



The Dilemma of Indonesia Welfare State Challenge of Realizing Social Welfare in the Global Era¹

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Abstract

Globalization has placed Indonesia in a dilemma in creating the welfare of the people. Many legislations with liberal character are disallowed through the constitutional review by the constitutional court. The liberal character then becomes constraints for government to realize social welfare, thus harming the economic interest of people and contrary to the constitution (UUD 1945). Efforts to create welfare cannot be separated from state sovereignty in determining the economics welfare policy in the form of law. The State needs to adopt policies of recalibrating sovereignty to realize its objectives. Sovereignty is the essential requirement to be able to build pengayoman law character, ideology by Pancasila ideology and UUDNRI 1945. The legal substance of pengayoman law (protection and succor) will realize a balance between global interests and the interests of the nation. Pengayoman Law integrates the efficiency and freedom with fairness and

¹ This paper has been presented on Law 2.0: New Challenges in Asia 12th Asian Law Institute, Taiwan, (2015).

welfare excellence. Also, the Pengayoman Law always opens the space to give a guarantee/partiality to the poor through social policies that are based on human dignity.

Keywords: *Welfare, Challenges, Globalization, Dilemma*

A. Introduction

The process of globalization is a fact that cannot be denied, and it's a challenge for all states. It should be recognized that the process brings a lot of benefits, the state can take that. However, there is the other side of the globalization process that must be observed, the existence of injustice in global structures. Free markets and free trade raise serious issues that the emergence of the losers are the results a result of free competition with states that have well-established economies.² The injustice global structural becomes adversity factor for developing countries and developing countries in global competition as stated by Joseph E Stiglitz.³

The process of globalization has distorted the role of the state in all lines of the nation's life. The state loses sovereignty to make essential policy relating to the economic welfare, independently without considering the standard international norms. The denial of international norms will result in the isolation of the state of international relations.⁴ An Even international norm, standard, which has no legal binding, such as the Washington consensus⁵ has stronger forced power. Globalization puts Indonesia in a

² Ahmad Erani Yutika, *Perekonomian Indonesia*, Malang: BPFE Unibraw, (2007), p. 61.

³ Joseph E Stiglitz, translation Edrijani Azwardi, *Making Globalization Work –Menyiasati Globalisasi Menuju Dunia yang Lebih Adil*, Bandung: Mizan, (2007), p. 56. Argued that there are five issues that must be considered in the process of globalization, inter alia: a) Rule of globalization is not fair, designed specifically to benefit the industrialized countries. In fact nowadays some changes very unfair to make poor countries getting worse; b) Globalization prioritize material values above other values such as the environment and life itself; c) The way of managing globalization has lifted most of the developing countries sovereignty including the ability to make decisions in important areas that affect people's lives. It certainly undermines democracy; d) While the supporters of globalization claimed that everyone will get economic benefit, there is ample evidence to show a lot of losers, both in developed and developing The State; e) Perhaps most importantly, the economic system imposed (in developing countries) and even in some cases too forced, inaccurate and often very destructive. Globalization should not constitute Americanization in terms of economic and cultural policy, but indeed that's what often happens. This condition leads to anger

⁴Muladi, *Refomasi Hukum Dalam Pembaharuan Sistem Hukum Nasional*, Makalah Ceramah Ilmiah, Bandar Lampung, 6 March 2007

⁵ See I Wibowo in *Neoliberalisme* p. 287. Further by citing the Hertz opinion "Round the clockdoormen at the headquarters of the private sector plc" stated that the country now it has become a security guard for businessman, who are ready to drive away all who try to disrupt their comfort. Washington consensus is an informal agreement between the authorities and

dilemma to create in welfare. Also, there are space and more restricted state interference. The other side, global competition threatens the collapse of the social welfare sector and cause social disintegration.

