

THE ROLE OF LAW IN INDONESIAN ECONOMIC DEVELOPMENT: SURVIVAL UNDER TWO GLOBAL ECONOMIC CRISIS**

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INTRODUCTION

During the last ten years, the world, including Asia, have suffered two times from economic crisis in 1998 and 2008. For Indonesia the 1998 economic crisis has caused some banks collapse and liquidated, unemployment increases, people's purchasing power weaken, stock-exchange index deteriorates, Rupiah exchange rate formerly Rp 2,500 per one US Dollar, within only one month became Rp 15,000. Many corporations suffered from bad debts that they could not pay their debts.¹ The second global economic crisis began to occur in 2008. The crisis hit Indonesian export commodities to America and European countries, mainly in the businesses of garment, footwear, and shoes. They caused unemployment increase in Indonesia into around 14,000,000 people. The stock exchange market once crashed so that many corporations suffered loss suddenly.²

The lawyers and economists seem to have a common opinion that the law has significant role in economic development. Most of them considered that legal certainty is a pre-requisite for the economic development. However, the law does not automatically encouraged economic development. On the contrary, the law could become an obstacle for economic development.³

In order that to play a role in the economic development, law must provide three qualities, "predictability", "stability", and "fairness".⁴

Firstly, law has to be able to predict or provide certainty. For example, investor will get confidence that the law will protect the capital he/she invested. Creditor will get legal security, if the debtor fails to pay the loan. Lack of legal certainty is the most significant constraint in inviting foreign investor to a country. The business Sector needs to have certainty on how long he/she will get the required licenses or permits to start a business including the cost that has to be spent for following such permit issuance procedure.⁵

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¹ "Mengurai Benang Kusut BLBI", (Jakarta : Bank Indonesia, 2002), p. 4.

² "Footwear and Textile Firms to Upgrade Equipment, Shift Focus to Local Market", Jakarta Globe, April 20, 2009.

³ L. Michael Hager, "The Role of Lawyers in Developing Countries", American Bar Association Journal 58 (1972), p. 33

⁴ Leonard J. Theberge, "Law and Economic Development", Journal of International Law and Policy Vol. 9 (1980), p. 232.

⁵ "Investor Jepang Masih Ragu-Ragu", Media Indonesia, 20 Maret 2000.

Secondly, the law should be able to create stability, meaning it has to be able to accommodate or balance the competing interests of the society. For example, the society want to live in a clean environment and the company's interest for making profit. The law has to protect both customers and producers. The law has to be able to protect land-owners and government that requires the land for infrastructure construction.⁶

Thirdly, the law has to provide justice. The law has to be able to determine which one is right or wrong. The lack of standard on which one is right or wrong will eliminate the government's legitimacy in the long run.⁷

The three qualities constitute a requirement for any economic system to develop.

The law as a legal system has three elements: legal substance, apparatus, and legal culture.⁸

Firstly, substance is the legal norms, those which already exist in regulation as well as court decision. It also can be found in the society, which might not be in written form. Every community, no matter how simple they are, has rules to keep their life.

Secondly, legal apparatus are important institutions such as Parliament, Court, and Executive institutions. The government is legal apparatus, because the government issues licenses or permits and produces regulations lower than statute. Without legal apparatus or organs, the law and regulations as well as the Courts decision become useless texts on paper. To make them live we need the apparatus or organs.

Thirdly, it is the Legal Culture. This is the element which is the most important for legal system to perform. Without legal culture, the law is similar to a fish in a basket, the fish cannot move like in the water. Legal culture is the people's perception about the law, people's expectation in the law, the role of law in the society.

If we consider the legal system as a factory, then legal apparatus is like "machinery", legal substance is the "product" produced by the "machinery". Legal culture is the persons who operate the machinery, they, the ones who know what and how for the machinery to produce. It is they who know when to turn on and shutdown the machinery.⁹

The following paragraphs will explain the development of several statutes, one of the substances of law, to overcome economic crises in 1998 and in 2008.

