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Embodiment of Economic Democracy Aspects in Na-tional Banking Law

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ABSTRACT

This research discusses the embodiment of aspects of economic democracy in Indonesian national banking law. Economic democracy is defined as a system in which the distribution of wealth and economic opportunity is done fairly and equitably. This research evaluates the extent to which the principles of economic democracy, such as fair access to banking services, financial inclusion, and consumer protection, are implemented in national banking regulations and policies. The method used in this research is qualitative analysis with a normative juridical approach, which involves the study of legal documents and related regulations. The results show that although there are some efforts to integrate the principles of economic democracy in national banking law, there are still gaps in its practical implementation. Recommendations are given to strengthen regulations and policies to be more aligned with the objectives of economic democracy, so that economic benefits can be felt by all levels of society.

KEYWORDS *Economic Democracy, Banking Law, Financial Inclusion.*

INTRODUCTION

The core of the financial system in all countries is banking institutions. The banking system in Indonesia has been regulated by the issuance of Law No. 7 of 1992 which has been amended by Law No. 10 of 1998 or called the Banking Law. Business entities that collect funds from the public in the form of savings and distribute them to the public in the form of savings and / or other forms with the aim of improving the lives of many people are called banks. Banks are allowed to collect funds from the public directly and give them back to the public through the legal system of credit. Therefore. banks play a role of *financial intermediary* (financial intermediary) whose main business is to collect and distribute public

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funds and provide other services commonly performed by banks in payment traffic (Elyana Novira, 2024).

Article 2 of the Banking Law states that Indonesian banking must be based on economic democracy using the principle of prudence. The elucidation of Article 2 states that economic democracy here is defined as democracy based on Pancasila and the 1945 Constitution. Things that must be avoided in economic democracy based on Pancasila and the 1945 Constitution are as follows: (a). In the history of its development in Indonesia, the system of *free fight liberalism* that encourages exploitation of people and other nations has resulted in and maintained the weakness of the national economic structure and Indonesia's position in the world economy, (b). The system of ethatism, where the state and the state apparatus rule, is needed to strengthen the potential and creative power of economic units outside the state sector, (c). Unfair competition and economic power that is only centralized to certain groups in various types of monopolies that make society lose and are not in line with the principles of social justice (Usman, 2001).

Indonesian banking is primarily tasked with collecting and channeling public funds in order to support the implementation of national development in an effort to increase equity, economic growth and national stability in order to improve the welfare of the people, as stated in Article 3 and Article 4 of the Banking Law. Banking activities also always adapt to the development of various economic activities both in the domestic market and in the global market, therefore banking functions are increasingly numerous and varied. This development of course brings the possibility of higher risks that will affect banking health. After all, in the past banking could grow and develop based on customary practices that would be recognized by society as unwritten legal norms, so given the increasing complexity and higher risks faced, a modern regulatory system is needed to regulate banking practices (Djoni & Rachmadi, 2010).

In Indonesia, the development of banking occurred in several periods, namely: (Hasanah, 2017)

1) Banking during the Dutch Colonial period.
2) Banking during the Japanese Occupation.
3) Banking during the Old Order Government.
4) Banking during the New Order era.

In its quest to trade and profit from the archipelago, the Verenigde Oast Indische Company (VOC) brought with it a system of finance and payment during the Dutch colonial period. De Javasche Bank was given a monopoly by the Dutch East Indies Government to issue money that was previously handled by the government. With the growth of plantations and the export of plantation products abroad, funds were needed for these operations. After banking came into existence, money was already known by almost everyone in the interior of Java Island as a means of payment, whether to pay taxes, make buying and selling transactions, and so on. All foreign banks, including De Javasche Bank, were owned by the Japanese government during the Japanese colonial era.

The establishment of the central bank in 1953 along with the economic turmoil marked the beginning of banking during the Old Order era. The printing of new banknotes by Bank Indonesia (BI) to support the expansion of bank credit had caused very high inflation and had a negative impact on the national economy. Meanwhile, during the New Order period, National Banking went through 3 (three) main stages, namely: (1). Stabilization and rehabilitation stage, (2). Development stage, (3). Deregulation stage.

In 1967, the New Order Government enacted Law No. 14 of 1967 on Banking Principles and its implementing regulations, such as Government Regulation No. 3 of 1968 on Foreign Banks. This law was also emphasized by Law No. 1 of 1967 on Foreign Investment (PMA). Therefore, there was an opportunity to establish a foreign bank. Since there were still restrictions, the opportunity was not extensive. The aim is to safeguard the interests of domestic banks (Djumhana, 1993).

