

# *Law in the Globalization and Its Influence on Economic Development and Environmental Preservation based on Pancasila and the Indonesian Constitution of 1945*

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*Abstract- Economic globalization has a great influence on the legal system because globalization demands the globalization of law. The globalization of the law is not only based on international agreements between nations, but also an understanding of the legal and cultural traditions between west and east. However, the role of law in economic development and natural resource management in globalization and modernization is still being debated. The results of the discussion explained that: first, the effect of globalization caused the sovereignty of the state to be neglected, the strength of the state weakened along with the submission of the state to international institutions, such as the WTO with its free-market agenda, forcing the state not to protect the basic rights of citizens towards natural resources and the environment; secondly, efforts that can be made in the context of developing of national legal system, namely the regulation of economic law, must pay attention to the legal interests of various related sectors in a balanced method; Third, the concept of the Indonesian legal system that should be developed at this time is the concept of legal development based on the substantial value of the Pancasila and the Indonesian Constitution of 1945, namely a legal system that emphasizes the principle of community or family, which places more emphasis on the rule of moral than the rule of law only.*

**Keywords:** *Legal System, Globalization, Natural Resources Preservation, and Environmental Functions.*

## I. INTRODUCTION

Talking about the system must be understood as an organization consisting of various elements or components that influence each other and influence one another by one or several principles. When related to the topic of the Indonesian legal system, the organ to be discussed is the Indonesian legal system organ. In Indonesia, there are known legal systems in places such as the Customary Law system, the Islamic Legal System, the Colonial Legal System, and the National Legal System. Until the 14th century, the inhabitants of the archipelago lived in the atmosphere of customary law in each region. An important principle in traditional life is the nature of kinship (often called as communality). With the entry of Islam into Indonesia, many regional customs permeated the elements of Islam in the life of their customary law. Likewise, when the 17th century the Portuguese, British, and Dutch came, in addition to the products of their industrial products, they also influenced the local community with their religious teachings so that customary law in the area was

permeated by the teachings of Protestant and Catholic Christians. [1]

In the GBHN up to 1998, an effort to unify law throughout the archipelago was underlined, namely only one legal system, the Indonesian National Law System. Systematically, Indonesia's national legal system is a legal system that is based on the Pancasila and the Indonesian Constitution of 1945. Because legal pluralism cannot be maintained, customary and religious law elements are transformed or become part of the National Legal System, which in the 21st century has not developed course consists of regular fields such as criminal law, civil law, constitution law, administrative law, but it has developed rapidly, especially regarding economic law, natural resource law, environmental law, health law, computer law or cyber law, and so on. [2]

Economic globalization poses a great influence on a country's legal system because the globalization of the economy led to the globalization of law. The globalization of the law is not only based on international agreements between nations, but also an understanding of the legal and cultural traditions between west and east. [3] However, the role of law in economic development and natural resource management in the current era of globalization and modernization is still being debated. because the law, after all, is needed to regulate social life in all its aspects, whether it is social life, political life, culture, education especially what is equally important, namely its function or role in regulating economic activities and natural resource management. In this economic activity, law is really needed because natural resources are limited on the one hand and there is no limited demand or need for natural resources on the other, so conflicts between fellow citizens over natural resources as economic resources will often occur, conflicts between the state, even in the management of these economic resources overrides the ethics and norms of good management that cause damage to the environment.

Changes in world order today are marked by technological developments that make communication and information between the international community very easy, and international law today is characterized by harmonious law or at least transnational law.

Harmonization of law here means that international law is influenced by national law and national law is also influenced by international law. In the process of harmonization of laws, where international law influences national law, it means that nation-states must make national rules that encourage the realization of agreements to achieve common goals. For example in the field of international trade, the provisions of international trade in the framework of the World Trade Organization (WTO) have encouraged each country to make national rules as a follow up to the application of these provisions in a national atmosphere. [4]

The relevance of economic law has become more prominent since cross-trade entered a world without borders or economic globalization. For Indonesia, precisely after the ratification of international agreements in the field of trade in an international organization such as the WTO, Indonesia must comply with all the provisions applicable to all member countries of the WTO with all its consequences.