Economic Crisis in 1998

To solve the economic crisis in 1998, Indonesia created various Statutes or Laws, among other things, such as Bankruptcy Law (1999), Law of Bank of Indonesia (1999), Anti Corruption Law (1999), Arbitration and Alternative Dispute Resolution Law (1999), Fiduciary Law (1999), Anti Monopoly and Unfair Business Competition Law (1999), The Law of Anti Money Laundering (2002), Deposit Insurance Law (2004),

Law No. 4 of 1998 concerning Bankruptcy and Suspension of Payment.

The goal of this law is to force debtor to pay his/her debt to creditors. Law No. 4 of 1998 concerning bankruptcy and suspension of payment is pro creditor because the

⁶ Leonard J. Theberge, op. cit., p. 232.

⁷ Ibid., p. 232.

⁸ Lawrence M. Friedman, American Law (New York : W.W. Norton & Company, 1984), p. 6.

⁹ Lawrence M. Friedman, American Law the 20th Century, (New Haven and London : Yale University Press, 2002), p. 505-519.

requirement for requesting a statement of debtor's bankrupt shall be two or more debts already overdue, and one of them has not yet been paid. There is no insolvency test, whether its asset is bigger than debt. The weakness of this law is, among others, small creditor can make big company bankrupt.

Law No. 10 of 1998 on Amendment of Law No. 7 of 1992 on Banking.

This law is intended, among others, to establish a special institution as implementation for bank restructuring program. As a follow-up of this stipulation, the Government established Badan Penyehatan Perbankan Nasional-BPPN (National Banking Restructuring Agency) to solve the payment of Bantuan Likuiditas Bank Indonesia - BLBI (Fund Assistance from Bank of Indonesia) given to the banks suffered financial problems with expectation that they would survive, although some being liquidated finally.

Law of Bank of Indonesia 1999.

This law aims, among others, to regulate on the goal and duty of Bank of Indonesia to maintain the Rupiah currency value (Article 7) and Article 9 of this Law No. 23 of 1999 mentions that other parties are not allowed to intervene in anyway whatsoever into the implementation of duty of the Bank of Indonesia, and the Bank of Indonesia is obliged to reject and or disregard all forms of intervention from any parties whatsoever in the implementation of its duty.

Anti Corruption Law (1999).

This law has a goal to eradicate the rampant corruption. Article 2 paragraph 1 of Law No. 3 of 1999 mentions that every person illegally performs an action of enriching himself or other person or a corporation which can inflict loss of state finances or state economy, shall be sentenced with lifetime or minimum 4 (four) year imprisonment and maximum of 20 (twenty) year imprisonment and minimum fine of Rp 200,000,000.00 (two hundred millions rupiahs) and maximum of Rp 1,000,000,000.00 (one billion rupiahs).

Paragraph 2 mentions in aspect of corruption crime referred to in paragraph 1 conducted in a certain condition, capital punishment will be enforced.

Article 3 mentions that every person with intention to take benefit for himself or other person or a corporation, abuse of authority, opportunity or facility at his disposal because of position or function which can inflict loss of state finances or state economy, shall be sentenced with lifetime or minimum 1 (one) year and maximum 20 (twenty) years imprisonment or fined with minimum Rp 50,000,000.00 (fifty million rupiahs) and maximum Rp 1,000,000,000.00 (one billion rupiahs).

Moreover, Article 4 mentions the payment of loss of state finances or state economy does not eliminate the perpetrator's criminal punishment as referred to in Articles 2 and 3.

In 2001 Law No. 31 of 1999 was amended by Law No. 20 of 2001 that, among others, Article 5 mentioning minimum imprisonment is 1 (One) year and maximum punishment 5 (five) years and or minimum fine of Rp 50,000,000.00 (fifty million rupiahs) and maximum Rp 250,000,000.00 (two hundred fifty million rupiahs) for every person:

- a. to give or promise something to government official or state apparatus with intention so that the government official or state apparatus to do or not to do something in his/her position, which is against his/her obligation; or

- b. to give something to government official or state apparatus because of or in relation with something which is against his/her obligation, conducted or not conducted in his/her position.