Law No. 7 of 1992 came into force on March 25, 1992 replacing Law No. 14 of 1967. The replacement of banking regulations was carried out to increase the role of banking institutions in supporting the implementation of development and to meet the growing demands of banking services. Law No. 7 of 1992 on Banking underwent material changes with the issuance of Law No. 10 of 1998 on Amendments to Law No. 7 of 1992 on Banking. These changes include: (a). Conventional Commercial Banks can also conduct business activities based on sharia principles, but on the contrary, Commercial Banks with sharia principles cannot conduct business activities conventionally, (b). Business licenses to carry out banking business activities are granted by Bank Indonesia, (c). Deposit Insurance Corporation (LPS), (d). bank secrets are limited to information regarding the position of the customer as a depositor, (e). Special institution for National Banking Restructuring (IBRA), (f). increased imposition of sanctions against perpetrators of criminal acts in the banking sector.

In the face of national economic growth that is always fast-moving, competitive, and integrated with increasingly complex challenges and an increasingly advanced financial system, the development of national banking will inevitably experience dynamics between progress and stagnation during the banking crisis. Banks must submit and comply with the law when conducting their business as banking law has a compelling legal nature.

Legal principles are the philosophical basis that form laws and regulations that contain legal standards. The principle of national banking law is the principle of economic democracy, which is the legal basis for the formation of law. The legal norm must be returned to its principle. There should be no regulations that contradict the principle.

Problem Formulation.

How is the realization of the principle of Economic Democracy in National Banking Law?

RESEARCH METHOD

This study employs a normative juridical approach with qualitative analysis, focusing on legal documentation and existing regulations to examine the extent of economic democracy principles within Indonesia's national banking law. The research relies on legal analysis techniques to interpret provisions in national banking legislation, specifically examining the legal framework surrounding economic democracy as laid out in Article 33 of the Indonesian Constitution and its manifestation in banking regulations. Data sources include legal texts, previous studies, and regulatory documentation to assess how effectively these laws embody economic democracy and to identify areas for improvement in regulation and policy implementation.

RESULT AND DISCUSSION

Principles of Economic Democracy.

A normative foundation is needed to direct economic strategies, policies and programs. Article 33 of the 1945 Constitution provides the normative foundation for Indonesia's economic system. After the amendment, this article has been amended and further clarified. According to Article 33 paragraph (1) of the 1945 Constitution, the economy is established as a joint venture based on the principle of kinship. By prioritizing kinship, groups and collectives over rivalry, this article was created by the *founding fathers* with nuances of socialism. However, there is still the possibility to apply the principles of the market economy system. Paragraph 4 states that economic democracy is the basis for organizing the national economy by combining the principles of togetherness, equitable efficiency, sustainability, environmental insight, and independence as well as maintaining a balance between progress and national economic unity (Dewantara, 2014).

Economic democracy consists of two words, Democracy and Economy. As the name implies, democracy comes from the words "demos" and "cratos", which means "government by the people". However, the actual understanding of democracy is very diverse and deep. Democracy is usually defined as both a system of government and a philosophy of life. Democracy, as a philosophy of life, is a *way of life* based on the idea that all people are equal and have equal rights to freedom and happiness. Democracy, as a system of government, is government or rule by the people themselves established by an institution made up of freely elected representatives of the people (Winarno, 2005).

Economic System.

Institutional devices and various subjects or objects connected in a certain order are called systems. This means that this system emerges as a result of human efforts to fulfill life's needs. Meanwhile, the economic system is defined as a system that manages and builds economic relations between humans and various institutions in a living system. The economic system cannot function independently but must be linked to the philosophy, perspective and lifestyle of the surrounding community (Nurullah, 2017).

In summary, the history of Indonesia's economic development includes three economic systems, namely the liberal economic system (during the democratic era) from 1950-1959, the etatism economic system (during guided democracy) from 1959-1966, and the Pancasila democracy system (during economic democracy) from 1966-1998, which was liberal in practice.

