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## Globalization and Responsive Legal Model Based on Sovereignty of Purpose

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**Abstract:** The modernization process takes place quickly and gives rise to a new phenomenon in the form of globalization. In the world of business, globalization implies trading in several countries and throughout the world, making it transcend national borders. Law is needed to face globalization as an integrating mechanism between the nation's internal interests, national interests, and international interests. The method used in this research is juridical normative, oriented toward literature study. Literature study includes international conventions, laws and regulations, and literature books containing legal principles and doctrines. The results show that facing the increasing flow of globalization, it is necessary to have laws with local (national) content characteristics that can accommodate international trends. This type of law is a responsive one oriented toward purpose sovereignty.

**Keywords:** globalization, local content, international trends, responsiveness, sovereignty of purpose.

## 目的主权下的全球化与回应性法律模式

**摘要：**现代化进程迅速发生，并以全球化的形式引起新的现象。在商业世界中，全球化意味着在多个国家和世界范围内进行贸易，使其超越国界。面对全球化，需要法律作为国家内部利益，国家利益和国际利益之间的整合机制。本研究中使用的方法是法律规范性的，以文献研究为导向。文学研究包括国际公约，法律和法规，以及包含法律原理和理论的文学书籍。结果表明，面对日益增长的全球化潮流，有必要制定具有地方（国家）内容特征的法律以适应国际趋势。这类法律是针对目的主权的回应性法律。

**关键词：**全球化，本地内容，国际趋势，响应能力，目的主权。

### 1. Introduction

In the past, rapid social change resulting from the modernization process was felt as something that could potentially cause social anxiety and tension (social unrest and social tension). The rapidly changing value system has demanded new social life norms to preoccupy the legislature, dispute resolution institutions (in and out of court), and efforts to socialize laws [1].

This situation demands a law that is open to the development and dynamics of the society in

globalization. What is called modernization and globalization is not optional but is a phenomenon that must be faced (change is not optional) and cannot be avoided. Both are natural things that arise immediately as a result of the complexity and heterogeneity of human relationships as a social problem as a result of the invention of modern technological tools.

With the increasing modernization process due to the discovery of modern communication tools, communication tools, and modern information

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technology, the issue of modernization has become global. It has led to a new phenomenon in the form of globalization, which demands a change in the structure of legal relations (legal structure), new substances of legal regulation (legal substance) and legal culture, which is often completely new. Without a change in the legal system, there will be dangers to the peaceful life in different social lives; all will become uncertain and disorderly and feel unprotected [1].

In the face of globalization, which increasingly swiftly enters the joints of social, national, and state life, Anthony Giddens thinks of the "third way" as the third choice between socialism and capitalism or between state intervention and the free market [2]. The world at the end of the 20th century was characterized by "manufactured uncertainty" [2], namely a period of uncertainty. This situation is not brought about by nature but by humans themselves, thanks to the technology they have created [2]. This means that manufactured uncertainty eventually leads to "high consequence risk" [2]. Indeed, humans have to make many choices that contain many risks in this life, but the risks humans must take are the types of risks that have very far-reaching consequences. The economic crisis that hit Asia in 1997 is another example that we have experienced. This is argued not to deny that humans have succeeded in producing modern life that contains certainties (Anthony Giddens uses the term "ontological security") [2].

In the business world, globalization is not just trading in several countries worldwide, but trading around the world in a new way that maintains a balance between global quality, production results, and the unique local needs of consumers. This new method is influenced by the increasing interdependence between nations (the world = the big village), the enactment of international standards and quality standards, the weakening of narrow ethnocentric ties, the increasing role of the private sector in the form of international corporations (MNE'S), weakening national ties in the economic field, the role of information as power increases, the emergence of root needs, brilliant human beings regardless of nationality and so on [1].

On the legal side, the things above cannot be allowed without the rule of law and ethics. Preparation of each country, both internally and externally, must be carried out in a planned manner with a clear vision and mission (National Action Plan). Therefore, the object is also the subject of globalization.

Here, the law is challenged to play a role as an integrating mechanism (law as integrative mechanism) that can accommodate various dimensions of interest, both between the nation's internal interests and between the national interests and international interests. In the era of globalization, all things that have national

consequences are not only filled with ideology, constitution, the human condition, nature, and national traditions (local characteristics) but must also accommodate trends contained in national instruments such as conventions, declarations, resolutions, international guidelines, etc. This adaptation is carried out by ratifying international conventions. It is not against national goals because participating in creating world peace is one of the pillars of national goals, and international treaties are sources of law whose strength is recognized.

Rampant corruption is one of the things that are substantial as a negative result of the rapid flow of globalization in the world. The increasing corruption resulting from globalization is felt by the Indonesian people and the international community. The impact of corruption, which destroys the joints of the life of the community, nation, and state, is a concern of the international community. This concern is evidenced in a convention called the United Nations Convention Against Corruption which is popularly abbreviated as UNCAC 2003 [3]. UNCAC 2003 was attended by countries in various parts of the world, even though the participating countries already had laws and regulations on corruption.