Paragraph 2 of this article mentions that for government official or state apparatus who receive a gift or promise mentioned in paragraph 1 point a or point b, shall be sentenced with the same punishment as explained in paragraph 1.

As implementation of this Law on Corruption Eradication, there are many officials and former state officials and also businesspersons brought before the court and sentenced with imprisonment due to corruption crime, whether by Special Corruption Court, as well as by General Court, both of them culminate in the Supreme Court.

Law on Arbitration and Alternatives Dispute Resolution (1999)

This law regulates the domestic arbitration and the enforcement of foreign arbitral award. Article 3 of this law mentions District Court has no jurisdiction to examine the case of disputing parties that have made commitment to arbitration agreement. In the aspect of enforcement of foreign arbitral award, article 65 mentions that the institution authorized to handle issue of acknowledgement and enforcement of International Arbitral Award is the Central Jakarta District Court.

Indonesia has become a member of the New York Convention of 1958 concerning Recognition and Enforcement of Foreign Arbitral Award.¹⁰ In order to attract foreign investor, Indonesia also has ratified ICSID Convention (International Centre for Settlement of Investment Dispute). This convention is to settle the dispute between Investor and the State.¹¹

The Amendment of Bankruptcy Law of 2004

The amendment of Bankruptcy Law of 1998, mentions among others, enlargement of definition of debt, into obligation stated or can be stated in value of money, in Indonesian currency as well as foreign currency, directly or indirectly, existing as well as which will arise in the future, arising out of an agreement or law; and should be fulfilled by debtor and if not will result in giving the right to the creditor to fulfill it from debtor's asset. Other amendment in this law is, if a debtor is stock-exchange company, stock exchange, clearing institution,

The request of bankruptcy declaration can only be submitted by Capital Market Supervisory Agency (paragraph 3 of Article 2). Moreover, paragraph 5 of article 2 of Law No. 37 of 2004 mentions that in the case the debtor is companies of insurance, reinsurance, pension fund, or state-owned company that deals with the interest of the public, its request for bankruptcy declaration shall only be submitted by Minister of Finance.

Investment Law 2007

Foreign investment is one of the indispensable financial resource for Indonesia's economic development. The economic crisis over the last nine years has brought about a number of problems such as threat of national disintegration, bankruptcy of large companies, and increasing number of people who live below the poverty line.

¹⁰ Indonesia, Presidential Degree No. 34 of 1991.

¹¹ Indonesia, Law No. 34 of 1968.

As economic become integrated, legal harmonization follows suit. The establishment of the WTO (World Trade Organization) was preceded or followed by the establishment of regional economic blocs such as the European Community, NAFTA, AFTA. There is no contradiction between regionalization and trade globalization. Joining the WTO and regional economic cooperation means developing a democratic institution, renewing market mechanism, and functioning legal system.

The recovery of Indonesia's economic crisis needs substantial capital. One of the capital sources is foreign investment in the form of investment portfolio as well as direct investment.

The purpose of foreign investment anywhere is to gain profit. The profit can be gained through a widely open market, lower labor cost, proximity to natural resources, sales of raw materials and spare parts, and transfer of technology through patent, trade mark, and copyright licenses.

However, there are at least three other conditions which are quite determinant as to whether a country is attractive for foreign capital, such as : political stability, economic opportunity, and legal certainty.

Economic growth in Indonesia has been insufficient to create enough jobs to absorb the estimated 2 million to 2.5 million workers entering the labor market annually. Unemployment in Indonesia rose from 6.1 percent in 2000 to 11 percent in 2006 or around 11.000.000 people.¹²

With the integration of Southeast Asia's trade and investment on the horizon, the government must begin improving Indonesia's development policies in line with the region's future economic landscape. Indonesia in particular must iron out lingering uncertainties that have long shrouded the country's investment climate, and roll out those sectors it wants to develop to attractive more investors. Failing to do so will see Indonesia left out of the increased trade and investment in the region following the planned economic integration.

