

3rd IMCoSS 2015

**THE THIRD INTERNATIONAL MULTIDISCIPLINARY
CONFERENCE ON SOCIAL SCIENCES**

5, 6 June 2015
Bandar Lampung University (UBL)
Lampung, Indonesia

PROCEEDINGS

Organized by:



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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the **The Third International Multidisciplinary Conference on Social Sciences (The 3rd IMCoSS) 2015** organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 112 technical papers were received for this conference.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also grateful to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

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LAW FUNCTION AS INSTRUMENT TO BUILD A STABILITY OF MORAL ECONOMY IN GLOBALIZATION ERA

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ABSTRACT - Globalization is a necessity which can't be avoided by the nations of the world. There are Many benefits that appear from globalization process, but also there is negative effect which posed by economic order difference. To cope the negative effect, it need an effort to strengthen the state role which can be done by creation of law instrument. The creation of law instrument based on the Pancasila Ideology and UUDNRI1945-Constituion. Those thing as a fundamental value in constructing the real state sovereignty. The orientation of law creation focused to create the stability of nation interest and global interest. The stability focused on 4 important aspect which are justice, excellence, efficiency, and liberty as fundamental value of moral economic law. Those 4 aspect having a fundamental value which embodied in character of law that protect and succor.

keywords: Globalization, Moral Economy, Stability, Law Instrument.

1. INTRODUCTION

Benefit not only the one of Globalization of Economy promises, but there is a global poverty as the main issue which caused by injustice system of economic global order structure. **Joseph E Stiglitz**[1] a nobel winner on economy, stated five issues that need an attention in the globalization process which are:

- a) *Globalization rules are not fair, specially designed to prosper the industrial developed country. In the reality, several movement were not fair and indicated to the reduction of undeveloped country's ability.*
- b) *Globalization go before the values of goods upper than the other values, such as environment and the life itself.*
- c) *The way of globalization management has diminish most of the developing country's sovereignty, including the ability to create a decisions in the important sector which affected to the society life. That thing must weaks the democracy.*
- d) *While, the pro parties of globalization claims that every people will get an economic benefit, shows a lot of evidence which tells many parties impaired, both developed and developing country.*
- e) *Maybe for the most important thing, the coercion of economic system to the developing country, even for several cases it causing a missed purpose and heavily damaging. Globalization musn't an Americanization in the economic policy and culture, but that is the reality. Thus condition will affected to the furiosity in the end.*

Those opinion explains that, there is another side of the globalization which causing injustice in the global structure and a factor which causing reduction of undeveloped country's ability in the global competition. Those condition shows "free market" and "free trade" as a polite and good clause, used to blurred an injustice reality. The serious issue is an apperance of the losers parties in the cause of the free competition with the economic superior countries.[2]

Globalization process has distort the state's role in every lines of people's life. So, the state couldn't create an essential policies independently in the role as regulator, provider, umpire and entrepreneurs. The state must obeys the transnational law instrument. In specific things, these things supported by the needs to follow or create harmonization againts the international law standarts to avoid by the isolation from the international society[3] Even the *soft law (unbinding legal system)* like *Washington consensus*[4] having a great into force legal system. For now, states couldn't create policies independently without market's approval. State's role decrease because of states weakened by the growth of multinational company's and the investor's power. Global competition threaten the fall of social welfare sectors and disintegrated the social aspect. The subsidy policy is very important for a specific social group. And these thing as a violation and the state "forced" to do a privatization as a basic of public service for the community.

Muladi[5] stated that globalization makes a happines for humanity in social, economy, industrial, financial, politic, international and culture aspect but has negatif aspect such as coprporate imperialism, cultural imperialism, cultural imperialism, and the destruction of environment and culture. Global injustice as a condition such as global poverty not only happens in undeveloped country but also in developed country. Pro parties of globalization assume that equalization of economy is not a responsibility of the economic policy, that is political concern. They said the imbalance and poverty because of population growth beats the economic growth. **Jeremy Seabrook**[6] displays number of the poverty which blurred potrait of neoliberalism such as:

- *More than 849 million of malnutrition people in the world.*
- *Six million kids over the world under 5 years died every years because of malnutrition.*

- 1.2 billions people in the world live with money less than 2 dollars every day.[7]
- 1 % income of the richest people of the world same as the 57 % income of the poor people.
- 12 millions people died every years because of water crisis, 1,1 billion population didn't have a clean water acces, 2,4 billions people live without decent sanitation.
- 40 millions people infected by AIDS.
- More than 113 million kids in the developing world doesn't have a basic education, 60 % of them are girls.
- Women still the poorest from the poor.
- Women works two from the three hours of the world's time of work.