The ideological tendency of the law is more oriented towards liberalism and neo-liberalism. This ideology replaces national sovereignty with the sovereignty of the market. The State is often helpless against market pressures. The market mechanism is believed to drive the wheels of the economy (facilitate the production, distribution, and consumption). The State is no longer able to make independent policies without regard to the conditions of market psychology. The concept of the welfare state is an option to develop a law state of Indonesia, as stated in the preamble UUNRI 1945. Welfare can only be done by strengthening the role of the state so that the state can create minimum standards for its citizens through the rule of law. Francis Fukuyama⁶ explores the idea of how to strengthen the role of the state through minimal functions, secondary functions, and activists function. These functions are oriented in an attempt to overcome market failures and create social justice.

The concept of market role cannot be separated from the idea of liberal democracy. After the collapses of communist, idea on state is dominated by democracy, individualism, and capitalism.⁷ Domination which ends only on the freedom based on the free market. Steven Rosefielde argues the system which depends on the free-market as a self-regulating system, giving on every people with the rights, voice, and chance.⁸ For liberal democracy, it becomes the only way to the fulfillment of the welfare and prosperity.⁹ David Howarth, said that this is more close to the concept of classic liberal¹⁰ Classic liberal is truly only care about the restriction of government role above their rights of property but doesn't care with distribution and democracy.¹¹ Every individual is responsible for his/her destiny. The concept of justice distribution based on Samuel Freeman

international institutions and businessman on economic development requires: market, trade liberalization and the reduction of the state role in the economy.

⁶ Francis Fukuyama, *Memperkuat Peran Negara*, Jakarta: Gramedia, (2005), p. 9.

⁷ Brian Z. Tamanaha, *On The Rule of Law: History, Politics, and Theorie*, Cambridge: Cambridge University Press, (2004), p. 1.

⁸ Steven Rosefielde, *Comparative Economic System Culture Wealth, and Power in 21st Century*, Massachusetts (United State of America): Black Well Publishing, (2002), p. 16.

⁹ There are two (2) reasons chosen by liberals why pro-free markets: 1) The interest in realizing basic liberty exists in free markets. Each person is free to choose a career and the workplace. 2) allocation made by the market considered to be more efficient, from a non-market system. See Samuel Freeman, "Capitalism In The Classical and High Liberal Traditions", *Sholarly Journal Social Philosophy and Policy*, 28 (2), (2011), p.36.

¹⁰ David Howarth, *What is Social Liberalism?*, can be accessed at <http://www.socialliberal.net/2009/02/12/what-is-social-liberalism/>

¹¹ *Ibid.*

arguments, already done with the fulfillment through the judiciary and public goods provide.¹² The limit of responsibility from classic liberal only placed in the chance of providing.¹³ In the end, this condition makes the strongest have the power to control the weak.

Liberal in the problem of market and role of the state, already change their thought, an example in America. Based on the liberal-progressive movement lead by Roosevelt, said the freedom of property right would make human alienate from their welfare.¹⁴ A property right is not the pure free from the state. It must have involvement of state because of the obligation of government on social and economic condition.¹⁵ The role of the federal government for example, not only controlling but also distributing the sources and the wealth to the public.¹⁶ America then based on Scott Arnold argument, used not only liberal but tended to extract the value of social democrat.¹⁷ In practice, America shows in the issue of economic and social. They use liberal-socialist supported by 2 (two) features:¹⁸ 1) in the liberal ownership they only reside nominally with the private party; 2) compensation for tax and spend with impunity has been omitted, if faced with regulations.¹⁹ America also uses social democracy to counter social issue problems (e.g., unemployment, health, and poverty) and has the will to create the welfare state.²⁰ State and welfare nowadays, cannot be separated even the contribution and involvement through the social and political aspects.

The experience in Europe depends on social-democracy movement. Tom Allen concludes the state has an obligation in creating social welfare with social responsibility which associated with the ownership.²¹ Different

¹² Samuel Freeman, *Op. Cit.*, p. 47.

¹³ The liberal view in terms of salary as an example of someone with a particular talent gets a higher salary because: 1) everyone is made better off when those people work those jobs, and 2) those people will only work those jobs when they are given incentives. Accessed at <http://harvardpolitics.com/united-states/liberalism-versus-socialism/>

¹⁴ Ronald J. Pestritto, "Founding Liberalism, Progressive Liberalism, and The Rights Of Property", *Scholarly Journal Social Philosophy and Policy*, 28 (2), (2011), p. 72.

