

NATIONAL LAW AND ITS POSITION IN DECENTRALISATION, REGIONALISATION AND GLOBALISATION ERA

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The Center of Law and Governance (PSHP) was basically established to answer the nation challenge, and is aimed to build the goodwill, work and network for a continuing strong public effort and to develop 17 August 1945 University thoroughly.

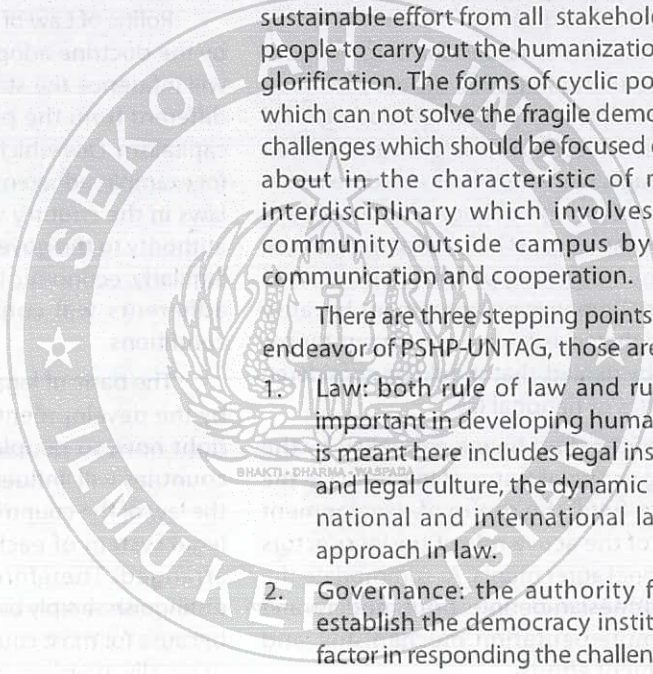
This center creatively and actively involves in developing humanity and nationality of Indonesia. Democracy needs a sustainable effort from all stakeholders and all Indonesian people to carry out the humanization and Indonesia nation glorification. The forms of cyclic political impoverishment which can not solve the fragile democracy problems are the challenges which should be focused on. This effort is brought about in the characteristic of multidisciplinary and interdisciplinary which involves the participation of community outside campus by establishing mutual communication and cooperation.

There are three stepping points which become the core endeavor of PSHP-UNTAG, those are:

1. Law: both rule of law and rule by law become the important in developing humanity and life. Law which is meant here includes legal institution, history, society and legal culture, the dynamic life of law-state-society, national and international law, and critical, recent approach in law.
2. Governance: the authority factor and the way to establish the democracy institution becomes the key factor in responding the challenges in managing diverse aspiration and goodwill, and building inter-nation relation.
3. Development: the whole efforts of human including macro- and micro economy public policy, private sector, democracy in development, agriculture, and poverty.

In this public discussion, PSHP also appreciates the positive action of Indonesian government in ASEAN. ASEAN is a regional nations organization which serves a good function. It is along with the policy of "free active". In the field of trading, human rights and regional defense, Indonesia can encourage ASEAN to play significant, active role. Therefore, the passive status is not relevant in globalization and the threat of disintegration becomes more real.

Public discussion today is a first step in the cooperation with National Law Development Agency (BPHN), which is



achieved in various fields, including on trade. Among others in the area of tariffs, both those related to national policy national treatment, and policies that apply to the traffic of goods and services between countries (Most Favored Nation / MFN).

Reasons for these international agreements reached by the protection and subsidies that affect the market, also aims to facilitate the expansion of trade resulting into the marketing area boundaries to enhance the national economy of the country. Implementation mechanisms influence the legal policy of the states members. Easier for developed countries which features a homogeneous society, but for developing countries, which typically ex-colonies and characteristic heterogeneous society, have some legal systems (original law, development law, and foreign law¹ is Islamic law²), posed a dilemma, as Indonesia.

The government works hard to develop business actors and also empowers them to enter the arena of global development. Indonesian society that still has the traditional features is empowered, while legal politic must follow the global developments. Inequality of technology understanding, lack of human resources, funding, modern menegement is often resulting in public unrest which led to dissatisfaction over government policies (including local government). It can be seen in certain areas, such as in Brebes, where agricultural products were held in the middle of the road; in Wonosobo, where Brastagi cabbage after harvesting is much cheaper than its capital; and in East Kalimantan the harvest was demanded by indigenous peoples to share, even when sowing the seeds there was no agreement because the government ignored their existence. Such circumstances are a reality that can not be denied, that should be considered in determining the politics of national law.

The question is whether and how legal policy by the government in effecting the legal status of Indonesia in the global stage, in order to fulfill the desire of development through the realization of the active role of business actors in the arena of international agreements. Accommodate the diverse needs of the Indonesian people, both modern and traditional, how the implementation mechanisms, and constraints and government efforts.

