Lampung, 2009, hlm. 232-233.

<sup>2</sup> FX Adji Samekto, *Ekspansi Kapitalisme Dengan Tekanan Demokratisasi*, Diskusi Panel Nasional Arogansi Amerika Serikat Dalam Hubungan Internasional, FH-UNDIP Semarang, Oktober 2000, hlm. 1.

<sup>3</sup> Soetandyo Wignyosoebroto, *Hukum Dalam Masyarakat: Perkembangan dan Masalah*, Banyumedia Malang, 2008, hlm. 237-252.

<sup>4</sup> Dalam Satjipto Rahardjo, *Pendidikan Hukum Sebagai Pendidikan Manusia, Kaitannya Dengan Profesi Hukum dan Pembangunan Hukum Nasional*, Genta Publishing, April 2009, hlm. 100.

<sup>5</sup> I Gede AB Wiranata, *Revitalisasi Dan Reorientasi Nilai-nilai Atas Tanah Sebagai Objek Investasi Dalam Pembangunan Hukum Ekonomi Di Era Global*, Pidato Pengukuhan Guru Besar Tetap Pada FH. Universitas Bandar Lampung, 10 November 2009, hlm. 2.

The Interaction between people across the country has been going on for a long time that occurs in the era of enlightenment. The spirit of enlightenment of Europe in the Middle Ages which prompted a search of the new world can be said to be a current of globalization. Therefore, globalization is not new. Although globalization has long lasting and it is not something new, but globalization seems to still gain the attention of the society, especially legal experts in Indonesia. the attention of experts is visible from the spotlight and discussion of the influence of globalization on the life of the nation, especially the impact of globalization on the development of economic law in Indonesia. At first, the interaction between people and between Nations ruled by military and political, which the emphasis on issues /economic interests, while culture, religion is on the position of the epiphenomenal.<sup>6</sup> Therefore, Wallenstein said that globalization is the process of the formation of the world capitalist system.<sup>7</sup>

The theory of capitalism is to understand which aims at making the buildup of capital (capital accumulation) through the processes of planting (capital investment). In practice understanding capitalism has encouraged and requires expansion to the outside in the form of control of the market, the source of supply of raw materials and labor as cheap as possible. The capture and control of markets, sources of supply and labor can aim for sustainability of the fertilization of capital home.<sup>8</sup> Thus globalization is none other than the expansion of global capitalism. Globalization as a process of interaction between the people of the world and between countries unwittingly in time travel has influenced various aspects of community life, the world order (global) be it in politics, culture, science and technology, as well as the law. The next Indonesia as part of one country in this hemisphere would certainly not escape the influence of the development of current globalization.

For example, in the process of globalization at this time was marked by a series of policies that are directed to open up the economy in order to expand and deepen integration with global markets. Therefore, any policy which is directed at the development and economic growth are influenced by global thinking and development must be accompanied by instruments that organize them called as law. The law is prepared to organize and regulate the life of the community that is affected by the development of industrialization and capitalism, and followed familiar-understand social, cultural, political and economic society has given rise to the modern State. Of the modern State of modern legal systems then appears with the doctrine of the rule of law.<sup>9</sup>

The emergence of modern law, according to Satjipto Rahardjo, is a response to the new economic system of production (capitalist) because the old system can already no longer serve the developments of the capitalist economic system.<sup>10</sup> Changing new world order nowadays many steps are undertaken by the Government to respond to this legal internationalization. The Government measures include the setting up of this particular field of economic law in the field of capital investment law (law of investment). The policy of the Government to organize the investment law aimed at attracting investors to infuse capital in Indonesia.

The motivation of this paper is to give an idea that globalization has an effect on all aspects of society, nation and state, including the Indonesian economic law and primarily affect the investment law and international trade law. This is because when Indonesia decides to become a member of the WTO at the same time Indonesia is obliged to perform harmonization of the laws of economics based on the norms of the WTO in accordance with the WTO Agreement attachments as contained in General Agreement on Rates and Trade (GATT), Agreement on Trade Related Investment Measures (TRIMs) and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) as an agreement that must be obeyed by all WTO member countries. In doing harmonization of economic laws in accordance with the norms of the WTO when it is not anticipated to be feared liberal ideologies spawned the individual in the economic law of Indonesia, which is certainly liberal ideologies is not in accordance with the spirit of the Indonesian people based on the values contained in Pancasila.