Adam Smith, a philosopher who lived in Scotland from 1723 to 1790, is considered the creator (father) of economic liberalism. He formulated the hypothesis that when everyone is trying to make a profit for themselves, the free market will bring the highest prosperity to the power play. According to Smith, there are three factors that influence the achievement of prosperity: (1) profit-making and private ownership, (2) division of labor and specialized skills, and (3) extensive trade and competition. Smith argued that the state should only intervene indirectly and provide the widest possible market freedom in mobilizing the sources of prosperity and directing the profits of the country's division of labor and trade. Hence the *Laisser Faire* doctrine, which limits state responsibilities such as maintaining public security, national defense, legal certainty, infrastructure provision, and education, and prohibits market intervention. Thus, high productivity would develop.

Before the world economic crisis of 1929, Smith's classical theory of economic liberalism was the most popular perspective. It was only after the crisis that people began to wonder whether the invisible hand would always keep the market in balance. The seriousness of the crisis and its consequences, such as acute unemployment, showed that the Laisser Faire approach did not make sense. Therefore, the foundation of classical economic liberalization became shaky.

Some people see Karl Marx's critique of capitalism as a counterpoint to Adam Smith. Living between 1818 and 1893, Karl Heinrich Marx was a German philosopher and political journalist. Unlike Smith, Karl Marx pointed out more about the inventiveness and innovation of capitalism. However, the conclusions that can be drawn are very different. Unlike Smith, Marx argued that capitalism has no stable foundation and is destructive in nature. Capitalism does not create prosperity for the nation but instead brings poverty to the majority of the people. Marx considered inhumane living and working conditions as a logical consequence of capitalism. He saw that destitution and exploitation were caused by the free market, because the capitalists' profits came from the exploitation of workers. Marx had several demands: (1). Centralization of credit under state management through the National Bank with state capital and total monopoly, (2) centralization of transportation under state management, and (3) Increase in the number of national factories and production equipment, as well as the establishment and improvement of all land assets through collective planning.

However, Friedrich Angels, who was the most important interpreter of Marx, recognized the weakness of state control. The state will become more and more of a true capitalist and oppress its citizens the more productive forces it controls. In contrast, the elites control more capital, so there is no equal distribution of capital. John Kenneth Gailbrath, an economist, states that while people exploit others in capitalism, in communism the opposite is true. Countries like the Soviet Union and East Germany fulfilled the communist manifesto's demand for centralization and socialization of the means of production, transportation, and banking which proved to be a failure. Marx was generally concerned with how wealth was acquired and socially distributed over several periods of history. He thoroughly analyzed the relations of conflict that gave birth to the "bourgeois epoch". The period of the industrial revolution in England and the democratic revolution in France towards the end of the 18th century marked the bourgeois era. One of the most important things is that in the bourgeois era, capitalism became the dominant economic system, to the point where legal institutions were established and laws were defined to govern the lower classes.

The teachings of John Maynard Keynes are considered to be the control of capitalism to counterbalance Smith's teachings of free capitalism with the least possible state intervention and Karl Marx's teachings of competition and private ownership of the means of production. Keynes, a British economist who lived from

1889 to 1946, saw capitalism from two different sides: productive and efficient, but both structurally unstable. Although he believed in the benefits of a market order based on private ownership and competition, he criticized the Neo-Classical school based on Smith's thinking. In difficult economic times, the government should intervene in the market and increase demand by going into debt and spending more. This could include direct handouts to the public or lowering taxes. However, it is dangerous and does not produce any results, as people continue to save due to uncertainty. However, if the state directly spends money on infrastructure development, such as schools and roads, this will have a greater impact. The additional spending boosts consumption, increases demand, and results in an economic upturn. His recommendations and analysis, which called for the state to intervene in the market, were so ahead of their time that they were referred to as the "Keynes Revolution", surpassing the positions of Smith and Marx. Reactions differed with liberals and conservatives calling him a masked socialist, while Marxists accused him of having too much faith in the market.

However, Keynesianism has failed since the mid-1970s. On the one hand, the concept of anti-cyclical budgetary policy formulated by Keynes has failed. During the crisis spending increased, but debts could not be paid when the economy recovered. As a result, the country's debt accumulated, there was less room for spending between one crisis and the next, and there were two oil crises. As oil prices jumped dramatically, there was a vicious circle where salaries increased while fuel increases reduced income. Salaries rise again and cause inflation so that salary increases occur again. Therefore, state-initiated stimulus programs have no effect.

Economic System in Indonesia.