A. Politic of Law, Its Development and the Social Structure

Politic of law is one of the three aspects of the legal framework of the study, in addition to legal philosophy, and science of law, has the power which attracts each other. Legal philosophy concocted ideas about the law, and then processed by the law science. Politic of laws lead to more concrete formulation of what and how the law ought to come to be formed and formulated to meet the needs of society and government objectives for the welfare of the people.

The existence of law demands the requirement that *conditio sine quanon* with the basic legal nature of the country. In order to be established and provide security for the Indonesian people, then the law should contain a message that is depicted in the Preamble of 1945 Constitution, which is how the people of Indonesia in order to carry out a free life as an independent nation. It requires some conditions, either related to the law / regulations, or system of social relations in society in various aspects of life, including interacting with the outside world.

General conception says that the law, particularly laws and regulations (written), is a political product. Not only by political institutions such as the House of Representatives, the People's Consultative Assembly, or the president, but regulations will basically reflect the thinking and political wisdom of the most influential person in the country concerned. Political mind and political policies that affect them can be sourced from a particular ideology, special interests (such as the interests of the conglomerates), or strong social pressures from the community.³

Politic of Law of a country in general will be influenced by the doctrine adopted country. The doctrine of socialism will influence the states which are follow it, and certainly different from the politic of law based on the doctrine of capitalism. Law which would be established will be different, for example, adherents of the doctrine of socialism, economic laws in the country would apply in its provisions granting authority to the government to influence economic activity. Similarly, economic law on the doctrine of state capitalism adherents will contain many of the market economy conditions.

The basic of legal establishment will be influenced also by the development of community life as it is happening right now, so people say that thin territorial limits of the countries will influence the formation. Implementation of the law of the countries that do trade relations will affect the legal system of each country, depending on the objects arranged. Therefore today⁴, no longer appropriate to distinguish sharply between the 'all countries' and 'all markets', because for most countries, the all-ideological approach was gradually abandoned, and which is used as the standard is an ideological state to protect the people and open ourselves to accept the principle of the outside world combined in determining the politic of law.

Trade between the state and capital investment, are affecting the countries in the world to better consider the principle of ideology with the intention of attracting foreign capital. In this situation politics could be considered logical that the government, in addition to following the progress of globalization, to take action so that the principles and legal rules created and law enforcement can provide a way for people as a whole achieve common prosperity. Law

¹ Kenici Ohmae, *Law in the Development Countries*, Harvard University, Boston, Msachusetts, USA, 2000, p. 71.

² Jeane N Saly, *Law in the Global Stage*, ILJ, BPHN, Jakarta 2009.

³ Bagir Manan, *Law Development*, Antology to honour 70th anniversary of Prof. Dr. Mochtar Kusumaatmadja, SH; LL.M, Unpad Prss, Bandung, 1999 hlm. 231

⁴ Bagir Manan, *Op. Cit*, hlm, 232

policies in an international agreement to follow the results enforcement sought to give protection to the people to live safe, peaceful and prosperous. In principle, the new approach is not limited to wisdom. Situations and circumstances can affect the basics and paradigms that have been implemented for a basic political system, economic, social, cultural state.

Therefore Policy may be viewed on the economic development in Indonesia, which led to different interpretations when associated with the principles contained in the basic rules, the Constitution 45. However, it is important to note that the policy was still in the framework and the paradigm embodied in the idea of country / 'staatsidee' or the idea of law / 'rechtsidee'.

Politic of State law which follows the principle of democracy will be different from the dictatorial state. Community participation in determining the content and the desired color of law is the law of the political character of a democracy, because it provides ample opportunity in the community participation. On the contrary, countries of dictatorships will always avoid public participation in determining the style and content of the law. The will is always the dictator basic principles and demands total submission to the will of the people ruling.

Indonesia as a country that embraces Pancasila which is based on the kinship, has its own laws in accordance with the 'rechtsidee' contained in Pancasila and the Constitution 45. Judging from the political aspects, Indonesia's politic of law's goal is to build a democratic state of law. From the social and economic aspects, the politic of law aims at social justice for all Indonesian people and the maximum benefit of the people. From the normative aspect, the national politic of law aims of justice and righteousness in every aspect of community life. The whole goal is in a frame of the national legal order which is sourced and based on Pancasila and the Constitution 45.

It must be realized that the development of the community also has a major influence in determining the legal politics. Politic of law which is based on community development is more 'pragmatic'. Its implementation must be careful to touch the bottom or state paradigm that may touch the idea of the state, or the legal ideas that is the source state goals.

Needs and interests of different industries will vary with the needs of an agrarian society. In agrarian societies, the dominant factor for the economic life is the land, and this is still a factor, social, cultural, even politic. Employment in the agrarian society, especially related to land rights issues, as well as land or rights that can be placed in person on the ground. Ownership of land is seen as the main factor supporting a dominant productivity for agricultural labor.