### **The Influence Of The Globalization Of International Economic Law On National Economic Law**

Globalization as a process of intensification of the consciousness of the world as a whole has experienced accelerated intact since the last few decades. The process of accelerated globalization started the era of industrialization and capitalization in Europe and spread to variety corners of the world. Because of this the great influence of globalization may result in changes in social, cultural, political and economic world community. Furthermore, due to the effects of globalization is the world imperialism. The dominance of West European countries of the world (third world), especially in the political and economic scene continues. The idea of capitalism and free market starts rolling and introduced. The dominance of free-market capitalism and thinking which later became the embryo of the formation of GATT (the general agreement on tariffs and trade), in 1948 until the establishment of the WTO (word trade organization) in 1995.

At the moment with uruguay round negotiations has been agreed ( uruguay round ) and free multilateral trading system more to dominate the world. It can not be denied that multilateral trading system that is prefixed to the emergence of GATT, later joined by the WTO has contributed not least in the field of economic and social is able to increase productivity growth and economic development of the world. Indonesia as one of the countries in the hemisphere certainly can not be separated from the influence of globalization. The influence of globalization towards Indonesia cannot be avoided, when Indonesia decided to become a member of the regional and international trade organization. Indonesia's participation in regional and international trade organizations such as: GATT (General Agreement on Tariffs and Trade), AFTA (Asian Free Trade Area); APEC (Asia Pacific

<sup>6</sup> Satjipto Rahardjo, *Op.Cit.*, hlm. 100.

<sup>7</sup> Dalam Satjipto Rahardjo, *Ibid.*, hlm. 100

<sup>8</sup> FX Adji Samekto, *Loc.Cit.*, hlm. 3.

<sup>9</sup> FX Adji Samekto, *Ibid.*, hlm. 3.

<sup>10</sup> Faisal, *Menerobos Positivisme Hukum*, Rangkong Education, 2010, hlm. 51.

Economic Cooperation ) and by the WTO (World Trade Organization) as well as in international institutions such as the IMF (International Monetary Fund), ADB (Asian Development Bank), FAO (Food and Agriculture Organization), ILO (International Labour Organization) WIPO (World Intellectual Property Organization) and so has a great influence to the entry of the current globalization in the life of the people of Indonesia.

As a country with an open economy, Indonesia has showed active participation since then Indonesia entered into an era of global trade and global competition in the influential circles merchandizing, and at once became a swirl of influences of liberalization. Liberalization is primarily a trade a world without limits, without protection, without inhibitions and heightens the level of competition for trade between the economic actors. Therefore the schools that are known in the trade as global capitalism, individualism and liberalism are familiar and understood that familiar and even unconscious has been part of the economic system of Indonesia.

When Indonesia became an open economy (market) then simultaneously also went in multinational corporations (multinational corporation) or trans-national companies (transnational corporation) operating in Indonesia. Multi national companies or transnational corporations certainly plays a major role to enhance the growth of economic development in Indonesia alone as well as in collaboration with domestic companies, but so that has been influential unconsciously on a wide range of community life Indonesia. Therefore, the people of Indonesia must be prepared to receive the attack range of foreign products, foreign cultures, new values arising out of international influences, not least in the field of economics and law.

The influence of economic globalization is that globalization and liberalism has offered an alternative for achieving a better standard of living, globalization also gives a lot of choice of the desired product that suits your needs and desired price. But on the other hand the influence of globalization increasingly widening inequality of income distribution between rich and poor countries, between rich and poor, as well as open up opportunities for wealth accumulation and monopoly business and political power in a few people.

In areas of law such as the existence of this free trade then certainly Indonesia's legal system certainly did not escape the influence of globalization. Due to the influence of globalization and the increasing influence of global trade and is pretty much the norm, the methods or rules (laws) of the trans-national nature of foreign have impact on the legal system of Indonesia.<sup>11</sup> For example in the field of the law of contract business in which developed countries take new transactions in developing countries and its trading partners receive the business contracts as part of its legal system concurrently with it's no surprise some agreements such as: joint venture agreements (joint venture), the franchise (franchise), a license agreement (license), Agency (agency)<sup>12</sup> agreements as a model agreement which are familiar in our legal system today and not even rarely be the same model in several countries. And its common law countries because a country is following the model of developed countries with regard to legal institutions for capital gain.<sup>13</sup>

In addition, the necessary attention is when Indonesia decides to become a member of WTO since after the WTO legal consequences of economic fields such as investment law, international trade law harmonisasi must be done in accordance with the norms of the WTO. This is consistent with the WTO Agreement attachments as contained in GATT, TRIMs and TRIPS as an agreement that must be obeyed by all WTO member countries. Efforts to harmonize economic laws of Indonesia in accordance with the norms of the WTO is feared mengandung ideologies of liberalism and individualism in the legal nature of the Indonesian economy which is not in accordance with the spirit of the Indonesian people. This concern is understandable given on the one hand Indonesia is a country born on the principles of communal while norms in the WTO norms born of liberal life style developed countries.

