

RATIO LEGIS GLOBALIZATION AS AN ASPECT OF LEGAL DEVELOPMENT IN THE SYSTEM OF TERMINATION OF PROSECUTION IN THE PROSECUTOR'S OFFICE

¹ Herlina Hanum Harahap, ²Marzuki

¹ Universitas Muslim Nusantara Al Wasliyah, Medan Indonesia

² Universitas Islam Sumatera Utara, Medan Indonesia

Email - ¹ linahrp4@gmail.com, ² marzuki.lubis@fh.uisu.ac.id

Abstract: *This research aims to analyze the Logical Ratio on Termination of Prosecution associated with the influence of legal globalization in Indonesia. This type of research is joint legal research (legal research) and empirical law. The results of the study found that development is a form of social change that is directed and planned through a variety of policies aimed at improving people's standard of living. The opening of the 1945 Constitution has listed its national development goals. The welfare of society is a state that has always been the ideal of all nations in the world. Various theories about development have been widely issued by western social experts, one of which is also embraced by the Indonesian nation in its development program is modernization theory. Society and culture are nothing but duality in the cultural element of the law that has an important influence in the work of a large system, called the legal system. So it's no wonder that legal experts say that culture and legal awareness are the only sources and binding powers of the law. Globalization that has had a great influence on the legal order in Indonesia must be maintained so as not to cause harm to the Indonesian nation itself.*

Key Words: *Globalization, Legal Development, Prosecution.*

1. INTRODUCTION:

The 21st century is a century of globalization characterized by openness and freedom in various areas of life. The 21st century is a hopeful century, loaded with positive opportunities that can be utilized for human life opportunities, also loaded with negative challenges that must be kept away because it will damage human civilization, namely religious, social, economic, policy, security, education and so on. Globalization, for now, is much discussed in addition to the terms modernization, post-modernism, Post Colonialism, and post imperialism.

Satjipto (1996) stated that the law practiced in Indonesia must have a national spirit, the spirit of the original law in Indonesia, it is necessary to reform the legal system, especially in the field of prosecution in the prosecutor's office. When the transfer of files from the level to the prosecutor should be able to analyze not only the issue of fulfilled administrative provisions but also must be seen in substance of a case. This is where a more observant understanding is needed by including the element of humanity in the law. Cases that are considered in substance do not meet the case that needs to be continued to the court then the prosecutor can process until the case is decided in court. However, if the case can be resolved at the prosecutor's level then the prosecutor can resolve the case up to the prosecutorial level by using the approach of the case resolution model based on restorative justice. Settlement of cases that only reach the level of prosecutors until finally enough not to be followed up to the court does require courage and comprehensive understanding.

The basis of the consideration that the law was created indeed to make man happy, the law was created for man, the law should not be the shackles of applying justice are the sides of the consideration that the law is not only a matter of standard provisions that have been written by the law but further that the law is a matter of man and all the fireworks that decorate from the course of human life.

Termination of prosecution with a restorative justice model in the prosecutor's office will make the law undergo changes and developments because the device of law enforcement tools in Indonesia is not like a certain machine that any type of case that is delegated to law enforcement agencies will produce the same verdict despite having a different background. Different backgrounds, different motives, and different situations from the cause of the crime will cause the law to consider the need for proper handling as well. Globalization is understanding something without being rigid and willing to accept the social realities that occur in society.

In connection with the meaning of the power of the Prosecutor in conducting state power in the field of prosecution independently. Prosecutors in carrying out their functions, duties, and authorities regardless of the influence of government power, and the influence of other powers. This means that the state will guarantee the Prosecutor to carry out his profession without intimidation, interference, temptation, improper interference, or untested disclosure of the truth, whether against civil, criminal, or other liability.

According to article 14 of the KUHAP, the public prosecutor has the authority to close the case in the public interest. In the prosecution of criminal cases, there are two principles that apply, namely the principle of legality and the principle of opportunity. The two principles are in opposite positions, on the one hand, the principle of legality requires the prosecution of all cases to the court, without exception. On the other hand, the principle of opportunity provides an opportunity for the Public Prosecutor not to prosecute criminal cases in the Court.