There is a desire to combine laws for foreign investment and domestic investment. In relation to GATT (General Agreement on Tariffs and Trade), there is still opportunity for Indonesia to change or add to the investment regulating that can cause trade distortion. In addition, the reform of the foreign investment law should not overlook the principles of investment agreed upon in APEC (Asia Pacific Economic Cooperation).¹³

The APEC Non-Binding Investment Principles can be used us a guide to determine the transparency and of consistency of investment policy. Over the past few years, countries in the Asia-Pacific region have carried out significant liberalization. Amidst this severe economic difficulty, Indonesia needs to invite more foreign capitals to boost exports.

The new investment law provides, among other things, the strengthening "national treatment" and "the most favored nations" principle under GATT, permits 100% foreign capital in certain industries, and requires joint venture companies for other industries, as stated in the Presidential Regulation on the new negative list of investment. The law also provides a guideline for simplification investment procedure to ensure that the required licensing can be dealt with under the same roof in shorter time than before.¹⁴

¹² Bisnis Indonesia, September 17, 2002.

¹³ APEC Non-Binding Investment Principles, Bogor, November 19, 1994.

¹⁴ Indonesia, Presidential Regulation No. 111 of 2007.

An updated “negative list of investment” in the Presidential Regulation would only serve as a basis to conduct an initial screening of investors, but would in no way be used to apply discriminative policies against them.¹⁵

The new investment law is expected to clarify the criteria for investments which are allowable. The new investment system will have uniform and transparent rules, procedures and guidelines. The revision of the negative list of investment in the Presidential Regulation was also expected to protect the nation in term of the environment, health, welfare and morality.¹⁶

The law integrated the country’s previously separate foreign and domestic investment laws, making various improvements, including simplifying the current 150-day investment permit process to a one-stop. It will also provide legal certainty in case of overlapping regional bylaws, and s guarantee for foreign investors against the threat of subsequent nationalization.

The government is now considering offering tax breaks for foreign investment in the automotive industry. The policy is obviously intended to help attract foreign direct investment.¹⁷

Law No. 25 of 2007 on Investment provides incentive and limitation for foreign investment

Law No. 30 of 2007 concerning the energy

Article 10 of this Law provides:

- (1) International cooperation in the field of energy can only be conducted for the purpose of:
 - a. to secure national energy resilience;
 - b. to secure procurement of domestic energy; and
 - c. to enhance national economy.
- (2) The international cooperation as mentioned paragraph (1) shall be implemented in accordance with the provisions of legislative regulations.
- (3) In the case the Government enters into an international agreement in the area of energy that creates widespread and fundamental to the people’s livelihood related with state finance obligation and/or necessitates amendment or formulation of law, should obtain approval with the People’s Representative Assembly (DPR).

Anti Monopoly and Unfair Business Competition Law (1999)

The goal of this law is every person doing business in Indonesia should be within a healthy and proper competition situation, so that this will not create economic power centralization into certain business actors. This law prohibits monopoly, price fixing, bid rigging, market allocation and abuse of dominant position.

Fiduciary Law (1999)

This law deals with the transfer of ownership right of a movable asset based on trust with provision that the asset with its ownership right being transferred remain within the control of the asset owner. This fiduciary security means the security right on movable asset whether they are tangible as well as intangible, also stating the asset that cannot

¹⁵ Ibid.

¹⁶ Indonesia, Law No. 25 of 2007 concerning Investment.

¹⁷ Ibid.

become collateral under other secure transaction law. Article 27 of this law mentions the receiver of fiduciary has priority right among other creditors. The goal of this law is to provide security to creditor who provides loan.

Money Laundering Law of 2003

In general, the current law is enough for the Financial Transaction Report Analysis Center to get the necessary data on money laundering. But there are several issues that there is a need to be accommodated into the law. For example, there is a need to expand the reporting parties, from currently only financial service providers to also cover designated non-financial businesses and provisions such as car dealers, real estate agents, traders of precious metals and lawyers.

Also, there is a need to include measure to address terror financing, especially as related to non-profit organizations which could be used by terror groups to finance their operation in Indonesia, non-profit organizations take many forms, especially foundations.