Indonesia rightly should to observe and to anticipate international trade revolution, because now there has been a paradigm shift in the field of economic law and management of natural resources. Before the globalization of law, the government has full sovereignty to change or establish law and natural resources economics,[5] however, this sovereignty has now been lost, especially in the fields of trade, natural resources, services, investment, intellectual property rights, and other provisions as stipulated in the GATT-PU. Even when the IMF was still entrenched in Indonesia, they often forced the formation of law as one of the conditions for disbursing debt, for example in the 2002 letter of intent; they forced the formation of a Foundation Law. In their 2003 letter of intent they asked for an amendment to Law Number 23 years 1999 concerning Bank Indonesia. [6] Complex work to be done by the economic law thinkers is how to harmonize the provisions of the GATT-PU, which is a tool developed countries to deplete a country's foreign exchange, with the interests of Indonesia which is now in poor.

In connection with the globalization of the law, it is necessary to develop a law (*rechtsbeofening*) [7] integrated and sustainable manner, following national legal order (the Indonesian legal system) based on the values contained in the substance of Pancasila and the Indonesian Constitution of 1945. The development of law is a job that is as old as the country's development. [8] The presence of written law through legislation and in the judicial process as a jurisprudence (judge-made law) has also long been recognized in the jurisdiction, as well as the part of Indonesian law which is currently increasingly important and influential, namely economic law that is applicable beside in the national and international sphere.

In connection with the harmony of legal development following the substance of the opening of the Indonesian Constitution of 1945, H.R. Otje Salman and Anthon F. Susanto [9] explained that the first paragraph contains the main ideas about the value of fairness, the second paragraph contains the main ideas about the purpose of law that is to provide welfare for the community, which is reflected in the words fair and prosperous. The third paragraph contains religious thought that is the values of the Godhead. The fourth paragraph explains the Pancasila, which is substantially a noble and pure concept. Noble because it reflects the values of the nation passed down through generations and abstract. Purely due to the depth of the substance which involves several main aspects, both religious, economic, resilience, social and cultural that has a particular style. Pancasila conceptually can be called as a system of all things, because conceptually all contained in the precepts are closely related and mutually inseparable, complete sovereignty.

The development of the legal system is based on the substantial value of Pancasila and the Indonesian constitution of 1945 intended, is directed to observe and anticipate international trade revolution and the change of paradigm in the field of economic law, management of natural resources and environmental conservation efforts. Starting from the description above, this paper is intended to describe how the influence of globalization on economic development and its impact on the environment in Indonesia? How is the concept of legal system development based on the substantial value of Pancasila and the Indonesian constitution of 1945, as a solution for Indonesia in dealing with the global economic system while preserving natural resources and environmental functions?

## II. RESEARCH METHOD

The collection of primary data through literature the Indonesian Constitution of 1945, Law Number 4 Year 1982 regarding Basic Provisions of Environmental Management, Law Number 23 Year 1997 on Environmental Management, and Law Number 32 Year 2009 on the Protection and Environmental Management. Secondary data collection is done on the results of previous research, and journals that discuss equitable environmental management.

This paper describes the effect of globalization on economic development and its impact on the environment in Indonesia, efforts that can be made in the context of developing the Indonesian legal system to deal with the global economy that tends not to benefit Indonesia's position as well as efforts to preserve natural resources and environmental functions, concepts the development of a legal system based on the substantial value of the Pancasila and the Indonesian Constitution of 1945, as a solution for Indonesia in dealing with the global economic system

while preserving natural resources and environmental functions.