The globalization of corruption is explicitly stated in UNCAC 2003 that corruption is already a serious threat to the national and international community's stability and security, has weakened institutions, weakened democratic values and justice, and endangered sustainable development and law enforcement [3]. All these consequences follow because the domestic legal state does not make changes and adjustments to the era of globalization.

### **1.1. Problem Formulation**

Based on the background description of the problem above, the following issues can be formulated:

1. What are the characteristics of national law in facing the flow of globalization, especially in the economic field?
2. What legal model can carry out the function of the mechanism for integrating the national interests and international interests of a country?

## **2. Research Method**

This study uses a normative juridical method, oriented towards literature study. Literature survey is carried out by studying international conventions, national legislation, and literature books containing legal principles and doctrines.

## **3. Results and Discussion**

### 3.1. Definition of Globalization

Globalization is a “process forced by global flows of people, information, trade, and capital” [1].

Globalization is a social and cultural process that begins with the interaction of one nation with other nations. Globalization can be defined as a condition of interdependence in international networks, including transportation, distribution, communication, and an economy that transcends countries’ territorial boundaries [4].

Paul Hirst and Graham Thompson emphasize globalization specifically in the economic field by stating that a truly global economy is declared to have emerged or is in the process of emergence, where the national economy is special. Therefore, domestic strategies of the national economy are increasingly irrelevant [5].

Globalization has the following characteristics [6]:

- 1) It is borderless;
- 2) It has cross border interests;
- 3) It exerts wider impact.

Globalization occurs when there are the following elements [6]:

- 1) International trade
- 2) Spread of European civilization and laws
- 3) Globalization involves all aspects of human life and the state in its development [6].

Based on the definitions of globalization above, it can be concluded that globalization is a process of interacting a nation with other nations, which is not only limited to the economic sector (trade) but also extends to the social, political, cultural, population, and science and technology fields. The interaction process is carried out through international networks (international networks) that go beyond the country’s territorial boundaries.

### 3.2. Economic Globalization

Besides containing cooperation in the military sector, world polarization also contains cooperation in other fields that are economic in nature. The economic depression of 1930 and the conditions after the war gave rise to a strong desire to create stability and economic growth. In addition, the polarization of developed countries into capitalist and communist countries encourages trade flows between them and developing countries. The independence of the colonies in Asia, Africa, and Latin America led to increased demands for a better standard of living, and this clearly fostered trade among nations. This situation encourages the formation of organizations accompanied by conventions in international trade and international agreements and functioning as a guide in carrying out trade activities among nations in the world. Among the international agreements and institutions are:

#### 3.2.1. *The General Agreement on Tariff and Trade (GATT)*

GATT pioneered tariff rationalization and world trade expansion which began operating since 1948. GATT is an agreement between trading partners not to treat discriminatory, protectionist based on “Law of the Jungle” in the world trade under the coordination of the “World Trade Organization”.

#### 3.2.2. *World Trade Organization (WTO)*

In the preamble, the agreement to establish the WTO repeats the GATT goals, namely increasing living standards and income, guaranteeing employment opportunities, expanding production and trade, and optimizing the use of resources in the world. The Preamble extends these goals to services and links them to thoughts about sustainable development (the Idea of Sustainable Development) and environmental protection and seeks to increase developing countries’ role in developing world trade.

#### 3.2.3. *General Agreement on Trade in Services (GATS)*

GATS consists of:

##### 1. *A Framework of Rules*

2. *Liberalization Commitments*, particularly in the service sector and sub-sectors as listed in the “country’s schedule”.

The prohibition against treating differently between domestic and foreign services is based on the National Treatment Principle.

#### 3.2.4. *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*

The development of world trade will be greatly influenced if the standards that apply in various countries to protect IPR vary. Ineffective law enforcement can lead to counterfeiting and piracy, which in essence can damage legitimate trading interests. TRIPS contains the “Minimum Standard of the Protection” of the IPR, including its enforcement procedures. The structure of the agreement is built based on international conventions on IPR. With the aim of not being misused, “compulsory licensing” is also regulated as long as it is not for trade reasons [1].

### 3.3. Factors Driving Globalization

More operationally, several factors that drive the globalization process include:

#### a. Market Pressure

Big companies fight over the market, and in this case, they tend to ignore national boundaries. This situation is especially observed with the emergence of global (world/multinational) and regional subsidiaries for

market expansion. Foreign and domestic companies compete with each other to expand their markets and marketing operations. We know Coca-Cola, Levi's, Sony, Toyota, found in various countries globally, as if countries know no boundaries [4].

b. Cost Pressure

It is noteworthy that in 1998 there were 53,000 MNCs worldwide with 450,000 subsidiaries with a trade value of US \$ 9.5 trillion. Hundreds of MNCs have spread, employing more than 6 million workers worldwide. These companies mostly have headquarters in the United States, Europe, and Japan (as many as 36,380) and are located in developing countries as many as 7,932 [7]. MNC entrepreneurs came to the heads of government (central and regional) to offer:

- 1) Employment
- 2) Investment in infrastructure
- 3) Economic growth [7].