The Agency also wants to get the power to stop financial transactions and block an account whenever we find indications of a crime. Otherwise, the money is moving very fast.

In addition, the Agency wants to have the power to force reporting parties to comply with the law. At the moment the agency have no power at all to force them to report suspicious transaction to us. The Financial Transaction Report Analysis Center (PPATK) has proposed the amending of the 2003 Money Laundering Law to give it the power to impose administrative sanction on institutions and firms that fail to report suspicious financial transaction.

Under the current law, banks, insurance firms, pension funds, finance firms, investment managers and currency traders are required to report all suspicious transaction to the agency, but some are reluctant and even afraid to do so in cases involving influential figures. The absence of the power to impose legal sanctions on uncooperative institutions had hampered the work of the agency in tracing and tracking money-laundering transactions.

Law No. 25 of 2003 on Amendment of Law No. 15 of 2002 Money Laundering

The law of the law of money laundering is amended by law number 25 of 2003. This law has clearer definitions to suit the current development in money laundering and with international standard:

First, the Definition of money laundering is enlarged and far-reaching:

- Money laundering shall be an Statute of placing, transferring, disbursing, spending, donating, contributing, entrusting, taking out of the country, exchanging or other such as related to, Assets known or reasonably suspected by a person to constitute proceeds of crime, for the purpose of concealing or disguising the origins of assets as if such assets shall be legitimate. (Article 1 paragraph 1)
- 2) Definition of Provider of Financial Service:
 - Other services in relation to finance – and the post office (Article 1 paragraph 5)
 - 3) Additional definition of Suspicious Financial Transaction
 - Financial transaction whether or not completed using assets that are reasonably suspected to constitute the proceeds of crime. (Article 1 paragraph 7 c)
 - 4) Introducing new aspect of Cash Financial Transaction

- Cash financial transaction shall be withdrawals, deposits, or entrustments, on a cash basis or using other monetary instruments, utilizing providers of financial services (Article 1 paragraph 8)
- 5) Enlargement of criminal Statutes related to assets of proceeds of crime
- The proceeds of crime shall be assets derived from the following criminal Statutes: capital market field, in the insurance field, currency counterfeiting, gambling, prostitution, in the tax field, in the forestry field, in the environmental field, in the maritime field, or other offences for which the prescribed penalty is 4 years imprisonment or more. (Article 2 paragraphs 1 g, h, r – y)
- 6) Reporting obligation - secrecy
- Directors, officials or employees of Providers of Financial Services shall not disclose to their users of financial services, or any person, either directly or indirectly, by any manner, that it is contemplating making or has reported a Suspicious Financial Transaction to the PPATK
 - Official or employees of the PPATK and investigators shall not disclose to users of financial services in any manner, either directly or indirectly, suspicious transactions reports submitted to the PPATK or investigators.
 - Directors, officials or employees of Providers of Financial Services, official or employees of the PPATK and investigators, who violate the provisions of paragraph (1) and paragraph (2), shall be imprisoned for a minimum of 3 (three) years and a maximum of 4 (five) years and shall be fined a minimum of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp 1,000,000,000.00 (one billion rupiah). (Article 17A paragraphs 1, 2 and 3)

SPECIAL ECONOMIC ZONES

The government is planning a new law to legalized the creation of special economic zones (SEZs) in the country. SEZs would also be included in the new taxation and customs laws. If the zones are successful, the government will develop similar SEZs in other parts of the country, possibly with other countries aside from Singapore. Other regions tipped to become to SEZs include Bali, Makassar, East Java, and North Sulawesi's Bitung island.

The creating the law could help the government determine the criteria for deciding whether areas should be developed in this way.

The government planned to relax the implementation of the labor legislation in the newly declared special economic zones (SEZS). The government recently decided to designate those three islands as SEZs.

SEZs are areas where fiscal and non-fiscal incentives are offered to prospective investors. So far there have been official statements about giving tax cuts, customs and excise reduction, shorter licensing procedures and low cost infrastructure. The offer of cheap labor seems to be the icing on the cake. The whole package will make investment attractive as the cost of doing business is considerably much lower than it would be under normal circumstances.¹⁸

Law No. 13 of 2003 on Labor

The planed to review of the law No. 13 of 2003 on Labor has reached deadlock over contentious issues.