Those data couldn't be easily accepted by the specific group because on the reality the poor people doesn't appear on the surface, or they possibly get hidid to avoid the global issues.

Global poverty is not about a crisis of the resources, but the economic control by the developed country has it roles. Because of that, the state authorities, international institution, charity organ and foundation must take a role of the responsibility to take care of it. Poverty and global issues should become an attention by United Nations and World Bank and they has touched the global poverty issues on their programs.

Global poverty is a serious threat againts the global and national security. **Kofi Annan**, [8] on his report as general secretary of United Nation identified, there are 6 cluster of threat groups that faced by the world nation. The threat are social economic or poverty, infectious diseases and environment degradation, conflict between the states, states internal conflict include the civil war, genocide and massive scale of other violance, nuclear weapons, radiology, chemical and biology, terrorism and transboundaries organized crime. It shows a *warning* of an appereance of asimetric danger as negative effect of global economic development which has create injustice structure. The danger will continous with appereance of social politic danger which are radicalism, separatism, and terrorism.

In the context of national state, poverty is a threat againts the national security. Poverty is a very strategic issues in the concept of comprehensive security. **Muladi**[9] stated, the comprehensive security concept promote a Human security to replace the mind frame that oriented to the *state centrisme*, and leaves the security scope to reflects the unsecure condition that commonly faced by the people, individually and social order.

Poverty condition placed Indonesian government in the dilematic position. Government faced by the international demand to do several policy with the free trade which affected to rule out the society. In the other side, government asked to create a policy that take sides to the poor society based on the preamble of UUDNRI 1945 and articles on the body.

Indonesia in the globalization of economy process could be called as *the lossier* especially post of

economic crisis on 1997 which consider as multi dimension crisis. IMF plan wasn't sucess taking care of the problem and bringing the nation stuck on the big loan.[10] Policy of privatization and withdrawal any kind of subsidy gradually has increase the society's anguish. The destruction of economic condition increase the number of unemployment and poverty which can't handled by the government.

Law reformation as synthesis againts the crisis until now haven't showed a law models which can gived a happines to the Indonesia Nation. There is several problem that still complicated and need to be solved. One of the issues is apoverity that need to be solved that using law instrument.

Law reformation related to the civilization of Indonesian society as a nation that free to live in dignity. And law's roles become an important thing as an *instrumen or tool of reform and democratization machinery*. Indonesian positive law / Written law, as an instrument to overcome a poverty issues must built in the global context and considering the values and order which develop in the global world society, for example human right, democracy etc. But, the most important thing is the nationality values especially value of national purpose which formulated by the founding father.

2. ISSUES

Based on the description, so there are several issues that will be discussed on this paper which are:

- a) How is the characteristic of law idea in the economic globalization era?
- b) How is the law function to build stability between Indonesian moral and economy?

3. DISCUSSION

3.1 Characteristic of Law Idea in the Economic Globalization Era

2015 global trends 2015[11] identified several factor which could handle and adicted that will manipulate the world until 2015, which are demography, natural resource and environment, science and technology, global economy and globalization, national and international government, future conflicts, and states roles. In the reality, those factor should notice several thing which no tendency or single handled factor that dominated, each control factor has kind of effect in the nations and region differently and the handled factor of globalization will related in a reflection.

Felipe Gonzalez[12] in the Shaping of Globalization explain that globalization of economy, technology, and communication that happening are aims to the negative international development, for example criminality, dope trade, and unemployment. It happen through the boundaries of a counrty. Those Global negative effect to the other country in the world, and we can see from the crisis that just happened, masive poverty, environment destruction, war and huge number of migration flow. It appeared in the case of poverty and human right violence.

Poverty and marginal condition of society can't be separated by the law aspect and government policy, economic, sosial institution and state aspect. Related to those aspect, *Trubek dan Santos*[13] explain that law and development doctrine are related to the three determiner factor which are economy, law and institution condition. Economy will affected the practice and policy of the policy maker and it could be adopted to become an economic theory. So, there will be a region which a metting point between the

institutional practice and economy. But the the measure of the scope contained on the constitution or state's law idea. So, it conclude the law and development doctrine not only related to the economic aspect.