The founding fathers of Indonesia sought to create a system of economic democracy to find an economic system that suited the nature of the nation. Since it is difficult to build an economic system that is uniquely Indonesian but still in accordance with the progress of the times, this concept continues to be sought and developed in its new form. Reka Dewantara, quoting Sritua Arief Juoro, states that economic democracy has moral consequences. However, he points to economic democracy as a form of fusion between politics, economics and cultural morals, which are dynamically balanced and do not undermine each other (Dewantara, 2014).

The concept of economic democracy is mentioned in Article 33 of the 1945 Constitution paragraph (1): the economy is structured as a joint effort based on the principle of kinship. Article 33 paragraph (3): the earth, water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people. However, Article 33 increased to 5 (five) paragraphs, after the amendment. Paragraph (4) states that the national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, environmental insight, independence and by maintaining a balance of progress and national economic unity. In paragraph (5) further provisions regarding the implementation of this Article shall be regulated by law. But unfortunately, the 1945 Constitution does not mention the meaning or intent of these principles. The provisions of paragraph (5) emphasize that further provisions regarding the implementation of this Article shall be regulated by law. This can lead to various interpretations, especially regarding the meaning of these principles.

Although there has not been a more detailed explanation of economic democracy, the 1978 GBHN / MPR Decree IV has found positive characteristics of economic democracy, namely: (1) The economy is built as a joint effort on the principle of kinship, (2) The state controls the most important branches of production to meet the needs of the people, (3) The state controls the earth, water and natural resources contained therein and is used for the greatest prosperity of the people, and (4) The state oversees the use of state assets and funds with the approval of the people's representative institutions, (5) Every citizen has the right to choose the kind of work they want, to get the work they want, and to get a decent salary, (6) Individual property rights are recognized and their use must not conflict with the interests of society, (7) The potential, ideas, and creative power of every citizen can be fully expanded within limits that are not detrimental to the public interest, (8) The state looks after abandoned children and the poor. Economic sovereignty in the hands of the people is an illustration of economic democracy. Here, it is the people who have the right to determine the three main economic issues. The three problems are what to produce (*what*), *how to* produce (*how*), and for whom the goods and services are produced (*for whom*) (Abbas & Manan, 2005).

Throughout Indonesia's political history, the national political system has always existed between two sides of the economic system, namely liberalism and socialism. Along with the direction of national political movement, the national economic system also moved between two sides of the economic system, namely between the capitalist economy and the centralized economy. During the guided democracy period, the national economic system was centralized. However, after the guided democracy period ended, the national economic system tended to shift to a capitalist economic system. The national economic system is not only known as a mixed economic system, but also known as the Pancasila economic system. In Tarmizi Abbas, Muqbyarto examines the philosophical basis of the national economic system and summarizes that Pancasila is the philosophical basis of the Indonesian economic system.

Mubyarto then changed the national economic system to the Pancasila economic system, which has the following characteristics: (1) Economic, social, and moral stimuli drive the economy, (2) The whole society has a strong desire to realize a state of socioeconomic equality, (3) The development of a strong and resilient national economy is the priority of economic policy, and every economic policy is influenced by nationalism, (4) Cooperatives are the pillars of the national economy, and (5) There is a clear balance between centralism and decentralism of economic policy to ensure economic and social justice while maintaining the nature of economic growth and efficiency.

The Realization of the Principles of Economic Democracy in National Banking Law.

In terms of content, the study of law and development in the economic sector in Indonesia is carried out by paying attention to legal politics, or *legal policy*. This legal policy consists of *basic policy* and *enactment policy,* where *legal policy* is the main reason for the creation of legislation. Most laws in the economic sector are made to replace outdated laws, such as the Banking Law and Bank Indonesia Law, so they contain *enactment policy*. In this case, the existing laws have not effectively supported the Indonesian economy because the enacted provisions are not in accordance with the *legal policy*. In Kusumaningtuti, Hikmahanto Juwana states that some of the laws made during the banking crisis in Indonesia include the Banking Act of 1998, the Bank Indonesia Act of 1999, and the Bankruptcy Act of 1998, and the Bankruptcy Act of 2004, as well as various government regulations, presidential decrees, joint decrees, and ministerial decrees relating to the establishment of the National Banking Restructuring Agency, the Government Guarantee Program, Banking Recapitulation and so on (SS, 2009).