¹⁸ Se also Article 31, Law No. 25 of 2007 concerning Investment.

Most of labor unions involved in the meetings confirmed they and the employers failed to find common ground because unionists were opposed to numerous key aspects of the law. The main controversy, among other things, is Article 156 about compensation on job termination, as opposed by the employers. They recommend the government to issue regulation to ensure wise and fair treatment of workers in accordance with their wage classifications. On the contrary, the proposed reform of the social security program is supported by labor unions.

Another crucial issue is the implementation of outsourcing system, opposed by the labor unions. Many multinational corporations have outsourced some of their work to other domestic companies.

Law No. 24 of 2004 on Deposit Security Agency.

This law has a goal to support the banking system. The function, duty and authority of this agency, according to Article 4, are:

- a. To secure deposits of bank customers; and
- b. To actively participate in maintaining banking system stability in accordance with its authority.

Concerning the limit of money being secured, article 11 mentions that the value of deposit secured for every bank customer in one bank is maximum Rp 100,000,000.00 (one hundred million rupiahs).¹⁹

Law on Limited Liability Company (Law No. 40 of 2007) as replacement of Law No. 1 of 1995.

This law has a goal to meet society's need because the economic condition, advancement of science, technology and information have developed so fast. A limited liability company is a legal entity which constitutes an association of capital, established based on an agreement, which its statutory capital is divided into shares.

Article 3 paragraph 1 states that shareholders of limited liability company shall not be responsible personally for the commitment made on behalf of the company and shall not be responsible for the loss of the company exceeding the value of their shares.

However, paragraph 2 says that the provision mentioned in paragraph (1) does not apply if a) requirements of company as a legal entity have not yet been fulfilled; b) the related shareholders directly as well as indirectly with ill-will abusing the company for personal gain; c) the related shareholder gets involved in tort performed by the company; or d) the related shareholder directly as well as indirectly illegally abusing the asset of the company, resulting in the company's asset becomes inadequate to pay company's debt.

Law on Small and Medium Scale Business of 2008.

Indonesia's economic structure is like a Pyramid. Small scale business, which represents the largest part of the Indonesian business community, occupies the lowest level of the Pyramid.

However, small scale business plays a very important role in Indonesia's economy, not only because it represents the largest part of the Indonesian business community, but also because it has a very important roles in distribution and sales of raw material supply. In addition, small businesses provide large number of employment

¹⁹ Indonesia, Law No. 24 of 2004.

opportunities. Moreover, since small business absorbs a huge number of employees, it distributes income very effectively, which in its turn, will create markets for domestic goods and services.²⁰

The emphasis on employment is a reaction to the concept of high scale capital intensive industrial policy which Indonesia applied in the 60s. It has been acknowledged that this the policy was a failure basically due to reasons such as the following :

1. The capital-intensive approach by its nature is not suitable for a country with abundant workforce.
2. The capital-intensive policy in developing countries mostly depends primarily on government protection. Consequently, it causes increases in domestic prices, then such increases could further decrease real income.
3. The policy failed to boost the capital surplus which is very important for reinvestment.

Realizing these failures, Indonesia looked into an alternative strategy which would depend more on the comparative advantage. Comparative advantage is obtained through low wage labor, exploitation of abundant-domestic natural resources, small scale business and export oriented industries. This new strategy is more labor intensive and thus can create more employment and business opportunities.

Despite many challenges and controversies, the so-called comparative advantage strategy has proven its contribution to the increase of the level income, employment and foreign exchange obtained.

However, in Indonesia, a strategy that will give more opportunities to small scale business still cannot be fully applied. Generally in the 90's, small scale businesses face very tough competition with large scale businesses as the result of the growth of the large scale enterprises, market liberalization through deregulation, and a more open foreign investment policy, all of which have tended to create structural changes and distortion in the competition. Although this strategy has had a positive impact on the growth of the national economy, the growth of large scale businesses has created negative impact on the small-scale labor intensive sector.

