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BOOK REVIEW

INFLUENCE OF GLOBALIZATION ERA ON BUSINESS LAW IN INDONESIA: A BOOK REVIEW *PENGARUH ERA GLOBALISASI TERHADAP HUKUM BISNIS DI INDONESIA*, DR. EDY SANTOSO, KENCANA JAKARTA TIMUR, 2018, 244 PAGES, ISBN 978-602-422-191-1

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Legal theory is a very critical discipline of law, in an interdisciplinary perspective, analyzing various aspects of legal phenomena, individually or as a whole, with the aim of gaining a better understanding and clearer explanation of available legal materials. Legal theory is not a normative form but is subjective in nature, which cannot resolve legal issues concretely in court, but must be processed in as much detail as possible and then be used as jurisprudence for lower decisions in the future. Legal theory will be an additional consideration for judges to decide cases later.

This book provides knowledge that the legal system in Indonesia is more inclined to the application of the Continental European legal system, where in the Continental European legal system recognizes the existence of individual property rights that are absolute. There is a difference between the Continental European legal system and Anglo Saxon. The Anglo Saxon system is known as dual ownership (dual ownership), a system that recognizes that ownership rights are legally recognized and legal ownership and beneficiary/economy owner. In fact, this legal system places jurisprudence as the main source of law. Jurisprudence in this context is based on cases decided in court which are essentially felt to be more flexible and adaptable.

The law of property is very closely related to material law, where the material law is the law of things (*Zaaken recht*), which is the overall rules governing the legal relationship between a person and matter. The word *Zaak* (Dutch) is translated with objects, and sometimes with goods. What is regulated in the law of objects is about the notion of objects, the differentiation of various objects, and various material rights.

Intellectual Property Rights are exclusive rights, where this arises for the results of human thought that produce a product or process that is useful for humans. This intellectual right only exists when the intellectual abilities of human beings have formed something that can be seen, heard, read, or used practically. The legal protection of Intellectual Property is very important for the creator and inventor to protect the results of his work. This is because a great sacrifice for the results of his work is very unfair if it is simply imitated and commercialized by people who are not responsible. Intellectual Property Rights play an important role in international trade, which can support the economic development of a country. In addition,

Intellectual Property Rights are seen as a very important company asset to create products and services that benefit the community. Therefore, a person's intellectual work can be recognized as an object of protection.

Every human work must be respected and obtain rights so that intellectual property gets its basis on property rights in the general sense, namely property rights as human rights. Property rights under the civil law system which constitutes the Continental European legal system are recognizing absolute rights. The article indicates that ownership rights are exclusive in nature, and this article gives the creator the broadest possible rights to use his property for his purposes. Therefore, it is natural that the creator or inventor finally has the right to get a reward commensurate with the value of the work given to the public at large.

The results of the creation of a person or group is a very valuable asset for its creators and at the same time a national asset that has a significant impact in realizing the prosperity of the community. Copyright not only has economic rights, but also has moral rights that need to be protected as a form of appreciation or incentives given by the government to inventors to actively create things that are more beneficial to the public at large.

The emergence of the ASEAN-China Free Trade Agreement presents challenges and at the same times and opportunity to explore creativity in creating innovative products. This is because Chinese products dominate the supply of imported goods so that they have a wide-ranging impact on the economy of the Indonesian people, especially among industries that are in the middle to lower level. The impact of this international agreement is that the value of Indonesia's exports in 2009 dropped quite sharply, reaching 14.98%. Therefore, the role of Intellectual Property Rights is very important because trademarks, trade secrets, logos, patents, etc. are part of Intellectual Property Rights that can protect the rights of the work of the creative community of Indonesia. So, it does not fade the spirit in creating creative products that can attract the attention of consumers and win the competition.

Unfortunately, Intellectual Property Rights only have a big positive impact on developed countries that have innovative products with high technological quality because they can enjoy economic rights that lead to large profits, by setting prices for their own benefits because they have monopoly rights. But the negative impact on developing countries, like Indonesia, will be felt on the economy. This is because industries in

Indonesia are largely dependent on the agriculture, manufacturing, and service sectors. Therefore, the protection of Intellectual Property Rights would have little impact on the Indonesian economy.