Further more *Trubek dan Santos*[14] maps three step of law idea in the globalization which are stated on the table:

Table 1. The Three Globalizations of Legal Thought

indicator	1 st : 1850-1914 clasical legal thought	2 nd : 1900-1968 the social	3 nd : 1945-2000, Policy analysis, and adjudication
Right	Individual rights property rights	Group rights, social rights	Human right
Equality	Formal equality	Social justice	Non discrimination
Legal ideal	Freedom, system, and legal science	Solidarity, evolution and social science	Democracy, rights, rule of law and pragmatism
Legal core	Private law	Social law	Constitutional law
Legal philosophy	Legal positivisme	Legal pluralisme	Multiple normative reconstruction projects
Normative ideas	Right, Will, Fault	Social welfare	Human rights and social policies
Governance idea	Unitary state	Corporatism	Federalism
Societal unit	People	Social classes, national minorities	Plural identities
Socio legal unit	Nation State	The institution	Civil society
Boundary	Law/Morality	Law/society	Law/politics
Legal instrument	Code	Special legislation	Constitution, treaty, charter
Legal tehnicque	Deduction within coherent and aoutonomus legal order	Rational development of law as means to social ends	Public neoformalism and balancing of conflicting considerations
Legal agency	Law professor (drafts code and expound it	Legal sociologist and legislator and administrator	The judge (and the litigants)
Economic image	The free market	Akternative to the market	Pragmatic regulated market
Family image	Patria potestas with unenforceable high moral duties	The family regulated in the interest of the state/society	The liberal family
Public international law	Nation state+colonies+treaties	International institution	International civil society, human right, and adjudication.
International economic law	Gold standard, free trade, private international economic law	Autarchy, bilateralism, IMF World Bank, GATT	EC, NAFTA, WTO, structural adjustment
Privileged legal field	Cantract law, commercial law	Labour law, administrative law, family law, international law	Constitutional law, bisnis law, international law.

there are three characteristic of law development based by the era on the table, start from classic law idea, social idea, and the current development which having policies analyze and adjudication character. By seeing those 18 indicators, there are a lot of law idea that fall behind. So, the state role as authority

regulation holder has a duty to take care about the backwardness of law idea.

Law reformation which coming into 15 years, should considers international and cosmopolitan law aspects. Many international law instrument such as general declaration of Human Right and the other rules that

support it like covenant of civil and politic right, economic right covenant, social and culture, WHO constitution 1946, Alma Alta declaration 1978, world health declaration 1998, etc. Those thing are international law instrument which aims to the prevention of poverty effort. And also, the understanding of become a mainstream in the deciding national policy with the existance of millenium summit in New York, United States of America which formulate and agree the purpose of the development on the millenium century (*Millennium Development Goals*)[15] which planned to clear the poverty in the 2015.

Those instruments are the legally binding law products. International community assumed that the violation againts the law and human right instruments as a humanity tragedy. In this case, the existance of United Nation *Rights of humanitarian intervention* as international norm in the frame of responsibility to protect becomes United Nation instrument to do an action againts the country that violate the Human Right.

But the sincerity of the developed country still become a main question by using Human Right as an instrument to prevent the poverty. Global power try to display their self as human right guardian angel, but they act as the right violater of poverty groups through the imbalance of free market. Global power unilaterally, defined the means and scope of Human Right, and sets parimeter of the operation. Human right as the place to cover, global interest oftenly disserve the poor groups. The main essential, human right appears as a helper.

World nation can't faced the market brutal preasure with no mercy. Liberal law prepare the structure which gived a freedom to the individual and how they taking care of those thing, as stated by **Satjipto Rahardjo**. [16] Those competition put "the *haves*" groups as the winner and "the *haves not*" group as the losers, and they must pay more ("the *poor pay more*") because of unable to take the benefit of the law structure existance. Because of that, in the prevention effort of poverty it need a responsive law character which cares againts the poor society's condition.

Human right global issues context is a very sensitive problem that need to notice by the nation of the world. States has a duty to harmonize all of their entire law instrument with human right values. In the human right prespective, states duty which are (*to protect*), (*to respect*) and (*to fulfill*) society's right must be enforced. And Indonesian government has ratified *International Covenant On Economic, Social And Cultural Rights* with Act No. 11/2005.