### III. FINDINGS AND DISCUSSION

#### 1. *Globalization Effect on Economic Development and Its Impact on the Indonesian Environment.*

The impact of globalization at the present cannot be avoided, because -when the information flow with relative freedom, then the geographical barrier that long becomes irrelevant. Global needs to produce global products. [10] This, of course, will occur in the implementation of development in Indonesia and other countries are closely linked with global commitments in the areas of the economy, trade, financial transactions, and others. This economic globalization will bring legal globalization. Economic globalization is a new manifestation of the development of capitalism as an international economic system. When the economy becomes integrated, the harmonization of laws has to follow it. The establishment of the World Trade Organization (WTO) has been preceded by the formation of regional economic blocs such as the European Community, NAFTA, AFTA, and APEC. There is no contradiction between regionalization and globalization of trade.

Conversely, global economic integration requires the creation of new trade blocs. Trading with the WTO and regional economic cooperation means developing a democratic institutions, renewing market mechanisms, and functioning of the legal system. Developments in technology and patterns of economic activity make people in the world increasingly touch each other to need each other and determine the fate of each other, but also compete with each other. This condition dramatically especially noticeable in the activities of world trade, whether trade in goods, as well as trade in services. This linkage requires agreement about the rules that apply. Rules are applied to international trade rules are evolving in the system GATT / WTO.

Globalization in the field of international business contracts has long been happening. Because developed countries bring new transactions to developing countries, their partners from developing countries accept the international business contract model, either because they were not familiar with the model before, or because of their weak bargaining position. Therefore not surprisingly, joint ventures, franchises, license agreements, agency agreements, are almost the same in all countries. A country's legal consultants easily work on such agreements in other countries. [11]

Globalization of law occurs through legal standardization among other multilateral agreements.[12] In this case, the law seeks to cross or dismantle the barriers of space and time, by defining differences in the legal system. As explained previously, the signing of the GATT-PU has brought members to lose sovereignty to make laws

in the economic field, especially about trade, investment, services and intellectual property rights (IPR) with all the conditions contained in GATT-PU.[13] This condition will affect the workings of the legal system in society.

Erman Rajagukguk said the similarity in the legal provisions of various countries could also occur because a country follows the developed country model about legal institutions to obtain capital accumulation. The Laws of Limited Liability Companies in various countries, from "Civil Law" and "Community Law", contain a similar substance. Likewise with capital market regulations everywhere are no different from one another because funds flowing into the market are no longer bound properly to the time and national boundaries. The entry of foreign law influences originating from the common law tradition. In this case, many are in contact with the provisions of economic law. The provisions of the Law on Consumer Protection, for example, have adopted legal institutions derived from the common law tradition. Another example can be cited for the existence of the Bankruptcy Law, the Antitrust Law, as well as several IPR laws (Intellectual Property Rights).

In connection with the influence of the legal system in legislation making on the economic field and natural resource management, the legal system in Indonesia is currently experiencing a pull from 'above and below'. Even though the common law currently dominates the legal tradition in Indonesia, after the regional autonomy law was enacted in 2001, the customary law system and the Islamic legal system will also show their identity as values to be reckoned with in their revival in certain regions. In other words, the legal system in Indonesia is in the form of the emergence of a micro-nationalism trend in the legal system 'in several regions in Indonesia. The upward pull in the legal system in Indonesia is in the form of the influence of the globalization of law.

#### 2. *The Concept of Developing a Legal System Based on the Substantial Value of the Pancasila and the Indonesian Constitution of 1945 as a Solution for Facing the Global Economic System While Preserving Natural Resources and Environmental Functions*

If observed, then the whole as a norm in Article 33 of the Indonesian Constitution of 1945 today was not close to the idea of market efficiency or globalization. Some terms are closer to the ideology of social democracy, for example, togetherness, sustainable, environmentally sound, and self-reliance. Values that emerged are a reaction to global economic development.[14] Even in paragraph (4) Article 33 of the Indonesian Constitution of 1945 is also called economic democracy. But the term existed in the 1945 Constitution before the amendment, although as an Explanation of paragraph (1) Article 33. The term is an explanation of what is meant by joint effort based on the principle of kinship. In principle, this principle is the main substance of the Pancasila economic system.