The authority to set aside cases in the public interest is the application of the opportunity principle which is only owned by the Attorney General as regulated in Article 35 letter c of Law Number 16 of 2004 concerning the Republic of Indonesia Attorney, this is different from the termination of prosecution. The power to stop prosecution belongs to the Public Prosecutor. Regarding the termination of prosecution, it is regulated in Article 140 paragraph (2) of the Criminal Procedure Code, which states that the public prosecutor "can stop the prosecution" of a case. In full Article 140 paragraph (2) letter a KUHAP In the event that the public prosecutor decides to stop the prosecution because there is not enough evidence or the incident turns out to be not a criminal act or the case is closed for the sake of the law, the public prosecutor shall state this in a decree.

In the 1945 Constitution, there is no article that directly becomes the basis for the establishment of a new legal order in the country, but if we look at the content of the opening of the 1945 Constitution on four points of thought concerning national management" and the four points of state objectives and the principles of state law and constitutional government described in its explanation, it can be used as the basis for the formulation of the concept of reform strategy and the development of national law.

2. THEORITICAL BASIC

Globalization is a process in which individuals, groups, and countries interact, depend on, relate to, and influence one another across national borders (Ihsan, 2006). According to Ahmad Suparman's opinion, globalization is a process of making something (object or behavior) a characteristic of every individual in this world without being limited by territory. Globalization does not yet have an established definition, except for a working definition, so it depends on which side people see it (Juwana, 2014).

Even in the economic aspect alone, globalization has a different meaning depending on the interests of the parties that give understanding about globalization from this point of view, globalization is nothing but (Bhagwati, 2007):

- a) Capitalism in its most up-to-date form. Globalization is a new style of imperialism, in which developed countries compete to rule developing countries with the tools of international economic institutions.
- b) According to Jan Aart Scholte in Muhammad Tohir Globalization has some understanding of equivalent
- c) Internationalization: Globalization is defined as the improvement of international relations. In this case, each country retains its own identity but becomes increasingly dependent on each other (Bamyeh, 2000).

Globalization is a complex process, driven by various influences, especially political and economic influences. Globalization changed everyday life especially in the developing world, and at the same time, he created new transnational systems and powers, more than just a backdrop to contemporary policies. Globalization has transformed the institutions of society in which we are located, globalization is directly relevant to the rise of new individualization (Giddens, 2000).

3. RESEARCH METHODS:

The type of legal research that the author will conduct is a combination of normative legal research and legal empirical because this author's research seeks to collect secondary legal materials.

4. RESEARCH RESULTS AND DISCUSSION:

a. Logical Ratio on Termination of Prosecution is associated with the influence of legal globalization in Indonesia

4.1. The Influence of Globalization and Modernization in the Substance of Law

Globalization and Modernization in influencing the substance of the law, the philosophy of Pancasila is the national identity of the Indonesian nation. The noble values of Indonesian personality contained in the philosophy of Pancasila include manners, mutual respect, mutual respect, upholding human rights, cooperation, patriotism and nationalism, and justice in all areas of life. Therefore, the life of the nation and state must always hold fast to Pancasila in various aspects of life.

Law as a tool that forms a provision that governs to realize a fair and prosperous society, at this time continues to develop following the needs of the community. In its current development, the law is growing rapidly due to several factors, be it changes in people's habits, as well as the role of state legislatures in seeking legal reforms that adapt to the development of the times. The function of the law itself is to realize an orderly order of people's lives and to keep the rights and obligations in public relations from being problematic. The purpose of this goal, the law has a role to

minimize persuasively the conflicts that will occur in the interaction of the community with the surrounding environment.

The development of the legal system is inseparable from the impact of changes in science and behavior of a society that continues to change. In the current era of Globalization, the elements of modernization and increasing intensity of development are very influential to the changes and developments of the law that had previously been regulated. However, modernization and development does not necessarily change the existing rule of law, but also the law that accommodates so that modernization and development that occur does not cause a loss to society and the country.

Modernization and Development will be discussed here regarding forms in the legal system that have an impact on social change in society. Modernization is a social change that shows aspects of systematic use of mechanical tools while developing as a desired and planned social change (Raharjo, 2009). Globalization is more than just a backdrop to contemporary policies, but it is also a system for transforming institutionalized institutions of the society in which one is located (Giddens, 2000). Even globalization will also become an increasing force that touches almost every aspect of everyday life (Sutherland, 2000).