Government effort to create social welfare and justice can't be separated with the economic human right, social and culture which has (*to protect*), (*to respect*), (*to fullfill*) society's right aspect. Social and culture human right is to free from the lack of resources, not to get free. Get free clause will aim to the social will, gives their right to the state authorities, and easily turned into state's competency to set a

limitation of civil's politic rights. Part II article 2 – 5 social and culture covenant rules generally about state's parties duty in the covenant[17] which are:

- a) *Every nation progressively reach the full shape of the right that approved by this covenant in the decent way, include with the legislation step without discrimination;*
- b) *State parties of this covenant promise to guarantee the equality of gender to feel the all economy, social and culture rights. The fullfillment of right that guaranteed by the state in this covenant, the limitation only for a thing that ruled by the law as long as suit with the nature, and purposed to gain the public welvare.*
- c) *There is no one thing in this covenant could interpreted to destruct the right and freedom, or to limit that right to a bigger level and violate this convention.*

Social culture human right is progressive, it means suit to the state's condition and ability. This progressive nature face a big and strong challenge in the free market context from the global power which caused by the imbalance and injustice social structure of neoliberal economic.

In the neoliberal economic globalization system, **Robert Kuttner dan Michael J. Piore**[18] explain that practical cooperation of international trade considered as a main instrument to poverty reduction, and "unconsiusly" money flow, investments, directly affected the dynamic of the national economic development. As we know the dynamics and stability of international capital market, world trade structure, and the world's investment regulation, would create destruction as the implication of inter-region competition if the nations not ready to prepared. The collapse of socialist country in 1980 ease the change process of liberalization wave by the industrial country. The decrease of movement space and intervention fom the national government for the society's interest caused of fall of power to fight the growth of multinational company and investors. Asset moveable through the boundaries, but government, parties, trade union, and the majority of labour nor. Those things that could change the stablity of power in the society. And the national government role to take care of the society's interes was never imagine before. So, the government politics need to be changed and getting back their ability. And the transformation of those politic interest focused to the new institutional structure, and the state's role changed.

In the economic globalization era, roles na duty of tge state to create social justice or general welfare only be done by stengthen state role. The excellence of neoliberal system to adapt world market, remove the performance and excellence from the social sector, and market preasure has created the destruction of public welfare system. But, society's welfare that focused on the social control againts

the economic market with national framework can't hold the developed countries pressure without engage the international agreement regulation. So, the state need a capability to create the minimum standard for the society and create the social development which on the same path with the economy of global market. And cope with the massive poverty issues. Related to those thing, **Francis Fukuyama**[19] explains how to strengthen the state's role and focused to the 3 state function which are, minimum function, middle function, and activist function that oriented to the effort of market failure prevention. And also to create the social justice. Effort to create social justice require the state to protect the poor group, create anti-poverty program, aid for the disaster's victim, social insurance service, pension fund redistribution, family happiness, unemployment insurance, and asset redistribution. Those three aspects will supports in the creation of instrument as the implementation of law function to realize the stability of Indonesian moral and economy.

3.2 Law Function to Realize the Stability Between Indonesian Morality and Economy

Law State is a basic frame to build national law system that protect and succor the citizen, but not forgetting the globalization aspects. Law state that ruled on article 1 point (3) UUDNRI 1945 not only serving the public function. Indonesian law state that based on Pancasila try to realize the state morality that contained on *staatsidee* which are social justice and public welfare. The existance of law state should have a capability to facilitate the people as stated by **Satjipto Rahardjo**. [20]

The important thing of state law frame is to gain a trust from the society over state's authority and their legitimacy to doing the control function. State as the politic power holder as entity must capable to grab the people's trust and loyalty taste built againts the law system. The effort to grabs the people's trust through democracy frame which suit with the society social structure. Welfare level and guarantee of people's hope through the law and policy are the dominant factor that very affected to grabs the people's trust.

The state must gived the guarantee of legal certainty againts the economic system through the guarantee of politic stability, economy and security. The state guarantee will gived a meaning for the people to work and reach their hope of welfare live. State function in this case is to distribute the right and duty to create the social justice.

Strong law system possibly gived a way out in every crisis trouble point. It would be strong if implemented in the right social structure of society. The ignorance of those thing only throw out society's believe and loyalty. Because of that, it need to growth and open againts the need of society through the society participation process (*Inspraak*), government and the investor in the process of sustainable development.