The government of Indonesia has tried to reduce the negative impact through some protection and subsidy measure for small businesses, priority in the awarding government projects and strong government supports for cooperation between large and small scale businesses.

Furthermore, the relationship between small scale and large scale enterprises is not equal. For example, the supply of raw materials; most small scale industries do not have access to raw materials and thus depend on large scale supplies. Consequently, the small scale output price will always tend to be higher than the large scale output price and that of course leads to imbalances in competition between the large scale and the small scale enterprises.

Moreover, the relationship between the small scale and the large scale which is suggested by the government, is mostly concerned with the financial matters. Unfortunately, the most important part of the relation which is management assistance from the large businesses is usually ignored. The reason being the different interests of the parties. In this case, the small scale is the one who needs help the most and therefore must rely on the generosity of the large scale business.

²⁰ See also, Law No. 20 of 2008 concerning Micro, Small and Middle Business.

It is very important to understand that we do not necessarily underestimate the meaning of individual small business development programs which have the ultimate goal of increasing the capability and status of small scale business.

As an economic unit, small scale business needs to have its own regulations due to the specific obstacles it faces that need special treatment. Treating the small scale business the same as the medium and large scale business will only lessen its opportunities to develop itself.

Essentially, the small scale financing problem is how to support the business, so that it can proportionally give a contribution to the national economy. The support is needed, especially if the small scale business is encouraged to be more export oriented. In addition, the limited financial management causes the small scale business to have a relatively slow turn over. Second, small business generally has a very simple management system. It is so simple that it is done without proper management tools such as a basic accounting system. Frequently, they are even mix their private property with the business.

Law No. 20 of 2008 on Micro, Small and Middle Business tries to overcome the issues above, among others, Article 21 says

- (1) The government and regional government is to provide financing for micro and small business.
- (2) State-owned company can provide financing and allotment of annual profit portion which is allocated to micro and small business in the forms of providing loan, security, grant, and other financing measures.
- (3) National and foreign big business can provide financing allocated to micro and small business in the forms of providing loan, security, grant, and other financing measures.
- (4) The government, regional government and business community can provide grant, make effort to get foreign assistance, and other financing sources which are legitimate and non-binding for micro and small business.
- (5) The government and regional government can provide incentive in the forms of facility of permit requirements, discount rate for facility and infrastructure, and other forms of incentive in accordance with the provisions of legislative regulations to business community that provide financing for micro and small business.

Economic Global Crisis 2008

In 2008 global economic crisis attacked in Indonesia, marked with the fall of stock exchange index in Jakarta Stock Exchange, namely various corporations in Indonesia began to experience hardships due to decrease of commodity export to America and European countries. Such corporations were mainly active in the commodities of garment, footwear, furniture, and textile.²¹ Unemployment began to increase with workers' lay-off sporadically in stages. Some banks began to undergo crisis, because of crimes conducted by their board of directors or mismanagement in the banks. Currency began to decrease from 1 US Dollar equal to Rp 8,000 into Rp 10,000 or more. This value then fluctuated unpredictably and once skyrocketed into around Rp 12,000.²²

²¹ Kompas, 13 Maret 2009.

²² Jakarta Globe, 15 April 2009.

The Government of Indonesia immediately issued two Government Regulations in lieu of Statute. First, Perpu No. 2 of 2008 amended the Law No. 3 of 2004 on Bank of Indonesia that enabled Bank of Indonesia to, among others, in the case a bank experiences a financial problem with systemic impact and potential to generate crisis dangerous to financial system, Bank of Indonesia can provide emergency financing facilities with its fund shall be borne by the Government. The procedures and condition of decision making on bank's financial problem with systemic impact, providing emergency financing facility, and source of fund originated from State Budget shall be regulated in a separate law. In addition, the Government issued the second Government Regulation in lieu of Statute No. 3 of 2008 amending Article 11 paragraph 2 of Law No. 24 of 2004 on Deposit Insurance, stated that the value of secured deposit can be modified. At the same time, Government Regulation No. 66 of 2008 on Value of Deposit being secured by Deposit Insurance Agency, increasing the limit of insurance for customer's saving from Rp 200 millions into Rp 2 billions.