Various laws that were born after the ratification of the WTO were accused of very liberal and not assessed in accordance with the conditions and soul of Indonesia including the Forestry Law No. 41/2004, Oil and Gas Law No. 22/2001, and the Investment Law No. 25/2007. It can be said that the various laws in the field of economic law is liberal and even some circles call it a legal product that is patterned capitalist. The influence of globalization on the making of the law seen from the many highlights and reaction, as well as the public rejection of the above Act.

This situation will require attention to all components of the Indonesian people, especially the government to avoid such legal developments that may lead to colonization of new models that harm the people of Indonesia. In other words, globalization has a major impact on the legal system in Indonesia should be maintained so as not to cause harm to the Indonesian nation itself.

In the face of the current globalization in recent years, one area of the law that its presence is increasingly needed and have significance is a legal economy. The presence of economic law for Indonesia became very important because Indonesia has become part of the global economy (trade). To anticipate the impact of the globalization influence then there is no other way except the Indonesia should organize its legal system, especially the economic legal system to address economic development

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<sup>11</sup> Erman Rajaguguk, Peranan Hukum Dalam Pembangunan Pada Era Globalisasi: Implikasinya Bagi Pendidikan Hukum di Indonesia, Pidato Pengukuhan diucapkan pada Upacara Penerimaan Jabatan Guru Besar dalam Bidang Hukum pada FH Universitas Indonesia, Jakarta, 4 Januari 1997, hlm. 7.

<sup>12</sup> Erman Rajaguguk, *Ibid*, hlm. 7.

<sup>13</sup> Erman Rajaguguk, *Ibid*, hlm. 7.

today.<sup>14</sup> The development of the legal economy is due in accordance with the law in Indonesia that is politic has directed the development of the law in sustained economic growth. But for the sets (build) the legal system.

### Development Of Economic Law In Indonesia

Development is a series of continuous efforts made to achieve prosperous societies in various strata of life.<sup>15</sup> Similarly, according to Adi Sulistyono that development is an effort to transform society from a condition to a better condition. Therefore, the process of transformation must be directed at: 1. dates of old values that are no longer relevant to the needs, challenges and contexts of the age, 2. modification and revitalizing old values that are still relevant to the needs, challenges in the context of the times. 3. The discovery and new values of corrections needed to interact with the environment that continually changes and to answer new problems brought by the change.<sup>16</sup> Thus the construction of it is an effort that is done continuously modify or change so as to leave or find new values to achieve a certain goal namely welfare.

One aspect of the support changes for society to achieve order and regularity is through the development of the law. The construction of the law that needs to be done to address the effects of globalization on the incredible amount of people currently in the fields of Economics, culture, politics, science and technology and the law. Construction law is a process that has long been in progress and the same amount of development work to the nation and the State. The prevalence of law (law) as the law is written through legislation and litigation (judge made law) has been taking place in the world of law and it can be also described as the process of development of the law.

So it is with the legal system of Indonesia. The legal system of Indonesia certainly did not escape the influence of globalization. As a result of globalization and the increasing influence of global trade that quite a lot of foreign legal rules which the transnational nature has effect on the legal system of Indonesia. Call it for example in law of contract business in which developed countries take its trading partners business transactions in developing countries and its trading partners receive new business contracts as part of its legal system<sup>17</sup> as well as Indonesia.

To anticipate the impact of the globalization influence then there is no other way except the Indonesia should organize its legal system, especially the economic legal system to address economic development today. The construction of economic law is exercised because in accordance with the law in Indonesia that is politic has directed the development of the law in sustained economic growth.<sup>18</sup> But to organize the legal system, the economic system is to first understand what is shared in this nation, because by understanding the economic system embraced of course can easily be styled legal system its economy forward.