Individual rights take precedence over land, and are the legal needs of agrarian communities. In industrial society, land is not related to jobs field. The problem in this case is related to the human resource potential, capable and skilled to support the activities in various forms of industries.

The provisions concerning the protection of labor in agriculture are not so pronounced, even ignored, as is happening today in our country. Whereas agricultural labor is not less important to obtain increased resources to enter the era of the multi-processing technology. The results of various studies show that most of the people of Indonesia work on small capital business, including agriculture. In its development, priority action on industrial workforce empowerment, based on the assumption that in the industry the protection is one of the important problems. Indonesia, which will soon enter industrializations, must plan its legal complexions.

Legal style in industrialization era is not only about the acceleration of efforts to encourage industrial growth but no less important is the law for the industry itself, should include the nature of agricultural production which has turned into downstream processing of combined with upstream processing of farmers to plant a technology, called the agrobusiness.

At this time, almost all policy and legal thought have objectives to encourage the acceleration of industrialization. Less policy or legal thought for the industry society itself, as the law in the field of employment, social protection etc. Government commitment is crucial in the conceptual act as the public faces the industry, to avoid the possibility of facing various problems, such as strike issues, wage system and so on.

Politics of law in a country that has a heterogeneous society as the people of Indonesia, is relatively different from the politics of law in a relatively homogeneous society in the political, economic and cultural. Politics of law in plural societies when applied similar to all things will result in political economic, and social problems. Therefore the politic of law, such as the enactment of similar laws throughout the country / unification, should be considered its benefit for the plural society, although normatively and ideologically recognized its positive aspects.

Normatively or ideologically, it is acknowledge that there are many positive aspects of unification, among others are the simplification of law, an instrument to express equality before the law, and gradually eliminate heterogeneous characteristics to a homogeneous nature⁶.

When viewed from a sociological point of view, the purposes of enforcing the same law can lead to obstacles in realizing goals, and could have happened otherwise. Implementation of the principle of equality in different

5 Cunan, Development Countries and Welfare. Harvard University Press, Boston, USA, 1999, Hlm. 112. He said that the people's business can be improved to industrialization, such as agriculture not only upstream but also downstream included in one system, management farming is done by using technology, etc.

6 Bagir Manan, Op:Cit. Hlm. 235 A unification will bring legal Simplification. A unification will create the legal system and a simple structure. System and the system is a simple legal structure. System and a simple legal structure is very important in achieving legal certainty and legal justice in the implementation and enforcement.

Political unification of an instrument to realize the principle of equality before the law, common law service, law and equality are treated regardless of the community, although the equation is not necessarily going to bring to justice

communities may result in legal uncertainty and injustice. The same law enforcement on the entire territory requires considerations, such as the realities of life in society. It was intended to avoid the law of non-compliance because the public feels the laws do not meet his needs, and feel unfamiliar, even injustice⁷.

Although the same law enforcement is possible in the fields of economy, trade, capital markets and so on. However, it should be careful in determining the statute of equality in areas that are neutral, because it still can cause problems. It was related to the capacity and ability of little more limited capital entrepreneurs to compete from large capital entrepreneurs. Without special legal provisions that provide 'protection' on small businesses, then they will be eliminated by big businessmen.

If government is not careful in this case, the economic situation will gradually return centered on the great entrepreneurs who have capital, and these circumstances will affect the style of political life, society as a whole. From the above facts, it can be stated that legal equality does not necessarily mean justice. Exclusion is required in accordance with the principle of protection of the law. The difference does not always mean legal inequality. The justice and the benefit law lies on the equation where the equation is treated, and on the places where differences are treated.

Based on the above view, the enacted politic of law is one which consider people's need, adapted with the condition and situation of that society.

B. Law and Its Position in Global Stage

Politic of law can not ignore the global impact which diluting the territorial boundaries and sovereignty state. In a global perspective, politic of law considers the interests among nations, and not merely its national interests. Politic of law can not merely protect the national interests but also must protect cross-country interests, especially with the development of information technology. Almost all aspects of the law have foreign elements, including the investment law, arbitration, business transactions. Even currently being promoted is one of law enforcement for the entire world (already happened, WTO). Regionally (ASEAN) conducted meetings between member countries of ASEAN to harmonize certain laws, such as terrorist Law, Arbitration, Commercial

Law etc.

Politic of law on copyright, patents and trademarks can not be separated from the interests of those rights are owned by foreigners. Regardless of the interests not only contain the conflict of laws, but perhaps the political and economic conflicts between countries. Similarly, the politic of law as in the field of labor may well be influenced by a variety of global issues, rights are like human rights, welfare workers etc. Goal of creating authoritative law to achieve the ideals of Indonesia that is safe, peaceful, democratic, and prosperous must be able to contain the three pillars of the law⁸, which is a good legal substance, legal structure, legal culture for legal users. The problem is to determine how far the global problem really is a global demand, or simply the interests of powerful states to 'impose' the will and interests of other countries. The issue could also be related to adjustment as long as global demand will not touch the bottom or paradigm that became joint state building as stated in *staatsidee* and *rechtsidee* state.