Law No. 7 of 1992 provided the foundation for Indonesian banking as it embarked on its take-off. The law creates a banking environment that enables the growth of the banking industry and produces transformations that can lead to the realization of public welfare. In the weighing section, Law No. 7 of 1992 explains several things to consider, namely the need to maintain continuity in the implementation of national development to realize a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution, that the main function of banking based on economic democracy is to collect and distribute public funds, considerations regarding rapid developments at the national and international levels, and finally, Law No. 14 of 1967 concerning Banking Principles is no longer in line with national and global economic developments. This explanation explains the *basic policy* and *enactment policy of* Law No. 7 of 1992.

The idea of economic development dates back to the New Order era in Indonesia, both theoretically and empirically. During this period, a number of economic concepts and programs were systematically implemented, which made it possible to predict where economic development would go. The development implemented during the New Order was due to the right economic program and stable political conditions that supported its implementation. Economic development can be carried out with political stability, and the success of economic development makes the people trust the government to continue to hold power. The New Order government took several integrated measures to rehabilitate the banking sector and monitor the money supply (Hadi, 2004).

Besides the balanced budgetary management of 1966 and the reduction of costs associated with Soekarno's legacy of lighthouse projects, there have been several steps taken gradually to increase the autonomy of the government's Central Bank. According to the latest plan, Bank Indonesia will only be the central bank and not conduct commercial banking activities. Meanwhile, foreign banks are allowed to set up branches in Indonesia, and state banks are required to treat state and private businesses the same way in competition for loans.

With deregulation enacted in June 1983, the banking sector underwent a profound transformation. Since the New Order economic policies of the late 1960s, it has been felt that deregulation was necessary to improve the efficiency of the financial and banking sector. Inefficiencies in the sector tended to be caused by market segmentation, especially between state-owned banks and non-government-owned banks, both national and international. Discrimination in areas of activity and implementation mechanisms tend to lead to inefficiencies in this sector. Deregulation of the banking sector began in 1983, which included *credit limits* and a selective credit system with interest subsidies, allowing individual banks to compete in setting lending rates, and pooling funds for liquidity loans that were no longer being extended. However, this deregulation was not complete and comprehensive, and state-owned banks still received special treatment and facilities, for example in relation to lending at low interest rates to economic groups to support and implement income distribution and development opportunities.

Indonesia entered the capitalist economic system according to John Maynard Keynes' theory of controlling capitalism. However, the state still controls it, as shown by the special treatment and facilities given to state-owned banks. The state provided lending facilities at low interest rates for the economically weak. The state expected an increase in the mobility and collection of public savings and an increase in the efficiency of the allocation of credit funds in the banking sector and all financial institutions. Prior to the early 1980s, the government faced problems in relation to the interest rate control system. Established banks faced no competition as they were dependent on the liquidity of Bank Indonesia and the interest rate set by the government.

According to John Maynard Keynes' theory, the drafting and enactment of laws such as Law No. 14 of 1967, Law No. 7 of 1992, and Law No. 10 of 1998, along with various policy packages, have influenced the development of banking in Indonesia (Imaniyati & Adam, 2021).

In the period of the policy package issued on October 27, 1988, known as Pakto 88, the number of banks increased significantly and sharply, from 111 in 1998 to 240 in 2004. Most Indonesian conglomerates owned their own banks. Within a short period of time, as a result of these regulations by the end of 1988 small banks began to experience liquidity difficulties, and eventually required assistance from BI (Wijoyo, 2015).

Several deregulation packages were issued up to 1991. The December 1988 policy regulated matters related to the addition of non-bank financial institutions and the expansion of their business fields. The March 1989 policy covered capitalization, lending *limits (credit ceilings)*, investment and investment lending, export credit, mixed bank ownership, and BPR provisions. The economic backdrop, especially banking, began to worry in 1991 when a policy package on prudential regulation was created, prior to the issuance of Law No. 7 of 1992 on banking.

In 1980-1981, Indonesia's economic growth peaked due to the *oil boom*. An *oil boom* is a term used to describe the state of the national and global economy related to the oil commodity. An oil *boom* is defined as a condition when a petroleum-producing country experiences a sudden surge in international demand and/or high sales prices. With the decline in global oil prices, the government was forced to change its protectionist policies towards economic restructuring that did not rely on the oil and gas sector. The government implemented a number of liberalization policies to stop the economic downturn, including the reduction of government subsidies, a 28% devaluation of the rupiah, and the rescheduling of development projects, including the cancellation or postponement of projects containing import elements. Meanwhile, deregulation of the banking system was enacted, allowing banks to set interest rates on deposits and loans.