Development concept (*developmentalisme*) and modernization concepts as a reflection from the west paradigm about the social change. Development and modernization as an evolution process of the traditional society's journey to the modern one, reflected as development of technology and economy progress which had positivist nature. Because of that, many development policy which not *populis* and sometimes sacrifice the society's interest. Many government's policy which create a benefit the international monetary institute and capitalism, and also implementation of capitalist Indonesian act such as foreign investment act and labour act. And several act that IMF ask for which create as the gift of IMF help to give a loan to Indonesia as the implication of monetary crisis in 1998.

Developing country enough with Development that only focused on the economic aspect. **Fritjof Capra** explains economy and technology development assumed as an essential thing by all of the economic and politcan, although it clearly display the unlimited expansion in an environment will effected to a disaster.[21] **Capra's** argument is only a warning to obey. Many disaster happened because of unsustainable development, such as environment damage, marginalization of specific group, and massive poverty over the world, is a failure of economic development and forgetting the history and non-economic aspect. And also Rio World Summit 1992 saids that the poverty of a nation is based on the environment damage level.

Economic development need to get in touch with the philosophy dimension, which try to found the deepest ground in the economic practice. Economy not only deals with technical issues like production and distribution issue, but the human relation issues as the subject that involved on the process of consumption and production. People as a subject on the economic relation, so the sociocultural dimension can't be separated, cause people lived on inheren cosmology with ethical values that they build. **Amartya Sen**[22] explains that the real economic dicipline is related to the evaluation of how something developed for the society and that's the central problem in the economic welfare. **Sen** explains economy will get in touch with the humanity issues, especially with the poverty's group of society in the cause of oriented investment on the market and business.

The real meaning of development is a highest society welfare with the law instrument as a based of development in the framework of Pancasila as *margin of appreciation*. In this thing law function as integrated mechanism of those sustainable development's dimension.

Law as institution that integrating nation againts the occur process in the society, the law accepts *input* from the economy, politic, and culture which be treated tp become an *output* for the society. Economic sub-system output is a new structure built againts an economic process. The substance of

the law must create an efficient economic system and losing the existence of economic obstacle.

Input from the *Output* must had UUDNRI 1945 perspective as constitution and *general principle* of the positive law system. UUDNRI existence is not a regular regulation, but it's morality text that contain value order, vision and cosmology of Indonesian Nation.[23] It's to create a law norms which protect and succor all of the people in a nation. And the global order force Indonesian government to introspect and reformulate the national strategic based on the standard norm and the global challenge. Every social issues that Indonesian Government deals with is a law issues which obey under national, international and cosmopolitan law regime.

Law function through the instrument that protect the people, intend to keep the sovereignty of economy and the implication againts the Indonesian law sovereignty, to create stability between morality and

economy. And also state could done the "social control" againts the society. Social control fullfilled from the stability of morality, and economic sovereignty through the law sovereignty which not forgetting the global and nations interest.

There are two function need to fullfill to create the stability between moral and economy which are through the law function that protect and succor the society. Both will supports each other which function of protection have contained on the UUDNRI 1945 and the succor process done through the law instrument as national policies. But UUDNRI 1945 as *general principle* need a further interpretation to formulate the scope of protection that written and the real of nation dream protection.

Yuichi Shionoya[24] in the philosophy of economy and morality explains economy and morality never walk in the same path. If the economic of a nation increase, the morality will decrease, and same as opposites. We could see from the diagram:

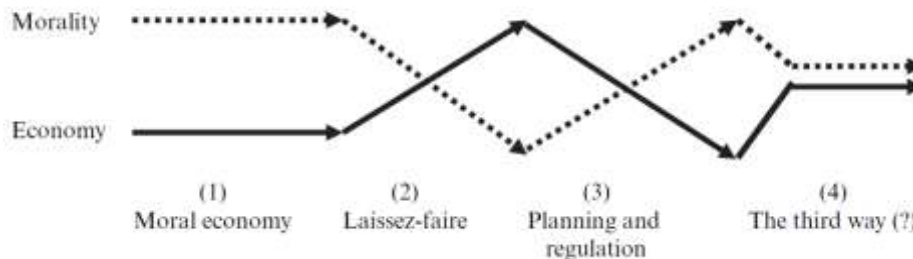


Figure 1. The economy and morality in historical perspektif

The fundamental question is, how to create a stability between economy and morality in Indonesian? It need a law instrument which not only fulfill the duty as the protector, but also the succors action to the society.