The effect of this globalization causes the power of the state to weaken along with the submission of the state to international institutions, such as the WTO with its free-market agenda, forcing the state not to protect the basic rights of citizens towards natural resources and the environment. Various regulations carried out by the WTO system, even reducing labor rights, depriving people of their rights, reducing regulations on protecting natural resources and the environment including cutting subsidies to fulfill basic rights. Water, forests, food, health, public social services are now treated as mere commodities, which can be exploited at will.[15] One of the reasons this arises is because of the assessment of Western governments and the practice of new "imperialism" in the era of globalization. There are two paradigms about the new imperialism, namely the paradigm that uses a state-centric approach and the network paradigm (focus on global liberal governance). The first paradigm directly points to the United States in which to protect its various interests, the US must ensure that the main countries in the world become the 'democratic club'. The most obvious example can be seen in the nuclear problem. The United States is not in trouble with India but behaves differently towards Iran. Meanwhile, the second paradigm concludes that current conflicts must be understood in the context of globalization where global imperial power is exercised through global institutions to benefit Western countries. On behalf of development and free trade, governments and companies or national and transnational corporations continuously exploit the environment and natural resources (land, water, forests, and minerals). Thus, causing damage to the ecosystem which in turn to ecosystem killings.[16] Even more alarming, the final killing of these ecosystems is the final sense that the environment is permanently damaged; it is no longer possible to be renewed and restored. This will have an impact on the survival of human beings now and future generations.

Development with an econometric approach alone has proven to be unsuccessful in eradicating poverty, preventing social conflicts that occur due to injustice in access to natural resources and thus exacerbating the rate of environmental damage.[17] This condition causes the State of Indonesia to sink into a more massive impoverishment coupled with an escalation in horizontal conflict due to a struggle over the use of natural resources, and vertical conflict as a result of policies that pay less attention to the sense of justice of the community. Each product of the laws and regulations in the economic field has included Article 33 the Indonesian constitution of 1945 as a legal basis; however, the provisions of the material contained in the legislation have not been consistently consistent with the constitutional mandate as formulated in the Preamble of the Indonesian constitution of 1945. It is not uncommon for the contents of the articles to be contradictory. The great work ahead for lawmakers is how to consistently be able to realize the mandate of the opening of the Indonesian constitution of 1945, for example, relating to, the Earth and water and the natural resources contained therein are controlled by the state and used for

the greatest prosperity of the people, in every legislation in the economic sector and management of natural resources and the environment.

#### IV. CONCLUSION

The conclusions in this study were: (1) Economic globalization is a new manifestation of the development of capitalism as an international economic system. The influence of globalization has neglected the country's sovereignty, the strength of the state weakened along with the submission of the state to international institutions, such as the WTO with its free-market agenda, forcing the state not to protect the basic rights of citizens to natural resources and the environment. Various regulations carried out by the WTO system, even depriving people of their rights, reduce environmental protection regulations. Water, forests, food, health, public social services are now treated as mere commodities. On behalf of "development" and free trade, governments and companies or national and transnational corporations continuously exploit natural resources and ignore the preservation of environmental functions; and (2) In order to position economic law so that it can play a role in economic development and management of natural resources, it is necessary to conduct an in-depth study related to economic development and management of natural resources that favor the people, by making the law not only meet the demands of economic actors, but also be able to become a means for prospering the community, for example conducting an analysis of economic legislation and natural resource management that is not in line with the Preamble of the Indonesian Constitution of 1945 and Article 33 of the Indonesian Constitution of 1945, encouraging the emergence of policies that favor small businesses, farmers and fishermen, criticizing and suppressing monopolistic practices carried out by transnational companies, in collaboration with the Ministry of Home Affairs and the Ministry of Finance to evaluate and improve regional regulations that hamper investment in their respective regions

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