After that, the Government issued the Presidential Instruction No. 2 Of 2009 concerning the provision of government goods and services procurement that they should only be domestic products. Similarly to the people, the government asked them to buy Indonesian products rather than imported ones.

In the provision of goods and services for the needs of government, department, institutions, in the central as well as regional offices, it is necessary to optimize government spending with the use of domestic products, mentioned in Presidential Instruction No. 2 of 2009. In the Instruction, the President asked departments and institutions to take suitable actions in accordance with each authority to maximize the use of domestic goods and services including national design, and engineering together with national goods and services provision.

Furthermore, it provides price limit for goods produced in the country and national contractor service providers to corporations goods/services providers with Presidential Decree No. 80 of 2003 on Guidance for Government Goods/Services Procurement Implementation as has been changed for several times. The latest change is through Presidential Regulation No. 95 of 2007.

Is this Presidential Instruction in conflict with the National Treatment principle of WTO/GATT? The National Treatment principle, does not allow discrimination or different treatment on imported and domestic products. However, the principle also firmly states that there is a clause for exception, for government goods/services procurement. Such exception is stated in Article III clause (8a) of GATT 1994, which mentions:

“The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale?”

The President also instructed to form A Team For Domestic Product Use Enhancement National for procurement of government goods/services chaired by Minister of Industrial Affairs. This national team is in charge of formulating policy, strategy, program, and establishing the necessary actions to maximize the use of domestic goods/services for government need. This is not in conflict with Indonesia's commitment as a member of WTO/GATT, because the use of domestic products for procurement for goods/services for government need is an exception from the principle *National Treatment* of WTO/GATT.

New Anti Corruption Law

The government is drafting an anticorruption law to include bribery and fraud in the private sectors, following Indonesia's ratification of the United Nations Convention Against Corruption (UNCAC) of 2003 in April 2006. The new law would replace the 1999 Law on Corruption Eradication and its 2001 amendment. Upon ratifying the convention, Indonesia issued a law consisting only of a statement of ratification instead of comprehensive articles to enforce the convention.

The new law must meet international standards in order to enable Indonesia to recover assets taken abroad by corrupters. In addition Indonesia would have to report on the law to the UN once it was enacted, while every year the UN would evaluate the progress of corruption eradicated in the country. The UNCAC comprises a total of 71 articles covering corruption in both the public and the private sector. It defines bribery and extortion in the private sector as corruption.

The prevailing Indonesian law does not classify private sector bribery as a crime. Perpetrators are usually given only administrative sanctions. The convention also includes a mechanism for international cooperation in the recovering stolen assets and recognizes the right of countries whose assets are taken away by corrupters. It also regulates efforts to deal with money laundering.

The new law would enlarge the jurisdiction of the Corruption Eradication Commission (KPK) to enable it to investigate corrupt practices at private businesses.

Conclusion

All of the laws explained, their effectiveness depend on implementation. As Friedman has said, the law can be effectively functions if it is being supported by legal apparatus and society's legal culture. The society's legal culture depends on sub-culture. This sub-culture is influenced by, among others, economic factor, one's position and his/her interests, including political interest. The late Prof. Daniel S. Lev stated that law is political decisions.

Meanwhile the economic crisis will reach its culmination in May and June this year, marked with the increase of unemployment. Most of the companies that requested employment termination are in the sector of labor intensive industry, located in West Java, West Kalimantan, Riau, East Java, and Central Java Provinces. New policies have to be taken in order to prevent the companies to be bankrupt.²³ Because of this economic crisis Rupiah exchange rate stability becomes the challenge for the Indonesian Government. The fall of export is taken care of by encouraging domestic product consumption. In addition, investment in Indonesia hopefully still grows of 5%. Indonesia still has to work harder to solve the problems, including to persuade legal certainty to occur.

²³ Media Indonesia, 18 February 2009.