In this regard, the government faced a dilemma. In addition to attention to the global demands, also consider the national interest, especially with the introduction of regional autonomy. The government really changes in the global level; the role of government is completely different⁹.

Characteristic of government power is no longer in the conventional manner with a vital power, centralized, but it was divided, especially with the regional autonomy. Governance with a very strong power was just in the past in this borderless world, and if it is maintained, it will not become reality, because the pedal power has weakened, no longer functioning.

These circumstances affect the way the public view, and their needs. The public's perception of global change into the era of information technology, while in Indonesia's view is not uniformly in the whole structure of community life. There are still some people, even leaders whose view as it was before the era of information technology, and even further behind, and more surprising, still there is a society whose views as purely a human being living in the nature of human relations thinking only in certain groups.

The relationship between community members, according to a study by experts¹⁰, have influenced and entered the information age. The thinkers of the world expressed different views¹¹, related to the dynamics of the

⁷ An instrument of political unification to gradually eliminate plurality into a homogeneous society.

For example in relation to statutory regulations in the field of education. If implemented the same in all parts of Indonesia, would lead to disobedience in certain areas. Various studies reveal that in areas of rainfall is rare compared with other areas, no school children at the time of rainfall. Diaitkan with the implementation of the same law for the whole of the country, the region violated the law, but such a circumstance occurs. This is a challenge in determining the all legal political equivalent

Some time ago there was a group of legal experts who consider that the law should apply equally across the country, in a society which is too *Bhineka* Indonesia. Law equation for all members of society is possible for areas that do not touch the feelings of individual nations, such as areas that are not related to the belief (religion) or the laws of the close familial or religious beliefs.

⁸ Friedman, *Legal Theory*, Marthin Nijhof, Nederland, Translated by Budiarto, RajaGrafindo, Jogjakarta, hlm. 92

⁹ Kenichi Ohmae, *The Next Global Stage, Challenges And Opportunities in Our Borderless World*, Whaton Scool Publishing, Apple Sadle River, New Jersey 07458, 2005

¹⁰ Alvin Toffler, *Megatrend*, Marthin Nijhoff Nederland, Terj. Budiarto, RajaGrafindo, Jogjakarta, 1986, h. 17

¹¹ Alvin Toffler, *The Third Wave*, dan Herman Mynard, *The Fourth Wave* dalam CFG Sunaryati Hartono, Menentukan Politik Hukum Ekonomi Bagi Indonesia Dalam Kurun Waktu Tahun 2004-2009 (Determining Politic of Economic Law for Indonesia from 2004-2009), in *Law and Non Law Dialogue Forum Report*, 7-9 September 2004, (Jakarta: BPHN) 2004, see also Selo Sumardjan, *Adat, modernisasi dan pembangunan*, in *Kumpulan tulisan mengenang Teuku Mohamad Radhie*. UPT Penerbitan Universitas Tarumanegara, Jakarta, 1993, hlm, 77-87

world community which is influenced by a wave of social developments that affect the economic life, the decisions of the state, a way of thinking, especially law¹², which meet the needs of the people in the law where it applies.

The nature of human relationships, from the world leaves its togetherness characteristic in certain group, and sees the man as a unified world society whose principles are not determined solely by himself, but depending on how all members and himself decide together.

This situation reduces the dominant power of the government, as happened also in our country. Government functions in the system of popular sovereignty, and the change in power associated with the integrity that arises in systems where collaboration occurs internalization, and commitment in the implementation. The value of life focuses on the integration of human life and is responsible for all the (quality) of human life, welfare is more determined by the existence or size of self-confidence (trust inner, spiritual Intelligence), and how decisions are determined by the intentions and commitment in its implementation.

Views, values and the standard of the peace / welfare, the real solution to this problem already exists in our nation's philosophy, Pancasila (Five Principles), which is set forth in the basic law of the 1945 Constitution, namely democracy, independence, and familial. But in practice depends on the government's legal policy. The central power is decreased as the system of governance is in regional autonomy. To achieve improved welfare interrelation is increased nationally in all business structures (small, medium, and large businesses have capital). The existence of legal opportunities for foreign investment while protecting the national effort, and attention to the application of international rules relating to the justice effort / nondiscrimination.

Views shifting above influence the government. Currently the government is required to portray the power of principled integrity, implemented in collaboration system that resulted in internalization, which encourages the creation of bureaucracies that have life values that focus on the integration of human life and is responsible for all the (quality) of life. Having the principle that the welfare of the law that was created with the basic intention and commitment to do it.