The economic system that embraced people of Indonesia is based on a national consensus about the paradigm of economic system drawn up in accordance with article 33 of the Constitution of 1945. This provision has the meaning that togetherness (collective) i.e. fraternity, humanism and humanity. Therefore, the economic system of Indonesia is not viewed as a manifestation of the liberal economic system competition but Indonesia contains moral nuance and togetherness as a reflection of the social responsibility of Indonesia. In addition, this provision also regulates the role of Government in the economy, as regulators and actors. The role of the Government appears to be on the Government's authority to regulate natural resources for the most of the prosperity of society. Furthermore, in principle this principle into the substance of the nation's economy is the economy of Pancasila Indonesia.<sup>19</sup>

The nation's economy as Indonesia's economy meanwhile should meet certain characteristics. According to Mubyarto features of the economic system of Pancasila are: 1. the wheel of economic activity moved by the stimulus for economic, social and moral, 2. There is a strong determined the entire nation to realize social equity, 3. There are economic nationalism, 4. A Cooperation is a pillar of the national economy, 5. There is a balance that is aligned, balanced and harmonious from economic planning and implementation in these areas.<sup>20</sup> Whereas, Edi Swasono said building an economy people do need partisanship, an ideological stance favoring to popular sovereignty.<sup>21</sup>

The people's economic development is an appropriate strategy to develop the national economy which is a strategy of improving productivity (people to be a national asset) and the effective utilization of available resources as grassroots-based strategies and resources. More than that, building a people's economy is one of the fundamental forms of participatory and emancipator implementation approach embraced by savvy economic democracy.<sup>22</sup>

Thus the economic system that embraced the economic system of Indonesia is not served on a capitalist system that extols the free market economic system but embraced the economic system that tends to favor the people's economy, as mandated in article 33 of the Constitution of 1945. In connection with it, there is a need to be prepared to support legal economic system, by

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<sup>14</sup> Adi Sulistyono, *Pembangunan Hukum Ekonomi Untuk Mendukung Pencapaian Visi Indonesia 2030*, Pidato Pengukuhan sebagai Guru Besar Tetap pada FH. Universitas Sebelas Maret, Solo, 17 September 2007, hlm. 18.

<sup>15</sup> I Gede AB Wiranata, *Loc.Cit.*, hlm. 1.

<sup>16</sup> Adi Sulistyono, *Loc.Cit.*, hlm. 3-4

<sup>17</sup> Eman Rajaguguk, *Loc.Cit.*, hlm. 7.

<sup>18</sup> Adi Sulistyono, *Loc.Cit.*, hlm. 18.

<sup>19</sup> Adi Sulistyono, *Ibid.*, hlm. 16.

<sup>20</sup> Mubyarto, dalam Adi Sulistyono, *Ibid.*, hlm. 16.

<sup>21</sup> Edi Swasono, dalam dalam Adi Sulistyono, *Ibid.*, hlm. 16.

<sup>22</sup> Edi Swasono, dalam dalam Adi Sulistyono, *Ibid.*, hlm. 16-17.

establishing the legal system of the national economy which is based on the principles in the Constitution. To prepare a law which is based on the Constitution and the Pancasila, political direction of development should be understood in the frame of the embraced law.

With regard to it then, Moh. Mahfud MD, states that law is the legal political policy or the official policy on the law which will apply both the new legal acts or by the turn of the old law in order to achieve the objectives of the country.<sup>23</sup> This means that the development of national law is concerned with the politics of the law embraced the ruling Government.

As for the political direction of the development of the legal economy of Indonesia should be based on the nation identity that contains the philosophy of the nation, the constitutional foundation of ideology and grounding on the Pancasila and the 1945 Constitution in article 33. Therefore, the fundamental values embodied in the principles of Pancasila and the life of the nation in the torso, the Constitution is signs for its construction management law.<sup>24</sup> Therefore, all products of the law (statutory) including economic laws must be based on a foundation. By fulfilling the foundation values and basic principles of basic family and citizenship contained in product of legislation, not just rely on the rule of law but also more paid attention to the rule of morals or the rule of justice. Thus the purpose of the law was reached that creating prosperity for the nation and country in accordance with the mandate of the Constitution protects the opening all the spilled blood all over Indonesia and Indonesia and to promote the general welfare, the intellectual life of the people and carry out orderly world based on freedom, eternal peace and social justice.<sup>25</sup>

To achieve the goals and objectives of the countries with the runway and the guidelines for national legal systems to be built is the legal system of Pancasila which legal systems take and incorporate different interests, the value of social values and the concept of Justice and lay it in the balance of the<sup>26</sup> 1. The balance between individualism and collectivism, 2. The balance between the *rechtstaat* and the rule of law, 3. The balance between the function of law as a tool to advance and the law as mirror the values that live in the community, 4. A balance between religious and secular State (Theo-democratic) and religious nation state.