¹⁵ *Ibid.*, p. 73.

¹⁶ *Ibid.* See Characteristics of progressive according to James W. Jr. Elly. James W. Elly, "The Progressive Era Assault on individualism and property rights", *Scholarly Journal Social Philosophy and Policy*, 29 (2), 2012, p.258.

¹⁷ N Scott Arnold, "Are Modern Liberals Socialist or Social Democrats", *Scholarly Journal Social Philosophy and Policy*, 28 (2), (2011), p. 262.

¹⁸ *Ibid.*, p. 282.

¹⁹ State manipulation of the tax code aimed at a wide variety of social functions. See *Ibid.*, p. 264.

²⁰ *Ibid.*, p. 282.

²¹ Tom Allen, *Liberalism, Social Democracy and The Value Of Property Under The European Convention On Human Rights, International and Comparative Law Quarterly*, Oxford: Cambridge University Press, (2010), p. 1068.

approach describe if the state involvement does not become the threat to the system, then the values of the property are being adjusted for public demands with the legislation.²² In the end, the role of the institution will be directed to the welfare as the main objection.

The understanding of west countries for efficiency and state responsibility is based on individuals rights, but Indonesia starts it from the communal rights. State-based on Article 33, becomes ruler of important production and natural resources. People on the other way, become the center or source of the authority in the conception of state ruling.²³ The state only manages and obligates to the welfare of the people. Indonesia ironically has been infected by market domination, when the western countries try to free from domination. In this situation, Edi Swasono argues that the state will be a corporate, not a nation-state.²⁴ Economic development will depend on the free market.²⁵ The welfare of the people they will be neglected, and be oriented only for the power of individuals.

Reality is the lesson for the state to be able to build a balance between global interests and the interests of the nation. The main prerequisite to be able to create a balance is reinforcing the sovereignty of the state based on the ideology of Pancasila and the Constitution, as stipulated in the law as an instrument to achieve welfare. In the global context, efforts to achieve economic welfare are related to moral formulated in preamble UUDNRI 1945. Economic moral embodied in the Law by considering global values (efficiency and freedom) and the strengthening of local values (excellence and fairness).

1 Problems

Based on the description, the issues to be discussed in this paper are as follows:

- a) How do the general principles of the Pancasila ideology of Pancasila and the Constitution in creating welfare in an era of economic globalization?
- b) How does the character of positive Indonesian law within the framework of the welfare?

²² *Ibid*, p. 1077.

²³ Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-Pilar Demokrasi*, Jakarta: Sinar Grafika, (2010), p. 140.

²⁴ Sri Edi Swasono, *Daulat-Rakyat versus Daulat Pasar*, Yogyakarta: Pustep-UGM, (2005), pp. 34-35.

²⁵ *Ibid*.

B. Discussion

1. General Principles Pancasila Ideology in Creating Social Welfare in the Global Era.

Indonesia's objectives are formulated in preamble UUDNRI 1945 in the 2nd and 4th paragraph, that the welfare state based on Pancasila.²⁶ Pancasila is the foundation of moral and ethical state administration, which is explicitly formulated in the Preamble of UUDNRI 1945. Unity of the five principles of Pancasila is a review of the Indonesian nation which views the state as welfare organizations, and not an organization of power.²⁷ As the Welfare Organization, the use of authority is based on the morality and ethics of state administration. Morality and Pancasila ethics become the basic concept of the welfare state to realize the responsibility of the state in seeking common prosperity for all people.

Welfare organization is organized by UUDNRI 1945 as the constitution of the political, while social and economic and the substance is general principles in realizing the objectives of the state. People who want to be targetted is the Indonesian socialist society and democracy is one of the means to an end.²⁸ Indonesian socialism is formulated as a just and prosperous society based on Pancasila.²⁹ Indonesian socialism is socialism adapted to (a) the conditions contained in Indonesia; (b) The nature of Indonesia; (c) The people of Indonesia; and (d) customs, psychology and culture of Indonesian people.³⁰ Indonesia Socialism has an idea and different substances with that socialism developed in other parts of the world.