On the other hand, MNC entrepreneurs as the party who owns and dominates capital sue the heads of government (central and regional):

- 1) Low labor wages
- 2) Low taxes
- 3) Non-strict terms [7].

These demands are accompanied by threats if they are not fulfilled, namely:

- 1) The state will be excluded from the MNC area.
- 2) MNC will leave the country concerned [8].

By looking for very efficient (very cheap) costs without paying attention to geographical facilities, the production costs can be reduced as cheaply as possible for the MNC to compete globally. From here, then emerged and developed new industrialized countries with production capabilities and low wages. Countries that do not want to meet the MNCs' requirements will not be included in the free market, so they will not participate worldwide [4].

c. Encouragement for International Treaties

The emergence of international agreements such as GATT, GATS, ACFTA (ASEAN-China Free Trade Area) requires the government to play an active role in international trade agreements for the interests of the free market in the global era. One of the objectives (such as ACFTA) is to provide convenience or reduce import duty (tariff), if necessary, it is free of import duty [4].

d. Encouragement of Competition and Advancement of Information Technology

The process of globalization, which is strongly supported by advances in information technology, results in strong competition to seize free markets. Without the support of sophisticated information technology, it will be difficult to compete for the free market in globalization [4].

Other factors driving globalization are [4]:

a. Proximity

Advances in transportation and information technology have made the world a smaller one that can be reached by aircraft and other state-of-the-art technological tools. Managers do not have to come to the location, but they can use teleconferences and the internet *having accurate information*.

b. Attitudes

Open managers or international managers should make a careful attitude towards differences and the willingness to enter the world market.

c. Location

The organization is expanding across the globe, with separate business units to take advantage of existing business unit network synergies.

### 3.4. Building a Sovereignty-Based Responsive Legal Model

In the era of globalization, all things that have national attributes are not only the content of ideology, constitution, the human condition, nature, and the nation (local chartism) but also must accommodate trends contained in international instruments, such as conventions, declarations, resolutions, and international guidelines.

This adaptation is carried out by ratifying international conventions, which is not contrary to national goals because participating in creating world peace is one of the pillars of the national goal and international treaties are one of the sources of law whose legal strength is recognized. As previously explained, the law has a function as a mechanism for integrating the national and international interests of a country. Integration between national interests and international interests is very important considering the increasing interdependence, interaction, and interconnection between countries in various aspects of life.

It is necessary to build a responsive legal model based on the sovereignty of purpose to integrate the aforementioned interests. Responsive law has the following characteristics [4]:

- a. Regulations are under the principle of law and policy according to their authority.
- b. The goal is to achieve substantive justice.
- c. Discretion is expanded but must be accounted for in accordance with the objectives.
- d. As much as possible to avoid coercion.
- e. The relationship between parties with equality with civil morality is a social force.
- f. Non-compliance is an ingredient to increase legality so that there is a juridical defense.

On the other hand, the theory of objective sovereignty as the basis for a responsive legal model has two main characteristics, as stated in [8]: "...it calls for inquiry into (1) substantive outcomes and (2) what is factually needed

for effective discharge of institutional responsibilities. In other words, purposive law is result-oriented”.

Peters gives two prominent characteristics of the concept of responsive law based on the objective sovereignty, namely [9]:

- a. Shifting of emphasis from rules to principles and goals
- b. The importance of society both as a legal goal and a way to achieve it.

With a responsive legal model based on objective sovereignty, the function of law as an integrative mechanism between national interests and international interests will be achieved. Conversely, if the law prioritizes international interests without paying attention to local characteristics, then the function of law tends to be ineffective. In this case, Robert C. Ellickson stated [10], “lawmakers who are unappreciative of the social condition that fosters informal cooperation are likely to create a world in which there is both more law and less order”.

In responsive law enforcement, to achieve legal objectives (laws), it must be supported by the professionalism and community empowerment. Community empowerment is defined as: “to give a power or authority” to the community. Empowerment demands that citizens no longer become objects of power/authority but as subjects. The paradigm shift from subject-object to subject-subject paradigm is a substantive element of community empowerment. Empowerment is inseparable from its connection with what is called civil society. Civil society can be defined as areas of social life that are organized and characterized, among others: voluntary, self-generating, self-supporting, high independence, and attachment to the norms or legal values that are followed by its citizens [11].

Responsive law enforcement based on sovereignty goals, aside from being supported by community empowerment, must also be based on professionalism. Five essential characteristics of professionalism are suggested in [12], namely:

1. Knowledge
2. Cleverness
3. Skills
4. Social interest
5. Code of conduct.

#### 4. Conclusion

Globalization is not limited to the economic field but extends to the social, political, cultural, scientific, and technological fields and the population. Therefore, the characteristics of national law in the era of globalization are limited to local characteristics and accommodate international trends. The legal model needed in the era of

globalization is a responsive legal model based on objective sovereignty, which is supported by community empowerment and professionalism.

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