The next Adi Sulistyono stated that the construction of the law is a human activity with regard to the existence and the enactment of the law within the community. That activity includes activity form, carry out, implement, finding, researching and systematically studied and applicable law. Further development of law stated can be distinguished from the construction law practical and legal theoretical development. Development of the practical law is mainly run by the institution of the field of legislation, judiciary, legal aid institutions and its administrative HR governance in General, while the development of a theoretical law is done by the College of law.<sup>27</sup>

Based on the legal opinion on the construction of the economic law development options in this paper is the development of practical law for new legal acts as well as the turn of the old law. As for the paradigm that is used to look at legal issues is paradigm constructivism.

This approach was taken because of the existence of legislation in the field of law is aimed to support the growth of the economy that had turned out to be not able to optimally serve to create an atmosphere conducive to investors, increasing the presence of foreign investors and prop up economic growth in order to prosper the society and the State. Mochtar Kusumaatmadja said that the presence of legislation in the field of economy turns out to have not contributed optimally because of the lack of legal certainty, both regarding the provisions of the legislation that many things are unclear and contradictory, as well as on the implementation of the Court ruling. There are 3 factors which are not the cause of the existence of legal certainty in Indonesia, namely, first, the hierarchy of legislation does not work and is still a pile of material arranged, secondly, the apparatus is weak in running, and the third, rules, dispute settlement in the field of Economics can't be predicted.<sup>28</sup>

Therefore, there is a necessary political commitment of the Government and the State to play a role in advancing the well-being of the people. George Jellinek in his book *Die Allgemeine Staatslehre* posited theories about the status of the relationship between the State and the people is as follows:<sup>29</sup> 1. the Status of positive, active State organized or intervened the issue of well-being/prosperity, 2. negative Status, the State does not intervene the Affairs of the people's economy, 3. Active Status, i.e. the people actively participating in the Government/development, 4. passive Status, people don't participate, but only subject to the Government/state.

Of the four statuses later gave birth to three types of countries, namely: first, the type of police state (*polizei staat*), with discrete State determines everything, whereas a passive people, so the people's relations are positive-passive. Second, the type of formal legal state/liberal (*rechtstaat*) with discrete: the State should not interfere in the economic sphere, the people of the free

<sup>23</sup> Moh. Mahfud MD, *Politik Hukum Di Indonesia*, Rajawali Press, Jakarta, 2009, hlm. 1.

<sup>24</sup> M. Solly Lubis, *Pembangunan Hukum Nasional*, Makalah disampaikan pada Seminar Pembangunan Hukum Nasional VIII, Tema Penegakan Hukum Dalam Era Pembangunan Berkelanjutan, diselenggarakan oleh Badan Pembinaan Hukum Nasional Departemen Kehakiman dan Hak Asasi Manusia RI, Denpasar, 14-18 Juli 2003.

<sup>25</sup> M. Solly Lubis, *Ilmu Pengetahuan Perundang-undangan*, Penerbit Cv. Mandar Maju, Bandung, 2009, hlm. 27.

<sup>26</sup> Suteki, *Rekonstruksi Politik Hukum Hak Atas Air Pro Rakyat*, Surya Pena Gemilang Publishing, Surabaya, 2009, hlm. 70.

<sup>27</sup> Adi Sulistyono, *Op.Cit.*, hlm. 13.

<sup>28</sup> Adi Sulistyono, *Ibid*, hlm. 30.

<sup>29</sup> A. Mukti Fadjar, *Beberapa Permasalahan Pembangunan Hukum dan Hukum Pembangunan*, FH. Universitas Brawijaya, Malang, 1996, hlm. 60-62.

individual who actively attend to the Affairs of his own well-being, so that the nature of the relationship is negative-folk-active. Third, State law for any material or type of State welfare (welfare state: social service state), where there is a consideration in the role of the State and the people in the business of organizing the well-being/prosperity, so that the nature of the relationship of State-people are positive-active.

Meanwhile from an economic theory, known as the three economic systems of the world, namely, First, of the liberal economic system or known as free enterprise economic system, in which fulfillment in economics was treated by the individuals in the private sector, while the Government only acted as a policeman who supervise the activities and lives of the country's economy, the Second, an economic system guided or guided economic system, where all economic activity, both production and distribution is in principle controlled and regulated by the State, while individual/private does not have a place, third, a mixed economic system, where the existence of the private sector and the Government in the economy, in the sense recognized in addition there is also the private agencies the State planners determine the direction of economic development according to the goals or objectives that have been set. So the system is a blend between liberal economics and guided economic systems.