Indonesian socialism is closely linked to the values of Pancasila as the national principal. The values are referred to a) basic Nationality, b) basic internationalism. c) The basis of consensus, the basis of representative, deliberative basis. d) The principles of welfare, the principle that there would be no poverty in freedom in Indonesia, e) basic divinity.³¹ The main principle of Indonesian socialism values is the principle of consensus or consultation (democratic Indonesia) and welfare. Both of these principles are oriented on peoples' sovereignty and social justice, which were held within the framework of law and Indonesia democracy.

²⁶ RM. A.B. Kusuma, *Lahirnya Undang-Undang Dasar 1945*, Badan Penerbit FH Universitas Indonesia, Jakarta, (2009).

²⁷ B. Arief Shidarta, *Ilmu Hukum Indonesia*, Bandung: Fakultas Hukum Universitas Katolik Parahyangan, (2010), p. 93.

²⁸ RM. A.B. Kusuma, *Op.Cit.*

²⁹ Soediman Kartodiprodo, *Sosialisme Indonesia*, Bandung, 10 March 1964, p.1.

³⁰ *Ibid.*, p. 5.

³¹ Soediman Kartohadiprodo, *Pancasila – Suatu usaha percobaan mendekati problema sekitarnya*, Bandung, (1963), p. 2.

Dynamics of Indonesia welfare state concept developed in parallel with the historical and political process. The UUDNRI 1945 Amendment I-IV, has changed the institutional structure and substance of state responsibility and the role of the state, especially the concept of the welfare state. The changes of Chapter XIV UUDNRI 1945 described the defended socialism in the constitution as the basis for realizing the objectives of the state, in addition to the principles of popular democracy in the liberal states.³² Pancasila morality is realized in the form of organizing various facilities and special measures to improve the welfare of poor social groups.³³ State responsibility sets in UUDNRI 1945 as the economic constitution is explicitly defined in the preamble and the formulation of the articles. Vision, commitment and attitude of state politics partiality in creating social justice and economic sovereignty, contained in Chapter XIV UUDNRI 1945 about National Economy and Social Welfare. Article 33 which provides that;

- (1) The economy shall be organized as a common endeavor based on the principles of the family system.
- (2) Sectors of production which are important for the country and affect the life of the people shall be under the powers of the State.
- (3) The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.
- (4) The organization of the national economy shall be conducted by economic democracy upholding the principles of togetherness, the efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.
- (5) Law shall regulate further provisions relating to the implementation of this article.

Article 33 consists of five verses are the result of changes (amendments) fourth. The provisions of Article 33 were amended by two verses that verse (4) and verse 5. The formulation of the article is a middle ground of the debate among senior economists who defend the principle of the family as the foundation of the national economy with a young economist who brought the spirit of neoliberalism. The formulation can also be interpreted as the maintenance of socialism and acceptance of global values.

³² Jimly Asshiddiqie, *Konsolidasi Naskah UUD 1945 setelah Perubahan Keempat*, Fak. Hukum UI: Pusat Studi HTN, (2000), p. 55.

³³ Franz Magnis Suseno, *Etika Politik, Prinsip-prinsip moral dasar kenegaraan modern*, Jakarta: Gramedia, (1991), p. 316.

UUDNRI 1945 is the foundation to shape policies and organize the administration in the political, social and economic. Legal policies have binding force on the power (the state), civil society (civil society), and the market (market) in a triadic relationship. The triadic relationship has become the foundation for achieving an idealized value in the life of the state, that is freedom, justice, and prosperity.

In a triadic relationship, states have the authority and responsibility to intervene unfair market through policies that are affirmative to protect and safeguard the national economy. The policy is based on the provisions of Article 33 verse (4) which provides that "The national economy was organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability and environmental friendliness, independence, and balancing economic and national unity." Efforts to create common prosperity cannot be separated from economic development, as stated by Paul SPICKER³⁴ that welfare depends on economic development". Economic development is conducted by the economic structure of the social and cultural conditions so that the economic rights and social rights can be realized. UUDNRI 1945 is the means of control to the dynamics of economic changes and also becomes the instruments of protection in economic development plans. Pancasila and UUDNRI 1945 are the foundation of moral and ethical development in an idea of the life of society and state which guarantees liberty justice and equitable distribution of prosperity. Economic development cannot be released to state sovereignty, especially in managing the resource.