The question that arises is, what and how the government legally motivates people to have a focus on the integration value of human life and responsibility in creating the common good in order to interact with parts of Indonesia, and other parts of the world. How can the government create a law that contains properties that community relations had stepped on the stage of national unity in the community, in the implementation of decentralized systems to determine the choice of cooperation with foreign investment and new

technologies to meet common needs in accordance with that contained in Article 33 paragraph (4) 1945 Constitution. And whether the legal steps are strategies that must be taken in the empowerment of traditional farmers who do not conflict with the principle of decentralization in national and international environment.

Those Issues color our public room followed by a change in the various fields, both in the field of constitutional, political economy and technology, and laws that describe the dynamics of life experienced by a country's democracy, as experienced also by other major democratic country like India, and the United States¹³. Indonesian state administration began to show a new face by not maintaining living constitution, constitutional reform carried out since 1999 until 2002 by the Assembly, the fourth amendment to the 1945 Constitution was born, which, although it is not changed in its entirety, but it brings new hope, the further improvement on the basic characteristics of Indonesia as a democratic country.

State law (the existing legal system) of Indonesia today is seen from the substance, form, and its effectiveness show that:

- The substance of the law, relating to the principles and rules, there are different legal systems, such as a system of customary law, religious legal system, legal system of the west, and the national legal system. Customary law system is a result of the politic of law during the colonial period¹⁴.
- Viewing from the form, the legal system in Indonesia is more reliance on other forms of written law. Written rules are guidelines and minds of the executive and law enforcement. Customary law or Islamic law is only used in cases that are legally defined to be examined and decided upon by the law. Jurisprudence in considering a decision is used only to support the written law which became the main pedestal¹⁵.
- written law that established the Dutch East Indies government era still exist, which are processed to be replaced with new laws in accordance with the legal idea of Indonesia.

Indonesia which is increasingly required to perform a new role after economic globalization, especially with the ratification of the Law No. 1 of 1994 on the WTO (World Trade Organization), namely the welfare state created both nationally and internationally on the principles of justice even more optimized. By the reatification of this agreement based on the consideration that the principles of justice with welfare objectives adopted by the WTO is not contrary to the purposes of the state philosophy of Pancasila, and the

¹² Mochtar Kusumaatmadja, Fungsi Hukum Dalam Pembangunan Nasional, BinaCipta, Bandung, hlm

¹³ Bomer Pasaribu, Re-arrangement Effort of State Auxiliary Bodies Through Regulations, Law and Non Law Dialogue in State Law, held by BPHN in collaboration with Airlangga University, Surabaya, 2007.

¹⁴ Negatively, the legal political was intended to let people live in the traditional legal environment and is restricted to entering the legal system treated for a modern social

¹⁵ Bagir Manan, Dasar-Dasar Konstitusional Peraturan Perundang-Undangan Nasional (the Constitutional Basis of National Regulations), Paper, UNPAD, Jakarta, 1993, hlm. 2

country's basic law, the 1945 Constitution.

The complexity of problems faced is increasing. For Indonesia, as other developing countries, was straightened up in the implementation of priority development of people's welfare, should also carry out a fair treatment of foreign businesses through national laws and policies.

Problem after problem that results in trauma which befalls this nation, both in the economic, political and uncertainty, among others, after the appearance of the monetary and financial crisis which led to the massive changes that some circles viewed it as a big-bang reform, and is even called the revolution in various fields including legal, information technology era of widespread has an impact on law enforcement which is not ready with its settings.

Been considered to form the law as a means for increasing government role in protecting and empowering the people in line with the implementation of the principles of world justice is shown in the discussions in academic circles and the bureaucracy and the people are represented by non-governmental organizations (NGOs), among others, about the implementation Article 33 paragraph (4)¹⁶, namely the implementation of democratic principles in doing business, which contains the principles of justice.

The principle of justice to appear in discussions with a basic discussion on the views of experts in the field of law, among others, Mohamad Koesnoe with thoughts that economic democracy is reflected in the 1945 Constitution is the basis of the concept of justice to be achieved in sustainable development¹⁷.

The basics of political philosophy to social welfare in the state shown as a rationale for the thinkers, about what justice and its benefits, among others, by John Rawls¹⁸, that justice is combined with the ideals of social unity alleviate the tendency of instability due to the anxiety community members who feel no treated fairly. This was based on two principles of justice that Rawls suggested, namely, First; Every person has an equal right to freedom of the broad base, covering the same freedom for all people, and second; social and economic inequality must be arranged in such a way that can be expected to benefits for all people, and the

positions and offices open to all people.