In Indonesia and the country's economic system type selected is the welfare State (welfare state) with a mixed economic system. In the system of State welfare law that the State has an obligation and ensure the creation of shared prosperity in the life of the community, whether that concern the interests of the economic, social, cultural, educational, political and legal interests. It is certainly in line with the Preamble of 1945 in particular paragraph IV States: "... from it to form a Government of Indonesia which protects all the people of Indonesia and all the spilled blood of Indonesia and to advance the general welfare...." From the platform affirms the obligation of the State and the task of the Government to protect and serve the public interest in order to materialize the happiness all the people of Indonesia.<sup>30</sup>

As a consequence of this choices then we borrowed an opinion Wolfgang Fiedmann,<sup>31</sup> i.e. the State as guarantor (provider) people's welfare, the State as a regulator Friedmann, (regulator), the State as entrepreneur (entrepreneur) or run contactors through State-owned enterprises (SOEs), and as a referee (the umpires) to formulate fair standards of economic sectors including State enterprises (state corporation), be required to be implemented.

The intervention of the State in terms of the functioning of the State as guarantor of the welfare of the people visible in, first, the basic constitutional law in Indonesia is the political Constitution which in its opening depicts of the mind ruling the nation Indonesia which is a choice of values and objectives of the Union and civic life with four its conception, i.e. the concept of the State Union, the concept of social justice countries, the concept of the independent country of the people (democracy), and the concept of morality in society and State with based upon the divinity of the one true God.

Functions of the State as expressed by Wolfgang Friedmann at the top, indicating that the country is actually in the country could understand welfare state intervention in the economy. Jimly Asshiddiqie materials according to state that the concept of the welfare State countries demanded expanded responsibilities to the socio-economic problems faced by many people. The development of this is what gives legitimacy to interventionist State constituency in the 20th century. The country is thus necessary and even had to intervene in a variety of social and economic problems to ensure the creation of shared prosperity in the life of the community.<sup>32</sup> In line with the opinion of the Frans-Magnis Suseno says that essentially serve to dress the general welfare. Countries must provide all prerequisites, conditions, and infrastructure so that the public can live with justice and peace.<sup>33</sup>

With respect to the development of the legal economy and to overcome various problems and facing an increasingly rapid economic development, complex and difficult to predict or foretold that to do the most thorough and to respond to development and ensuring legal certainty.

Economic law is built based on the philosophy of the law will influence to the development of economic life: legal elements which affect its construction economics is *first*: predictability. The law should have the ability to give you an idea for sure in the future about situation or the relationships in modern times. *Second*: procedural skills. Coaching in the field of law allows legal material it can realize himself well, into the legal sense this event not only legal provisions of legislation but also all the settlement procedure agreed to by the parties in dispute, for example, forms: arbitration, conciliation and so on. All of these institutions should be able to work efficiently when it is expected that economic life was like to reach the maximum level. *Third*: the codification of the goal, objectives. Legislation can be seen as a codification as well as intent as required by the State. In economics, for example, we will be able to meet the goals as formulated in some legislation which directly or indirectly have an impact on the economy. *Fourth*: offsetting factors. The legal system should be able to be a force that provides a balance between the conflicting values within society. The legal system provides a sense of balance in the efforts the State undertook economic

<sup>30</sup> Luthfi J. Kurniawan dan Mustafa Lutfi, Perihal Negara, Hukum & Kebijakan Publik, Perspektif Politik Kesejahteraan yang Berbasis Kearifan Lokal, Pro Civil Society dan Gender, Setara Press Malang, 2012, hlm. 49.

<sup>31</sup> Sering disebut dengan istilah negara ekonomi, lihat Wolfgang Friedmann, The State and The Rule of Law in A Mixed Economy, 1971, p. 3, lihat juga Aminuddin Ilmar, Hak Menguasai Negara dalam Privatisasi BUMN, Kencana Prenada Media Group, Jakarta, 2012, hlm. 13.

<sup>32</sup> Jimly Asshiddiqie, Gagasan Kedaulatan Rakyat Dalam Konstitusi dan Pelaksanaannya di Indonesia, Penerbit PT Ichtar Van Hoeve, Jakarta, hlm. 223.