Sonny Keraf³⁵ said that the vision of the Indonesian economy had been very clearly enshrined in Pancasila and UUDNRI 1945. On that basis, a minimum of two most important aspects of economic development is to realize and ensure prosperity for all Indonesian people (Social Justice) and ensure economic sovereignty. Economic welfare and economic sovereignty is a matter of ideology, which means about the vision, commitment and attitude of the state alignments. The values of the ideology are the dignity of the nation to sovereignty over their welfare independently. The minimum standards set out in the Law should be placed within the framework of the ideology of Pancasila and the Constitution (UUDNRI 1945). The denial of the values of Pancasila and the Constitution will result in cancellation of the Law. Many laws sued in the Constitutional Court and annulled because the value denies ideology and constitution as presented in the following table:

³⁴ Paul Spicker, *The Welfare State – a general theory*, London: Sage Publication ltd. 6 Bonhill Street, (2000).

³⁵ Sonny keraf, *Kesejahteraan Yang Berdaulatan*, Harian Kompas, Senin, 11 October 2010, p. 6

Year	In the past	Received	Amount	Verdict (granted)	Amount the verdict	Processes in this years	Amount The Law Which Review
2003	0	24	24	0	4	20	16
2004	20	27	47	11	35	12	14
2005	12	25	37	10	28	9	12
2006	9	27	36	8	29	7	9
2007	7	30	37	4	27	10	12
2008	10	36	46	10	34	12	18
2010	39	81	120	17	61	59	58
2011	59	86	145	21	94	51	55
2012	51	118	169	30	97	72	0
2013	72	109	181	22	110	71	64
2014	71	140	211	29	131	80	71
2015	80	140	220	25	157	63	77
2016	78	27	105	9	51	54	15
Total	583	1059	1642	230	1005	-	520

Source: Indonesia Constitutional Court

From the table above, there are 230 laws which are being reviewed and then annulled by the constitutional court with the argument that the law of liberal character and harm the interests of the nation. The state's sovereignty faces the fundamental problem against global influences. The state often cannot freely determine the policy over the resources optimal for the prosperity of the people. Therefore, sovereignty needs to be strengthened to determine legal policy independently. Sovereignty and welfare are the two aspects which cannot be separated from one another, and the state should be able to overcome the market failures that lead to structural injustice. On the other hand, state intervention and should be considered as an instrument of international law that intervention is not harmful and create market fear of participating in the welfare of the people.

2. Indonesia Positive Law Character to Achieve Welfare Framework

The reality of the global order shows a coercion phenomenon of democratic values and the conception of law state, which is based on the framework of thinking in a developed state for investment purposes.

Sulistiyowati Irianto argued that the rule of law and democracy was an important agenda in the law development which was designed by the developed countries through the motions of "law and development" launched in 1960 and the movement of "the Rule of Law." Movement aimed to promote democracy and development in the newly independent country and to grow in Africa and Asia.³⁶ Promotion of democratic values and development is conducted through the transformation of the social model, economic, political and west by denying the fact that developing countries have their own historical and cultural roots. On the other side, the internal reality shows that the ideology of Pancasila has not become the margin of appreciation in development. Dawam Rahadjo³⁷ argued that socialism or Pancasila economic in Indonesia, was being sought shape through exploring theory and practice. Socialism Indonesia (Pancasila) was not understood and be the margin of appreciation in the formation of legal policy. The Law raise many debates and annulled by the constitutional court for denying constitutional and liberal character. Law referred to, among others as follows:

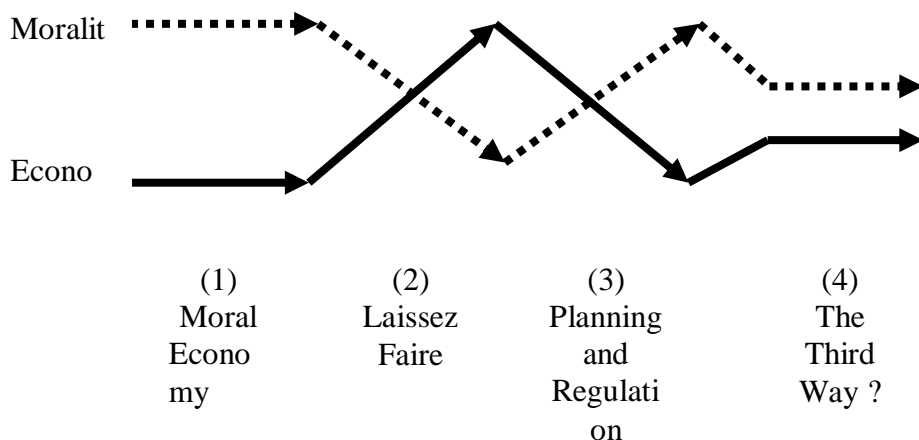
- a) Law No. 7 of 2004 about water resource (annulled by Indonesian Constitutional Court number 85/PUU-XI/2013)
- b) Law No. 18 of 2004 about plantation (annulled by Indonesian Constitutional Court number 55/PUU-VIII/2010)
- c) Law No. 41 of 1999 about water resource (annulled by Indonesian Constitutional Court number 35/PUU-X/2010)

Article 33, verse 4 UUDNRI 1945 regulates principles related to the liberal economic ideology (containing a minimum of state and held in the context of the capitalist market). A Problem that then arises is the loss of socialism value and replaced by the value of liberalism. Liberal character of legislation is about to reduce Indonesia socialism. Law is more in favor of the investor rather than on the people. The result is the loss of the totality of life and social order. In the economic globalization, the welfare state faces challenges in building institutional frameworks and political economic framework to realize the values of freedom, efficiency, and growth. The framework is intended to maintain the values of justice and the primacy of structural injustice within global and national economic order. Morals and values are integrated into the framework of the legal system positively by considering the moral aspects and economic aspects related to the individual differences and quality. Thus, it will achieve a balance between national

³⁶ Sulistiyowati Irianto, *Menuju Pembangunan Hukum Pro-Keadilan Rakyat –dalam Sosiologi Hukum Dalam Perubahan* (editor; Antonius Cahyadi dan Donny Danardono), Jakarta: Yayasan obor Indonesia, (2009).

³⁷ Dawam Rahardjo, *Mencari Pengertian Tentang Pembangunan Sudut Pandang Pancasila, in Ekonomi Pancasila*, Yogyakarta: BPF, (1981), p. 52.

interests and global interests. The balance of interests below was stated by Yuich Shionoya and can be seen as follows:



The illustration shows that in economic planning and regulation, based on moral and economic are done by taking the middle way to create a balance. The balance can be done by using the open-ended standard and general clauses. Also, there should be a change in approach toward legal purposive and procedural approach or substantive justice approaches.³⁸ The shift is intended for the protection of people and efforts to create social justice. Open-ended these standards will form the basis for the State within the form of social policy that also accomplished the liberal State

Law orientation should as well organize aid supporting living standards and reducing inequality reduction. For comparison, within a liberal, the state is obliged to form a liberal social policy oriented to solve market failures. According to Gerhart Raichle,³⁹ there are 12 theses that liberal social policies are its principles, namely;

- a) Thesis 1: Politics is a social liberal: liberal politics intrinsically social.
- b) Thesis 2: Assistance targeted than the general equity
- c) Thesis 3: The principle of subsidiarity
- d) Thesis 4: The principle of efficiency
- e) Thesis 5: Promoting freedom than
- f) Thesis 6: Slightly may force
- g) Thesis 7: Competition is liberal and social at the same time

³⁸ Roberto M Unger (translator: Dariyanto dan Derta SW), *Teori Hukum Kritis*, Bandung: Nusa Media, (2007).

³⁹ Gerhart Raichle, *Asas-asas kebijakan sosial liberal*, www.fnst-neustart.de.