Related to monopoly rights, this is contrary to the principles of Islamic law because it causes a lack of sharing of knowledge to the public, where the purpose of making the latest work is useful to provide benefits to the community from the creation or finding it. Finally, holders of Intellectual Property Rights have a private right whether they hope to protect and utilize their economic rights or not, because it will be related to the public interest and benefit of Muslims as a whole. On the other hand, in the concept of Islamic law, the concept of protection of intellectual property rights is acceptable and does not conflict with Islamic law. The result of the creation of the human mind is a personal effort to validate them, so that they can live from their efforts, which in this case can be claimed as private property. And the Sharia emphasizes that ideas must come from their sources and expressly condemns the false attribution of one's work to others.

The existence of Intellectual Property Rights itself is expected to provide motivation for the Indonesian people to be more creative in creating things that are beneficial to everyone, including creating creative works, such as Batik motifs. With UNESCO's recognition of batik as Indonesia's cultural heritage, it should be able to be used as a trigger for the emergence of community creativity to create other batik art in the future. So that intangible assets belonging to the Indonesian people can be maintained. Thus, Act No. 28 of 2014 as into Government Regulations in Act Substitute No. 19 of 2002 concerning Copyright will be more effective application. The Government also, as the copyright holder of Indonesian works, can prevent monopoly or commercialization as well as acts that damage or commercial use without seizing the Republic of Indonesia as the copyright holder. So that foreign parties cannot damage the value of Indonesian culture. So, concern for the assets of the Indonesian people towards the use without rights by other nations is absolutely necessary. Therefore, it is hope that some Indonesian batik when exported and sold abroad does not have to pay royalties at high prices.

At present, the development of information and communication technology causes relations between one country and another to become borderless and social, economic, and cultural relations are rapidly occurring. Current information technology contributes to the improvement of the

welfare and progress of human civilization because ideas and information must flow freely on Internet. However, as using technology it can be easily copied and is almost similar to the original, and plagiarism, piracy, and illegal plagiarism often occur. Therefore, cyber law appears to provide protection for the intellectual property rights of the creator of his work, and impose sanctions on those who violate it.

Cases in other countries have illustrated the rampant violation of illegal translations and become new international law cases in the current digital era related to violations of moral rights in the copyright regime. Google provides a project that is scanning more than 15 million books into its giant search engine. However, this was rejected by Judge Denny Chin because this was exploitation of the entire book, and without permission from the copyright owner. Finally, Google cancelled this project. In the Middle East, compact discs and Windows software are hijacked and sold. This can damage the brand value of the Windows name. In 2007 in Poland, a member of Napisy.org was arrested for posting illegally translated results of a film, which was eventually sentenced to two years in prison.

However, it is unfortunate that so far, there have not been any similar cases in Indonesia, as has happened in America, the Middle East and Poland. Possibly because there is no firmness of sanctions from the government or judges for violating them. In Indonesia, there are several laws related to Copyright. Act No. 11 Year 2008 concerning Information and Electronic Transactions. Article 25 Act of ITE provides general protection against issues of Intellectual Property Rights related to cyberspace activities, especially with regard to copyright infringement. Article 5 of the UUHC 2014 concerning the moral rights of the creator which is considered irrevocable means that it is the right of the creator if he wants to sell or give permission to others.

Technological advances have greatly impacted the modern business system that led to free trade using electronic intermediaries (e-commerce). In e-commerce, transactions between sellers and buyers occur without ever meeting physically, and this is done through the internet which enables the creation of a global market. So far, the court in Indonesia does not have experience on cases relating to the issue of electronic standard contracts in ecommerce activities, bearing in mind that the problem has not been raised in the court. However, this can happen later. A standard contract is an agreement whose contents are formulated by a party in the form of forms,

with the aim of efficiency and practical reasons. This agreement refers to Article 1320 of the Civil Code which implies the validity of the agreement, at least regarding the agreement, the ability to make an agreement, a certain matter, and legal reasons. Before conducting a transaction, the buyer is required to read and agree to the written terms such as terms, terms and conditions, and terms of conditions. In addition, another way to authorize a purchase is to carry out an electronic signature, which has been regulated in article 11 Act of ITE concerning electronic signatures which gives explicit recognition that electronic signatures have the same status as manual signatures in general which have the power law and legal consequences. Standard contracts are recognized and regulated by national regulations in Article 18 Act No. 8 of 1999 concerning Consumer Protection. According to the author, the standard contract really aims to be practical and not detrimental to consumers, so it can be used.