<sup>33</sup> Franz Magnis-Suseno, Etika Politik Prinsip-prinsip moral Dasar Kenegaraan Modern, Penerbit Gramedia Pustaka Utama, Jakarta, 1994, hlm. 316.

development. *Fifth*: the accommodation. Rapid changes once in fact will cause a loss of balance that long either in relations between individuals and groups in society. This circumstance in itself wants to demonstrate balance through one and the other way. Here the legal system governing the relationship between individuals both materially and formally gave the opportunity to balance that interrupted it to adjust to the new environment as a result of these changes. This is made possible by the recovery back for in tossing this legal system gives grip of certainty through formulation-formulation of a clear and definitive, opening an opportunity for the return of justice through orderly procedures and so on. *Sixth*: the definition and legal clarity about status.<sup>34</sup>

In addition to the elements above, the law contained elements supporting other law against economic development not less important is the element of legitimacy and stability. The validity of the meaning of the law after having validity, in order to have the ability then the law must be made of his education (education) and socialized, while elements of stability (stability) means that the law has the potential to maintain balance and accommodate competing interests.<sup>35</sup>

In order to be able to play its role of law to provide legal certainty on the economy then the Government should take to make the law as Commander in Chief, so the law is capable of increasing its role as a guiding factor, protector, mentors and able to guarantee certainty so as to create an atmosphere conducive to the field of economics.

## Conclusion

Globalization has created a whole world which is without boundaries between state / non-borderless, and can affect almost all human life. The influence of globalization on human kehidupan of whom are in the field of economics and law. Globalisasi influence in the field of ekonomi that globalization has offered an alternative for achieving a better standard of living, it also gives many choices of products offered according to the needs and cool prices. But on the other hand the impact of globalization is also causing more and widening inequality of income distribution between rich and poor countries, as well as open up opportunities for wealth accumulation and monopoly business and political power in a few people.

The influence of globalization in the field of economic law, namely the Indonesian government began the ratification of the Agreement Establishing The World Trade Organization (WTO) and as a member of WTO. With diratifikasinya WTO by the Indonesian government, the various laws in the economic field should be adapted to the norm-norm WTO Agreement then the consequences that Indonesia should be to harmonize the entire legal economy associated with norms in the WTO. Efforts to harmonize the laws of economics has given birth to various laws that can be said to be lacking in the spirit of the people of Indonesia based on Pancasila. This view is understandable given on the one hand, Indonesia is a country born on the principles of communal, while the norms of the WTO is a norm that comes from liberal life style.

Recommendations presented in this paper brought in doing development on the economic law of Indonesia in the era of globalization, should refer to the values of Pancasila and the Indonesian people living purposes contained in the Preamble to the 1945 Constitution, namely the welfare of the entire people of Indonesia and Article 33 of the Constitution 1945. in the legal development of the Indonesian economy by referring to the values of Pancasila and the 1945 Constitution, and Article 33 of the 1945 Constitution, the laws produced can realize prosperity for all Indonesian people, and sociologically generated economic law of course unacceptable Indonesian society, as well as legally produced products of economic laws can also provide protection for the economy and trade Indonesia.

## References

- Asshiddiqie, J. (1994). *Gagasan Kedaulatan Rakyat Dalam Konstitusi dan Pelaksanaannya di Indonesia*, Penerbit PT Ichtiar Van Hoeve, Jakarta.
- Fadjar, M. (1996). *Beberapa Permasalahan Pembangunan Hukum dan Hukum Pembangunan*, FH Universitas Brawijaya Malang.
- Faisal, (2010). *Menerobos Positivisme Hukum*, Rangkong Education.
- Friedmann, W. (1971). *The State and The Rule of Law in A Mixed Economy*, London: Steven.
- Ilmar, A. (2012). *Hak Menguasai Negara Dalam Privatisasi BUMN*, Kencana Prenada Media Group, Jakarta.
- Jatmiko, G. (2009). *Peranan Lembaga Pengadilan Dalam Mengintegrasikan Nilai-nilai HAM, Nilai-nilai Global dan Domestic Wisdom Dalam Rangka Pembaharuan Hukum*, dalam Hukum Bangun Teori dan Telaah Dalam Implementasinya, Penerbit Universitas Lampung.
- Kurniawan, L. J. & Lutfi, M. (2012). *Perihal Negara, Hukum & Kebijakan Publik, perspektif Politik Kesejahteraan yang Berbasis Kearifan Lokal, Pro Civil Society dan Gender*, Setara Press, Malang.
- Lubis, S. M. (2009). *Ilmu Pengetahuan Perundang-undangan*, Penerbit cv Mandar Maju, Cet. I, Agustus.