Democratic interpretation obtained by combining the principle of fair equality of opportunity with the principle of differentiation. This principle ignores the principle of differentiation efficiency by emphasizing the benefits for the parties involved, including government, businesses and people, which must be stipulated in the regulations/law. Law as a tool in the development order¹⁹, working to create justice. As a result, among others the existence of justice with more democratic principles in accordance with that stipulated in the basic law of the state, the Constitution which is amended for the fourth time. This brings new hope in pursuing a future Indonesia. However, within 5 (five) years of implementation, the basic provisions of the amendment indicates its vague, among others, in relation to the empowerment of the people, like farmers who had not optimal, although it occurred also in other countries, such as in Asia and Africa North. Farmers' daily life such as clothing, food, board and others, such as serimonial purposes, education, health, and other demands, is considered ignored by the government the community.²⁰

C. Positive Law and Indonesia's *Ius Constituendum*²¹ Format in Responding Global Development

Liberalization of trade and investment coupled with the rapid advances in communications technology between nations requires a fast of anticipation by every country to be able to compete with other countries in this field, both in regional and international forums, such as APEC, AFTA, and WTO. Meanwhile, the realization of an era of global free trade (free trade globally), on the one hand, has become an obsession for some countries, especially the industrial countries / advanced. On the contrary, for some other countries, particularly countries that weak economic conditions, free trade became a serious threat that could further weaken the state and its economic capabilities. However, inevitably, sooner or later, the last group of countries should participate in the process of free trade²²

Today the global views and questions arise about the authority of t at the global level why the third world country

¹⁶ Article 33 paragraph (4) 45 Constitution determines that the national economy was held based on the principle of economic democracy with the principles of togetherness, efficiency, equitable, sustainable, environment, independence and keeping a balance of economic progress and national unity

¹⁷ Moh. Koesnoe. Nilai-Nilai Dasar Tata Hukum Nasional (Basic Values of National Law Order), UII Press, Jogjakarta, 1997, hlm.46

¹⁸ John Rawls. A Theory of Justice, Harvard University Press, 1995, Teori Keadilan, Translation by uzair Fauzan, Pustaka Pelajar, Jogjakarta, hlm. 672

¹⁹ Mochtar Kusumaatmadja, Fungsi Hukum Dalam Pembangunan, BinaCipta, Bandung, 1979, hlm.11

²⁰ Landsberger, Land and Prosperity and Development Countries, , Harvard University Press, Boston, USA, 2002, p. 21 Difficulties experienced by the farmers already since the first place is because agricultural land is increasingly narrow, with the involvement terutam several factors such as institutional weaknesses, low education and others. Pemeintah efforts to protect the farmers should be a priority, along with increasingly strong demand to maintain rice self-sufficiency, improving the quality of human resources, understanding of marketing and information technology products, as well as other demands included in the global competitive arena..

From an economic standpoint insoluble farmer empowerment for its existence as a group of agricultural households land users (PPL). They usually have no land or only a narrow berlahan food sector, especially rice.

On the basis of the existence of such farmers, the need for efforts to change the conditions and the behavior of poor farmers in order to fulfill the vision of democracy and independence are set forth in the Constitution 45, Article 33 paragraph (4) The fourth amendment, to be independent and productive in meeting the needs of life.

²¹ *Ius constituendum* means aspired legal to in the future. *Constituendum ius* can be a concept or idea was a bill.

²² Justice effort based on democratic principles of justice apply effort in conducting the general business world that influenced the development of the thinning of the traditional elements in the economic field since the beginning of the industrial revolution in the 16th century. And the current increased with the emergence of the information revolution is increasingly showing backwardness of third world countries

called the undeveloped to the industrial countries²³. What standard is used, how to measure it, and who is determining it.

Global view of the existence of the third world can be accepted when associated with the technology which has a role in changing the human civilization. This happens also when the first production machines found in the earliest times revolutionized industry, human civilization through massive changes²⁴.

A new enlightenment is again offered. Information technology revolution is promising the human interaction which is better, fairer, and more efficient. Global information increasingly strained view of the third world behind, because the success of information technology that unites computing power, television, radio and telephone to be integrated²⁵, which is a combination of the revolution computer.

Information technology blurs the traditional boundaries that differentiate the business, media and education. Information technology also encourages re-interpretation of trade and investment. This revolution certainly permeates all aspects of life, and today's politics and the fuss surrounding the control of the technology continue to grow this. One thing that is a challenge for all nations, communities and individuals.

Basically, the technology that enables and facilitates people to interact with fast, easy, and affordable way has the potential to encourage the development of a democratic society. Such technology should be owned by the people to help people organize themselves in a modern, efficient, and in turn the people will take benefit.

The decision states, ways of thinking, socio-economic development affect the formation of the law. In addition to referring to the development of globalization, the establishment of law in Indonesia should also consider the condition of Indonesia's pluralistic society, not only related to ethnicity, race, and religion, but also about the mindset and level of education. Pluralism in the society order is not only because of the diversity order of society which behavior has been inherited several generations, but also caused by the differences of the changes and development of community structures that functionally delivery needs, values, beliefs, beliefs and goals that vary among community groups²⁶.