Basically, every human activity needs to be regulated by an instrument referred to as the law. The law here is reduced to legislation made and implemented by the State (Juwana, 2002). The ideals of national law are things that want to be achieved in the sense of application, realization, and implementation of certain values in the system of state and social life based on Pancasila and the 1945 Constitution. Especially in the field of life and economic activities and in order to meet the global community, the national legal mind is in need of more serious studies and development in order to be able to participate in the global economic life system safely, so as not to harm and harm by other parties (Redjeki, 2000).

Legal institutions are among the institutions or social institutions that exist, as well as institutions/family institutions, religion, economy, and so forth. The law is however indispensable to regulate people's lives in all aspects, whether, in social life, politics, culture, education, as well as what is quite important is its function or role in regulating economic activities (Lubis, 1986). In this kind of economic activity, the law is needed because of the limited economic resources on the one hand and the unlimited demand or need for economic resources on the other hand, so that conflicts between citizens in the fight for economic resources will often occur (Suhardi, 2002). Thus based on historical experience that the role of the law must be measurable, so as not to turn off the initiative and human creation power that is the main driving factor in economic development. To be sure about the legal role in development, modernization, and industrialization, another description of Rostow is needed, whose observations are based on investigations of a number of countries (Britain, the United States, Germany, France, Russia, Japan, Mexico). In the observed demonstration, the modernization process unravels in several stages. Rostow pointed to the role of law in other fields such as economics, the formulation of the rule of law, or the implementation of more concrete general policies, such as patent lawmaking, and railway law. Then it has an impact on the industrial aspect, if the industry has developed well-meaning in an environment that has the infrastructure (including mentality and skills), then it has an infectious power that is either backward, sideways, or in the future.

Development is a form of social change that is directed and planned through a variety of policies aimed at improving people's lives. The preamble to the 1945 Constitution has listed its national development goals. The welfare of society is a state that has always been the ideal of all nations in the world. Various theories about development have been widely issued by western social experts, one of which is also embraced by the Indonesian nation in its development program is modernization theory.

4.2. The Influence of Globalization and Modern in Legal Culture:

Building and realizing the law in people's lives will certainly be faced with various challenges, both caused by internal and external factors of the community itself. But the law will be good if the community accepts it voluntarily. On the contrary, the law will be bad if the public cannot accept it because it cannot safeguard the interests of the community. Thus the law and the interests of society must have a balance, in the sense that the law was created to protect the interests of the community. Sociologists view the law as a product of culture. The law is but an inanimate thing, meaningless if it is not made with an awareness of its urgency and sincerity to carry it out. The law will only be a joke and a joke if that makes him the number one violator of the law, and who carries it out is a lawless nation.

The starting point of all legal theories basically pivots to one thing, namely human and legal relationships. The more the basis of a theory shifts to regulatory factors, the more it considers the law to be a formally legalistic closed unit. Instead, the more it shifts to humans, the more the theory opens and touches on the social mosaic of humanity (Tanya, 2006).

Friedman (1979) included the legal culture component in the theory of the legal system, namely: (1) structure, (2) substantial (substance), and (3) culture (legal culture). These three components of the legal system are often used as standard references for measuring law enforcement in a country.

Once we see the anarchic events that have broken up this nation's recent unity, the government should make it clear and deal with it appropriately. As good citizens, we should also be able to maintain the existence of Pancasila, by living the content of Pancasila and practicing it in daily life which is the basis of the state, the purpose of the nation's life, the view of national life form the personality of the nation that distinguishes us from other countries. And we are not only busy studying Pancasila, debating about Pancasila, but we ourselves have never practiced it in our daily lives.

Society and culture are nothing but duality in the cultural elements of the law that has an important influence in the work of a large system, called the legal system. So it's no wonder that legal experts say that culture and legal awareness are the only sources and binding powers of the law. But to improve the degree of legal culture is not a matter of *mu-dah*. A task that is not light, because the legal awareness of a nation comes from the feelings and beliefs of individual laws. So it is needed efforts to build the belief of individuals of Indonesian society that the law is a milestone in the country. Legal culture is not just a monopoly of society, in it, there is the participation of rulers and legislators as teachers who should deserve to be "treated" and "emulated", as well as wise and of course virtuous. Not the other way around, just being an official who enjoys the chair by forgetting the duties and duties as a public servant. As a result, there is a society that is out of control and out of control, because of its control of society in this case state officials- forget the community. In addition, the community only feels used as an object of interest of officials alone or used as a dairy cow that is used to satisfy the interests of the ruler. As a result, there is no more legal awareness in the community, the law is only limited to the past wind that is not ignored by the lower layers. There is no legal culture when it is not supported by a clear substance and legal structure. The law that has been viewed only sharply downwards and blunted upwards can then be avoided if all the components of the law are able to interpret the law in real terms. Therefore, it is an obligation to review the concept of Legal Culture and strive to construct it into theoretical studies as a very appropriate step in understanding the whole theory of the "legal system." The legislation should come from a "down" vote brought to the "top", and not a mouthpiece of the ruler's interests to tear the people down. Because the law is not only the product of the ruler alone but the result of the manifestation of the values that exist in society. Therefore, efforts to improve the degree of legal culture can be done by doing several ways, such as making legal products that match the voice of the people, not frustrating and miserable people. Nor is it a legal product that contains only personal interests, certain groups that play in it. The law is like a language, grows and develops in a nation, and belongs to the nation. Therefore, the law is based on the character and national spirit of the nation concerned (*volkgeist*).