<sup>34</sup> Adi Sulistyono, *Op.Cit.*, hlm. 7-8. Bandingkan juga dengan : Eman Rajagukguk, *Peranan Hukum Indonesia Menjaga Persatuan Bangsa, Memulihkan Ekonomi dan Memperluas Kesejahteraan Sosial*, disampaikan dalam rangka Dies Natalis dan Peringatan Tahun Emas UI (1950-2000), Kampus UI-Depok, 5 Februari 2000, hlm. 6-7 dan Bismar Nasution, *Mengkaji Ulang Hukum Sebagai Landasan Pembangunan Ekonomi*, Pidato Pengukuhan Guru Besar Tetap pada FH USU Medan, tanpa tanggal dan tahun, hlm. 4-5.

<sup>35</sup> I Gede AB Wiranata, *Pembangunan Hukum Nasional*, Materi Kuliah I, Program Doktor Ilmu Hukum Angkatan IV KPK UNDIP-UNILA, tahun ajaran 2011/2012.

- Magnis-Suseno, F. (1994). *Etika Politik Prinsip-prinsip Moral Dasar Kenegaraan Modern*, Gramedia Pustaka Utama, Jakarta.
- Mahfud, M.D. M. (2009). *Politik Hukum Di Indonesia*, Rajawali Press, Jakarta.
- Nasution, B. *Mengkaji Ulang Hukum Sebagai Landasan Pembangunan Ekonomi*, Pidato Pengukuhan Guru Besar Tetap Pada FH USU Medan, tanpa tahun.
- Rajagukguk, E. (1977). *Peranan Hukum Dalam Pembangunan Pada Era Globalisasi : Implikasinya Bagi Pendidikan Hukum Di Indonesia*, Pidato Pengukuhan Diucapkan Pada Upacara Penerimaan Jabatan Guru Besar Dalam Bidang Hukum pada FH Uuniversitas Indonesia, Jakarta, 4 Januari.
- ....., (2000). *Peranan Hukum Indonesia Menjaga Persatuan Bangsa, Memulihkan Ekonomi Dan Memperluas Kesejahteraan Sosial*, Disampaikan Dalam Rangka Dies Natalis dan Peringatan Tahun Emas UI (1950-2000), Kampus UI-Depok, 5 Februari.
- Rahardjo, S. (2009). Pendidikan Hukum Sebagai Pendidikan Manusia, Kaitannya Dengan Profesi Hukum dan Pembangunan Hukum Nasional, Genta Publishing, Yogyakarta.
- Samekto, F.X. A. (2000). *Ekspansi Kapitalisme Dengan Tekanan Demokratisasi*, Diskusi Panel Nasional Arogansi Amerika Serikat Dalam Hubungan Internasional, FH-UNDIP Semarang, Oktober.
- Sulistiyono, A. (2007). *Pembangunanan Hukum Ekonomi Untuk Mendukung Pencapaian Visi Indonesia 2030*, Pidato Pengukuhan Guru Besar Tetap Pada FH. Universitas Sebelas Maret, Solo, Tanggal 17 September.
- Suteki, (2009). *Rekonstruksi Politik Hukum Hak Atas Air Pro Rakyat*, Surya Pena Gemilang Publishing.
- Wiranata, I. G. A.B. (2009). *Revitalisasi Dan Reorientasi Nilai-nilai Atas Tanah Sebagai Objek Investasi Dalam Pembangunan Hukum Ekonomi Di Era Global*, Pidato Pengukuhan Sebagai Guru Besar Tetap Pada FH Universitas Lampung, Tanggal 10 November 2009.
- ....., (2011/2012). *Pembangunan Hukum Nasional*, Bahan Kuliah I, Program Doktor Ilmu Hukum, Angkatan IV, KPK UNDIP-UNILA.
- ....., (2003). *Pembangunan Hukum Nasional, Makalah Dismapaikan pada Seminar Pembangunan Hukum Nasional VIII Tema Penegakan Hukum Dalam Era Pembangunan Berkelanjutan*, diselenggarakan oleh Badan Pembinaan Hukum Nasional Departemen Kehakiman Dan Hak Asasi Manusia RI, Denpasar, 14-18 Juli.
- Wignjosoebroto, S. (2008). *Hukum Dalam Masyarakat: Perkembangan dan Masalah*, Banyumedia Malan