Law function in the society protection must pay attention to 4 important aspect to fulfill, as *Yuichi Shionoya*[25] stated that those four aspects are:

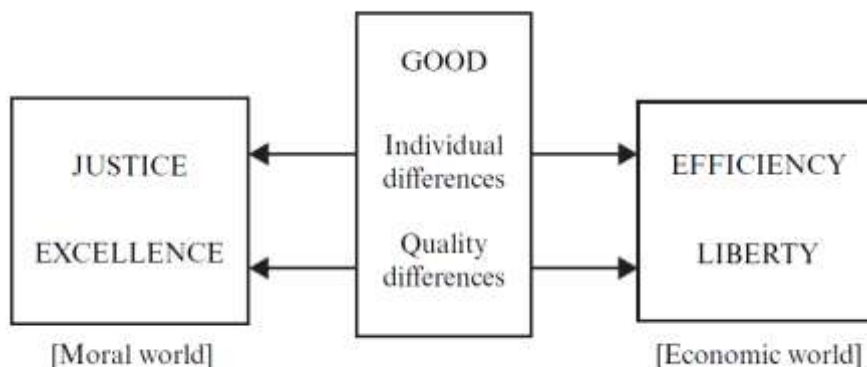


Figure2.

Justice and *Excellence* fulfill the morality aspect, *Efficiency* and *Liberty* fulfill the economic aspect.

I – IV amandement process of UUDNRI 1945, changes the state agencies structure and also change

the substance revolutionary, especially related to Indonesian nation as welfare state. **Jimly Asshiddiqie**[26] explains chapter XIV displaying the acceptance of socialist influence in the formulation of (*staatsidee*) in our constitution, besides the democracy principle that popular in the liberal countries. As a social state or welfare state[27] it need to be responsible to take care of the market inventory, poverty focus, and taking care of the poor. National economy that ruled on article 33 amandements with two point which are point (4) and (5). In the article 33 point 4 it stated principle such as togetherness, efficiency, justice, sustainably, environmental care, autonomy, and maintain the stability and unity of national economy. Justice and efficiency aspects as contained on the article 33 point 4 fulfill the half aspect from those 4 which stated by **Yuichi Shionoya**. Excellence and Liberty aspect not contained on the national economic part of UUDNRI 1945, but on the preamble we can conclude that advancing public welfare could be interpreted as fulfillment of excellence and liberty aspect. As we know UUDNRI 1945 as *general principle* not only limited to the general interpreted. The connection of the important aspect that stated by Yuichi walk on the same path with Constitution to protecting the supporter aspects in the case of realizing stability between moral and economy.

For example in Indonesia, the protection of society by the constitution and the connection between moral and economy is constitutional court abort many liberal acts as we know privatization of water. Amandement of article 34 point 2,3, and 4 as a base of law function that succor the society and it contains constitutional guarantee for government to do "*affirmative action*" and create welfare policy for people in society in structurally unlucky base on the point 2. And also, as a welfare state, there is a state responsibility to develop welfare policy in every sector, and responsibility to enhance the quality of public service as stated on the article 34 point 3.

Affirmative action in the substance of the regulation must containing a formulation or regulation which oriented to the supporting living standards and reducing inequality. Those orientation of formulation will be an instrument to create a social policy as an effort to stabilize the economy and morality. As the comparison, in the liberal doctrine, state must create social liberal policy that oriented to prevent the market failure.

Gerhart Raichle[28] explain there are 12 thesis of social liberal policy as the principles, which are:

- a) *Thesis 1: Liberal Politics is a social: liberal politics intrinsically is a social. It supported the creation of a state based on law and protects the rights of freedom of the weak from the strong bad authority holder. It is fighting for a market economy and created a fair opportunity for all people.*
- b) *Thesis 2: Assistance targeted than general equity: Interest of sociopolitical liberal is to help suffering people through proactive action in the prevention of poverty, and not to generalize social differences.*
- c) *Thesis 3: The principle of subsidiarity: The word "subsidiar" means "help, complete". In the context of the principle of subsidiarity, liberal social policies would only intervene when individuals or communities are not able to help themselves or if it is not sufficient.*
- d) *Thesis 4: The principle of efficiency: Liberal social policy seeks to achieve the objectives that described explicitly, clearly formulated in a rational and economically manner focused on those objectives and the effectiveness can be measured on the achievement of these objectives.*
- e) *Thesis 5: Promoting freedom than security: There is no social policy nor liberal social policies, which can provide a perfect guarantee against all risks of life. Liberalism supports the implementation of mechanisms of insurance (assurance) is regulated by the government, but only to the risks that (a) the existence or life-threatening, and (b) does not bias solved solely by the person concerned.*
- f) *Thesis 6: Slightly of possible coercion: In the liberal social policies, government intervention will only be applied if there is no other choice.*
- g) *Thesis 7: Competition is liberal and also social: Without the competition of social security mechanism would be inefficient, inflexible, expensive - and finally create unsocial sense.*
- h) *Thesis 8: The principle of openness: In a field where large amounts of funds distributed and life chances are affected directly for a long time, demands that the policy and its implications for the citizens should be open or transparent, calculative and accountable is an absolute thing.*
- i) *Thesis 9: The separation between transfer and insurance sector: liberal social policies which consequently avoid the merger between the principle of insurance and social assistance (Transferleistungen). Social assistance (transfers) are classified into distribution, while insurance equivalence principle, which means that there is an objective that is a mathematical relationship between contributions and services that should be free from manipulation by political interference.*
- j) *Thesis 10: Prioritising aid subject rather than the object of subsidies or intervention against market: Liberal social policy choose to provide assistance directly to those in need rather than manipulate prices and cover-up costs through market intervention or subsidies.*
- k) *Thesis 11: Justice generation or the principle of permanence: liberal social policy does not solve the current problems at the expense of future generations.*
- l) *Thesis 12: Stimulation to use insurance services as needed or the principle of responsibility: liberal social policies provide a stimulus such that the participants are interested insurance does not*

necessarily rely on insurance services and in particular are willing to bear the losses small.

Although those 12 thesis based on the liberal ideology, but in the reality those thesis could reduced into Pancasila Law State context. The fundamental essential is prespective of social protection for poor people in the context of state law. The substance of those social policy connected to the Pancasila socialism values that based on the norm.

Those meaning of social policy emphasize to the human dignity appreciation through empowering and people's responsibility. So, the important function of government's duty is promoting social integration. Therefore, the substance of legislation must focused on those thing through recognition of society's right to take a role on it.

4. CONCLUSION

a) Globalization can't be avoided by the world nation has a benefit and also the negative effect because of world different economic order. Economy, technology and communication globalization leads to negative international development. Those negative development brings poverty in the world. Is not about international poverty but going through the national border. This massive poverty is a concern and create a human right violence.

In the global context, human right is a very sensitive issues that need to getting more attention by every nation. Government effort to create a welfare and social justice can't be separated from the economic human right, social and culture which covers society's (*to protect*) aspect, (*to respect*) aspect, and (*to fulfill*) aspect. In the economic globalization era, role and state duty in creation of social justice or public welfare only be done by strengthen state roles.

Strong state roles need to be focused in this liberal economic globalization condition. Free market, unables government to fight the market power and forgetting the nation interest. And the destruction of socialist parties create the liberal economy easier to take over a nation sovereignty through the economic system which created with international law standard. Government's way of politic must changed, to get back their ability and protect the nation interest without forgetting the global aspect. So, stability between economy and morality could be created in the nation.

b) Indonesian's role and responsibility can't be separated by constitution prespective UUDNRI 1945 which as *general principle* of positive law system. Economic gain condition never get balanced with the morality condition. Law function to create a stability between Indonesian economy and morality, state law frame becoming a base to create law instrument that protect and succor the people, but not forgetting the global aspect. So, those law instrument could create a stability between economic sovereignty and morality of Indonesia.

Protection aspect shapes through the law function that focused on 4 aspects which are *Justice, Excellence, Efficiency, and Liberty*. Justice and excellence fulfill the morality sector, efficiency and liberty fulfill the economic sector. Half of those four aspect as stated on UUDNRI 1945 article 33 point 4 explains national economy hold on togetherness, efficiency, justice, sustainable, environment care, autonomy, and keeps the stability of national economic principles. And the UUDNRI 1945 preamble explains to progress the public welfare could be interpreted as the other part to fulfill those four aspect.

To fulfill the law function, the government succor aspect created through *affirmative action* which explained on UUDNRI 1945 article 34 point 2,3, and 4. Those action need to be contained in the substance of legislation and formulates the regulation that help living standar and injustice prevention. And those four action become a law product as social policy.

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