By looking at things above, the Medium Term Development Plan for the National (RPJM) 2004-2009 by Presidential Decree

No.7 of 2005 has outlined some of the agenda which is basically trying to find a solution to many problems caused by conflicts of interest of international and local due to globalization. Some RPJM agenda that reflects this is²⁷:

Agenda on creating a safe and peaceful Indonesian, which among others made by the strategic steps as follows:

- Increasing mutual trust and harmony among community groups; Improved security, order, and crime prevention; cultural development based on noble values; Prevention and control of separatism; Prevention and control of terrorist movements; Stabilization foreign policy and increasing international cooperation.

Thought About Agenda on Creating a fair and democratic Indonesian, which among others made by the strategic steps as follows:

- Reform the legal and political systems; Elimination of various forms of discrimination; Respect, recognition, and enforcement of law and human rights; enhance the quality of life and the role of women and child welfare and protection; revitalization process of decentralization and regional autonomy; creation of clean governance and authoritative; Realization democratic institutions are more robust.

Agenda on Creating a fair and prosperous Indonesian, which among others made by the strategic steps as follows:

- Poverty reduction, improvement of investment and non-oil exports; Improving the competitiveness of manufacturing industry; revitalization of agriculture; Empowering Cooperatives and Micro, Small and Medium Enterprises; Improving the management of state enterprises; increase the ability of science and technology; Improved employment climate; consolidate macroeconomic stability; rural development; Reducing regional development disparities; Improving Public Access to quality education; Increasing Community Access to quality health care; Increased protection and social welfare.

By determining the agenda and some strategic moves in the direction it is expected that the development of national laws become clearer. Thus, as much as possible to avoid

²³ Fritjof Capra, *The Turning Point*, Harvard University Press, Boston, Massachusetts, USA, p. 5

²⁴ At 16th century industrial revolution, people were not given freedom of choice but to work in factories and indoctrinated to follow the pattern like the current conveyor-style Taylorism. Productivity is based on the principle of efficiency for each worker, measured by the success of the sacrifice of human dignity, creativity by following the movement of the machine. Measurement of efficiency is done by pressing the lowest possible cost of raw materials, costs of production technology, and labor costs of workers. The pattern of human interactions and unequal menindas. Orang directed to serve the owner of the factory, usually men, and women in charge directed at home without receiving compensation, and ignored, are not counted as support element for efficiency. Multilevel repression occurred as a result of the industrial revolution spurred by the discoveries of science and technology at the time of production

²⁵ Besides the revolution in personal computers, data transmission and compression, bandwidth (bandwidth), data storage technology (data storage) as well as transmitter of data (data access), the integration of multimedia and computer networks. This technological revolution convergence of various media together. Among other sound media (voice, audio), video, image (image), graphics, and text.

²⁶ Bandingkan dengan yang dikatakan oleh Naboyuki Yosida, dalam *Law in The Developing Countries*, Harvard University Press, Boston, Massachusetts, USA, 2000, pg 35, who said that the law in most developing countries consists of; *Original Law, Development Law, dan Foreign Law.*

²⁷ Look at Presidential Decree No.7 of 2005 on the Medium Term Development Plan for the National (RPJM) 2004-2009

overlaps or even conflicts (contradictions) of a single rule with other rules. The entire legal establishment is expected to support each other to realize a national legal system aspiration.

This must be done because the overlapping symptoms, especially the conflict among the rules (even more conflict between the rules that lower the higher regulation, or between the Regional Regulation Act, a violation of any law drafting activities of legislation (legislation)²⁸. Because conflict or inconsistencies in the legislation it destroys the entire legal system, resulting in legal uncertainty and the loss of "clue" of legal political predetermined.

The formation of legislation in the development of national legal systems should be perceived as one of the legal reform efforts to be able to direct and accommodate the needs of law in accordance with people's legal consciousness that developed in the direction of modernization according to levels of development progress in all areas. It is expected to achieve order and legal certainty as infrastructure that must be shown to the increasing realization of the unity of the nation they serve as means of supporting the progress and comprehensive reform.

Especially on the compiler (Draft) of the Constitution and legislation in the field of other Economic Law²⁹, should be noted 3 (three) aspects, namely:

- protection of the coordination role of market disturbances (to prevent disruption of the market coordination);
- coordination of the actors (stakeholders) market;
- coordination between the various changes that (will) be determined by various laws and regulations, so that continuity is preserved in the regulation of Economic Law, in order to form a political / economic strategy that is clear and focused.

In addition, it should also be aware that the national law basically is a system³⁰, which is based on Pancasila (Five Principles) and the 1945 Constitution, in addition to a number of legal principles like the principle of archipelago, nationality, and diversity.

Government's position that is in transition between the traditional role of government concerning the welfare and wealth distribution. Government is the distributor, not a welfare facilitator. The government does not create prosperity. Welfare is found among other facilities created by the government, such as taxes, and this is a form of government intervention that can be enjoyed by people

The Politic of law position in the global stage is to create the law as signposts to reach the vision, give direction to the government in the desired area to function. For example in relation to the achievement of public welfare can be done through taxation, education etc.