The reason for the electronic contract is efficiency and some businesspeople accept it. Thus, the contract agreement is done by using a click wrap agreement more often done and can almost be said to be rejected by the court. Click Wrap agreement means the buyer agrees to the terms called standard contracts that have been prepared by clicking I Accept, OK, or I Agree, before the transaction runs. This is because through a click wrap agreement that is by clicking: I agree or I accept the electronic contract is valid and applies as usual trading, although it applies specifically. In addition, Article 1338 Civil Code states that the form of the agreement is free, can be in written and unwritten form. So, electronic agreements can be made possible. According to the author, if we refer to jurisprudence in foreign countries such as America as an additional source of law, then the agreement of the electronic standard contract is valid and acts like a normal trade, even without signature. On the company side, are prospective buyers aged adults or over 18 years as required by law? If we find out that there are parties who are not capable, then according to the agreed agreement terms can be cancelled. On the consumer side, the object being sold is sometimes very different between the one shown in the photo and the original item. This is what causes problems in making transactions, because consumers feel that the goods, they bought are not in accordance with what is listed in the photo on the website. Therefore, in an electronic standard contract, the thing that needs to be avoided by consumers is a rule that contains an exemption or

limitation of liability from business actors which can often be detrimental to the consumer.

In fact, the development of information technology offers advantages and disadvantages for online business activities, such as online banking and trade models. The advantages are ease of access, product search, many choices, shopping convenience, and efficiency. There is also a loss that is obtained, namely online banking fraud, such as in Malaysia, Indonesia, and the United States by way of identity theft mode. In Malaysia, statistics from the Financial Mediation Bureau (FMB) show that the number of cases increased from only 46 cases in 2008 to 163 cases in 2010. In Indonesia, quoted from Kompanasia.com, the number of attacks in Indonesia in 2015 reached 48.8 million. In the United States, around 40 percent of fraud was reported to the United States Federal Trade Commission in 2007. The type of identity theft is through email fraud. Where the email sent will appear as if it came from a legitimate source or institution, such as a trusted business institution or financial institution, and is urged to request consumer personal information. In addition, fraud also occurs through phishing sites. Phishing is a fake site that is designed as if it is very similar to the official website of a company. The site uses a domain name, which the company uses as a trademark. Then when a user clicks on the link, it will automatically connect to the fake website. Therefore, the victim will enter all of his personal data while logging in, and then the perpetrator can then log in to the victim's real account and steal funds.

One of the newest modes of business crime in this globalization era is insider trading on the capital market. Insider trading is a practice in which people conduct securities transactions using exclusive information that they have that is not yet available to the public or investors. The case of insider trading is an allegation on the sale of 81.95% of PT Petrosea's shares to PT Indika Energy in 2009 due to an unreasonable transaction that supposedly has to do with the planned sale of PT Petrosea (PTRO) shares in full. At that time the Capital Market Law (UUPM) lacked strong authority. Therefore, the Capital Market Supervisory Agency (Bapepam) requested that the Capital Market Law be amended immediately. In addition, with the Act No. 21 of 2011 concerning the Financial Services Authority (OJK), the authority of the FSA is broad enough to be able to guarantee the existence of a law that underlies economic activity in accordance with the market economy.

One of the ways in which international commercial disputes is by arbitration, where the disputes refer to one or more people, with the decision that they agree to be bound. However, this is often misused by the losing party to ask the court to intervene, especially during the execution.

Prevention for business crimes in this globalization era can be developed by strengthening surveillance which will be very easy to be able to quickly detect the occurrence of contra in business in Indonesia. In addition, socialization is needed to the public about the use of technology that is growing rapidly now. And enforce the law to provide protection against illegal businesses and protection of intellectual property rights.

Nowadays, the role of law is not only needed in regulating various fields affected by globalization and free trade. A greater legal role is needed in providing protection for weak parties. Which protection is really needed, considering that in the era of globalization and free trade, and there are not a few Indonesians who are still in poverty and in need of legal protection and serious attention from the government through concrete actions.

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