4.3. Fostering National Law in the Era of Globalization:

At this time, people tend to experience the process towards a global society. The dimension of globalization in *galibnya* is related to various areas of life, including politics, economics, culture, disease, and so on. When referring to Grotius's statement of "*Ubi societas ibi ius* (where there is society, there is a law)" then, the globalization of society has an impact on the globalization of law. This is a logical consequence. That is, the change towards a global society will inevitably give birth to global law because changes to the environment surrounding the law will inevitably affect changes in how the law is created and interpreted. On this phenomenon, Carlos Floria says: "one could say, that modifications to the environment that surrounds legal phenomena - such as economics and politics, among other systems - will inevitably lead to the significant changes in jurisprudence, in the way law is approached and created." (Budiman, 2002).

Globalization refers to the creation of a unity of the world that is borderless between countries / nonborderless has affected almost all human life. One of them is the field of law. The influence of globalization in this field of law. In other areas of law, such as Human Rights Law, globalization gives a result to countries respecting Human Rights as a basic right, as mandated by the UNITED NATIONS Human Rights Charter of 1948, or other international human rights instruments. In the Indonesian context, for example, the birth of human rights-related laws such as Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on Human Rights Courts is a form of harmonization carried out due to the influence of global law, especially the Rome Statute of 1998. In the era of globalization, harmonization of the structure of legal relationships, new substances of legal regulation, and a new legal culture are required. Without harmonization of the legal system, it will give rise to circumstances that can not guarantee legal certainty that can cause disruption in people's lives, unpenitriety and unprotected. In such a perspective, the issue of legal certainty, law order, and legal protection will be perceived as a necessity that can only be realized through the harmonization of the legal system. In a global context, the law not only protects the national interest but also must protect cross-border interests. From a global perspective, the plurality of the legal system in the international legal system is to establish a uniformity of the legal system that can be approved and accepted by all countries in carrying out international trade transactions. Uniformity of the legal system that can unite various dimensions of interest, namely between the internal interests of the country, the national interest with the international interests, and between sectors of national life. In such perspective, the step towards harmonization of the law can be done in two steps of formulation, namely harmonization of formulation policy (regulatory system) and harmonization of material (substance). The first thing

refers to the step of formulating harmonization of the legal system, and the second point refers to the step of harmonizing the norms (legal material). The role of law in globalization, for example in economic globalization is in the regulation of human activities in the fulfillment of needs through the trade of goods and services, being the proper disclosure of new forces that want the formation of community welfare. In addition to the laws here to protect, regulate and plan economic life so that the dynamics of economic activity can be directed to the progress and welfare of the whole society, economic globalization can not be avoided by any country (Ngadino, 2014). The development of the legal system should be interpreted as the structure of law or law as an institution in the sense law enforcement organizations, the renewal of this field is based on the fact that during this time, the law tends to be used as a tool of the ruler, as a tool of legitimacy or justification against the actions of the government, in other words, the law has been co-opted by and enslaved to the power of the ruler so that the law tends to serve the will and will of certain rulers and elites. In the normative state as stated in the 1945 Constitution formulated, that Indonesia is a country of law, not a state based on power. So the 1945 Constitution requires the state of Indonesia to be a state of the law by guaranteeing the rule of law, the principle of equality that implies the principle of freedom, the principle of democracy, and the principle of government serves the people.