In connection with regional autonomy, then the law should determine the necessity for a prosperous region to set aside a certain percentage of the central government. In terms of taxation, in the end a prosperous region will be a source of tax increases, and along with it, which raised taxes on affluent areas should continue to be maintained, allowing as far as political wisdom. Implementation mechanism is through technological advances and new technology platforms have the potential to raise taxes in a much more simple and inexpensive³¹.

In practice the government should have a vision of long-term changes, and communicate to the broad society with a simple presentation in order to understand all the layers. The whole of government activity until the slightest activity should be informed to the public. The politic of law needs to consider and contain the long-term vision³². Development came up with a simple vision, and can be implemented by the whole community.

Based on the above descriptions, then today needs long-

²⁸ M.R. Mok :*Economisch recht'dalam "Problemen van Wetgeving"*, Kluwer, Deventer, 1982, hlm. 145

²⁹ Verloren van Themaat ,*Problemen van Wetgeving*, Marthin Nijhof, Nederland, 1989, hlm. 151

³⁰ BPHN, Pola Pikir dan Kerangka Sistem Hukum Nasional Serta Rencana Pembangunan Hukum Jangka Panjang, BPHN, Jakarta, 1995/1996, hlm. 19; Similarly Subekti, Some Thoughts Concerning the National Legal System to Come, The National Law Seminar IV, in 1979. See also Kusnu Goesniadhie S, Harmonization of Law in the Perspective of Legislation (Lex Specialist One problem), JP Book, Surabaya, 2006, pp. 75. System is an arrangement or regular order, a whole composed of parts related to one another, arranged according to a plan or pattern, the result of a thought to an end. This system consists of a number of elements or components or functions / variables that interact always, related to one another by one or a few principles and interact. All the elements / components / functions / variables were adrift and organized according to a structure or a certain pattern, so always interact each other and interact

National legal system not only consists of rules or legal norms alone, but also covers all institutions and organizations apparatus, mechanisms and legal procedures, philosophy and legal culture, including the behavior of governments and public law.

³¹ The best way is through simplification, set forth in the law. In Western countries, taxes are required to members of the public and companies, which sometimes cause problems, and therefore needs to improve oversight and enforcement are transparent, with a simple process, payment directly through to the state treasury accounts without going through bureaucratic

³² Problems associated with this vision can be seen in other countries, such as Southeast Asia, like Singapore which has a long-term desires as the de facto capital of ASEAN, or Malaysia who want to create the Multimedia Super Corridor. Vision is not confidential, and open, transparent, disuluhkan to the whole society about what can and should be done to realize the vision, and why people should obey to do so. Must demonstrate what "is contained in the Vision", and not only as mere words

A vision should not be a mere collection of words and aspirations. Vision should contain clear objectives and practical that can be achieved. Only by means of long-term commitment to this can be done. This requires from the government a visionary approach, which seems quite far in the future, beyond the next election cycle.

Kenichi Ohmae, Op;Cit, 192 "Economic miracle" may be taken as an example to motivate Indonesia. Japan's economy after World War II, achieved through the vision of so-called trade value added (Kako boeki). Japan at that time was a mineral, which must import natural resources and add value and then export. Vision to achieve "added value" to be disseminated to all levels of society, and governments to create policies and laws containing tax payment obligations, to motivate community members to share responsibility for reaching the vision by working hard, and people who feel that they can provide added value through working, get welfare.

term vision that contains three things: First, contemporary society, that now live in a world without boundaries, and can no longer emphasize the national interest above everything else, but also consider the influence globalization. Second, in-depth interaction with information technology and life in the labyrinth of cyberspace.

Third, increased welfare achieved through the role of government that comes with and distribute a vision, among others, attract global investors, with the aim to add value to well-being. The concept is simple and clear direction, and continue to be maintained.

Although it is not possible to elaborate the map of the certain future, it is necessary to express the view proposed ways to build a vision that can be done in following political globalization through law in the global stage that it supports:

- Achieving the vision is to empower communities (both small businesses, menengah, and businesses large capital) with respect to welfare in the implementation

of regional autonomy in addition to the welfare center.

- Need to invite capital from other parts of the world. In this regard, the region needs to be given the opportunity to receive foreign capital by taking into account national interests. The right to be given to regional implementation.
- The area is also used as the entrance area of wealth from the outside world. It is a strategic business unit to attract and create capital and companies in the new global economy. Motivate local governments to prepare themselves to implement the vision of socialized in the community in order to achieve optimization.
- The balance of central and local welfare be maintained in its programs and its implementation.

Politik of Law that supports such vision should have a shared commitment in practice, because it would be associated with all devices that is traditionally a part of the political and economic systems that appear with new faces.

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