- h) Thesis 8: The principle of openness:
- i) Thesis 9: Separation between transfer and insurance field
- j) Tesis10: Prioritize subject help rather than the object of subsidies or intervention against market
- k) Thesis 11: Justice generation or principle
- l) Thesis 12: stimulation to take out insurance

Although 12 of the thesis is based on liberal ideology, the essence of these theses can be reduced in the context of Pancasila law state. The most fundamental essence regarding the perspective of social protection to the poor is in the context of the law state. The substance of social policy is essentially parallel with Pancasila socialism values, which are based on its principles. The meaning of social policy emphasized respect for human dignity through empowerment and human responsibility. An important function to be done by the government is promoting social integration. The Substance of the Law should lead to the recognition of the right of people to participate so that the character is Pengayoman law established. The Law is not only to provide protection but also to help the disadvantaged communities through social policy.

The Purpose of law based on Pancasila law-ideals is to give protection and succour to people, which protecting people passively and prevent an abusive power, and actively create a condition of humanity. Then it could able a process of society fairly, and then the people can get a big chance and equity to develop all of the human potentials and then happiness will be realized. These formulations including purpose are to keep and to develop “humanity manners and moral ideals which noble based on the One Almighty God” (Explanation of UUDNRI 1945). Implementation of Pengayoman law has implemented to realize as follows:

- (a) Order and well organized that makes predictability;
- (b) The peace that shows peacefully;
- (c) Justice (distributive, commutative, protective);
- (d) Welfare and social justice
- (e) Coaching sublime morals based on the One Almighty God.

The ideological tendencies of modern law are generally based on liberalism which upholds freedom but rejects the obligation of states to protect the welfare of weak social classes. The notion of liberalism and neo-liberalism replaces the sovereignty of the state with market sovereignty. The market mechanism (market mechanism) is believed to be able to move the wheels of the economy that is to facilitate production, distribution, and consumption. The state is no longer able to make policies independently regardless of market psychology. The state is often helpless in the face of such brutal and heartless market pressures. The liberal law only prepares the structure that gives freedom to the individual and then it is up to the

individual how to play and utilize the structure, as stated by Satjipto Rahardjo.⁴⁰ An open competition place has both the winner and the losers, so the losers have to pay more (“the poor pay more”) for not being able to take advantage of the existing legal structure. Law is one of the sources that cause freedom and is often the legitimacy of the process of impoverishment. Such strict legal structures and highly formal (positivistic) legal means, cause some groups of people to be unable to access legal resources. Similarly, often the substance of the law is not fair to the conditions and uniqueness of a community.

The existence of customary ulayat rights, for example, even though the constitution recognizes it but because the positive legal meaning demands formal proof of control over the rights, systematically the customary ulayat right becomes lost. Indigenous peoples who do not have a formalistic mindset and behavior, they will never be able to show certificates of land as evidence of the land being conceived as an ulayat right that they possess. The liberal nature of the law has separated man from his social and natural environment. The paradigm of individualism has replaced the collective paradigm. The cultural peculiarities and uniqueness of the society's order are kept away from the structure and its relation to space and time. Laws and policies issued by the state often become a burden for certain groups of people.

4. Conclusions

Based on the above description, it can be concluded that

- a) Morality and Pancasila ethics are the foundation of Indonesia socialist people. Welfare and democratic is one of the means to an end. Indonesian socialism is formulated as a just and prosperous society based on Pancasila. Moral and ethical development in social life and state that guarantees, liberty, justice, and equity prosperity. However, Development cannot be separated from state sovereignty, especially in managing the resource.
- b) The global order shows a coercion phenomenon of the coercion of democratic values and the conception of law state for the benefit of the investment (capitalist interests). Welfare states face challenges in developing its economy and ensure the values of freedom, efficiency, and economic growth. The Law of orientation should put a balance between national interests and global interests. Character and substance of law must be Pengayoman. The Law not only provides protection but also helps the disadvantaged communities through social policy.

⁴⁰ Satjipto Rahardjo, *Biarkan Hukum Mengalir*, Jakarta: Kompas, (2007), p.111

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