5. CONCLUSION:

- The development of the legal system is inseparable from the impact of changes in science and behavior of a society that is constantly changing. In the current era of Globalization, the elements of modernization and increasing intensity of development are very influential to the changes and developments of the law that had previously been regulated. However, modernization and development do not necessarily change the existing rule of law, but also the law that accommodates so that modernization and development that occur does not cause a loss for society and the country.
- Society and culture are nothing but duality in the legal cultural element that has an important influence in the work of a large system, called the legal system. So it's no wonder that legal experts say that culture and legal awareness are the only sources and binding powers of the law.
- The development of the legal system should be interpreted as the structure of law or law as an institution in the sense of law enforcement organizations, the renewal of this field is based on the fact that so far, the law tends to be used as a tool of the ruler, as a tool of legitimacy or justification against the actions of the government, in other words, the law has been co-opted by and enslaved to the power of the ruler so that the law tends to serve the will and will of certain rulers and elites. In the normative state as stated in the 1945 Constitution formulated, that Indonesia is a country of law, not a state based on power. So the 1945 Constitution requires the state of Indonesia to be a state of the law by guaranteeing the rule of law, the principle of equality that implies the principle of freedom, the principle of democracy, and the principle of government serves the people.

REFERENCES:

1. Bamyeh, Mohammed A. *The Ends of Globalization*. Minneapolis. University of Minnesota Press. 2000.
2. Bhagwati, Jagdish. *In Defense of Globalization*. Oxford University Press. 2007.
3. Budiman, Hikmat. 2002, *Lubang Hitam Kebudayaan*, Yogyakarta: Kanisius.
4. Friedman, Lawrence Meil. *Law and Society; an Introduction*, (Prencite-Hall Foundations of Modern Sociology Series, Englewood Cliffts, Standford University, New Jersey, 1979.
5. Giddens, Anthony. *The Third way Jalan ke Tiga Pembaharuan Demokrasi Sosial*. Jakarta. PT. Gramedia Pustaka Utama. 2000.
6. Ihsan, Faris Rifqi. *Globalisasi Ekonomi dan Dampaknya bagi Indonesia*. Kompasiana. 1November 2012. Lihat Werner Menski. *Comparative Law in Global Context*. Cambridge University Press. 2006.
7. Juwana, Hikmahanto. *Bunga Rampai Hukum Ekonomi dan Hukum Internasional*, Jakarta: Lentera Hati, 2002.
8. Juwana, Hikmahanto. *Hukum dan Globalisasi*. Bahan Kuliah "hukum Ekonomi" PDIH FH UNDIP.2014.
9. Lubis, Mulya. *Peranan Hukum dala Perekonomian di Negara Berkembang*, Jakarta: Yayasan Obor Indonesia, 1986.
10. Ngadino, "Peranan Hukum dalam Globalisasi Ekonomi", *Jurnal Pembaharuan Hukum*, Vol. I No. 1, Januari-April 2014. 2014.
11. Rahardjo, Satjipto. *Pembangunan Hukum di Indonesia Dalam Konteks Global*, Makalah seminar pertemuan Dosen/Peminta Sosiologi Hukum se Jawa Tengah dan DIY Yogyakarta di Universitas Muhammadiyah Surakarta, Agustus 1996.
12. Raharjo, Satjipto. *Hukum dan Perubahan Sosial (Suatu Tinjauan Teoretis Serta Pengalaman-Pengalaman di Indonesia)*, Yogyakarta, Genta Publishing, 2009.

13. Redjeki, Hartono Sri. Pembinaan Cita Hukum dan Asas-asas Hukum Nasional, (Ditinjau dari Aspek Hukum Dagang dan Ekonomi) dalam Kapita selekta Hukum Ekonomi, diedit oleh Husni Syawali dan Neni Sri Imaniyati, Bandung: Mandar Maju, 2000.
14. Sjahdeini, Sutan Remy. *Pertanggungjawaban Pidana Korporasi*, Jakarta: Grafiti Pers, 2006.
15. Suhardi, Gunarto. Peranan Hukum dalam Pembangunan Ekonomi, Yogyakarta: Universitas Atma Jaya, 2002.
16. Sutherland, Peter D. dalam Tulisan Dirk Messner, Rancangan Globalisasi Tantangantantangan Abad ke-21, Shaping Globalisation, Yogyakarta: Jendela, 2000.
17. Tanya, Bernard L. Teori Hukum, Strategi Tertib Manusia Lintas Ruang dan Generasi, (Surabaya: Penerbit CV Kita, 2006).