The liberalization policy package describes the economic system used by Indonesia which is known as the Controlled Capitalism Economic System or Mixed Economic System. The mixed economic system combines elements of the command economy legal system put forward by Karl Marx and the liberal economic system. Invented by John Maynard Keynes, the mixed economic legal system blends liberal and socialist economic legal systems after the rise of socialist economic systems that were seen as too extreme (Priowirjanto, 2022). Rules derived from various sources that can be implemented in the economic activities of the state, companies, and individuals are the essence of economic law.

Indonesia's economy has been significantly affected by economic globalization, which has resulted in interdependence and integration in trade, production, and finance. The influence of globalization is increasingly felt after the development of trade liberalization principles supported by many countries around the world in the form of regional economic cooperation such as the *North American Free Trade Agreement (NATTA), Single European Market (SEM), European Free Trade Agreement (EFTA), Asean Free Trade Area (AFTA),* and international economic cooperation organizations such as the *World Trade Organization (WTO)*. The result, among others, is the renewal of economic law in Indonesia.

The result of Indonesia's participation as one of the 125 countries that signed the WTO agreement was the *Uruguay* Round, which was implemented within the framework of the *General Agreement on Tariff and Trade* (GATT). The conference began in September 1986 in Funtadel Este, Uruguay, and was completed on April 15, 1994 in Marakes, Morocco (Nasution, 2014).

The General Convention on Trade in Services (GATS), an appendix to the WTO agreement, provides the basic requirements for international trade in services. In general, the GATS consists of two groups of obligations, one group of concepts, principles and rules that create obligations for all *measures* affecting trade in services, and the second group of specific obligations that are the result of negotiations contained in the *schedule of* commitments, which is a list of commitments given by a country as a result of negotiations conducted within the framework of the GATS. The main principles set out in the GATS include:

a. The principle of non-discrimination *(Most Favour Nation/MFN)*, which means that any country that makes it easy for one other country must also make it easy for other countries. This principle is automatic or *unconditionally* and *immediately*.
b. The principle of *National Treatment*, according to this principle, domestic entrepreneurs or companies must also receive the same treatment without discrimination.
c. Transparency is a principle that requires each member to publish all laws and regulations, implementation guidelines, and all generally applicable decisions and provisions issued by the central and local governments that affect conventional trade.
d. Phased liberalization is the principle of requiring all WTO members to work together continuously to achieve liberalization in trade in services. The purpose of gradual liberalization is to allow the liberalization requested by WTO members to be implemented as the country's economy progresses.

The government and IMF made an agreement through the *Memorandum of on Economic and Financial Policies (MEFP)* on January 15, April 10, and June 25, 1998 to protect the Indonesian economy, especially in the banking sector, which included the following:

a. Remove all restrictions on foreign ownership of banks
b. Abolish all restrictions on the establishment of foreign bank branches.

c. Remove restrictions on foreign ownership of banks that have been listed on the Jakarta Stock Exchange (Indonesia Stock Exchange).
d. Remove all restrictions on bank lending except for prudential reasons or in support of cooperatives or small entrepreneurs.
e. Provide guarantees for public loans in nationalized banks.
f. Establish the National Banking Supervisory Agency (IBRA).
g. Merger of state-owned banks.
h. Establish a savings insurance scheme.

Based on the description above, it can be concluded that the WTO and IMF want to remove the restrictions placed on foreigners in the banking sector. In other words, foreign parties need to be given transparent access to run a business in the banking sector and be treated the same as national parties.

Financial Services Authority Regulation (POJK) No. 12 of 2021 on Commercial Banks regulates how foreigners can own shares of up to 99% of the paid-up capital. No domestic or foreign investors own shares, and it is assessed by OJK, the banking supervisor. OJK also ensures that bank owners must adhere to proper prudential standards. OJK also places a condition that the bank must contribute to the national economy as much as possible.

Based on POJK No. 5/POJK. 3/2015 on Minimum Obligations and Fulfillment of Minimum Tier 1 Capital of Rp. 6 Trillion, People's Economic Banks (BPRs) must fulfill the minimum core capital obligation of Rp. 6 Trillion no later than December 31, 2024. Law No. 4 of 2023 on Financial Sector Development and Strengthening (P2SK Law) is one of the *Omnibus Laws* on the financial sector. Bank Perkreditan Rakyat (BPR), based on the P2SK Law, is renamed as Bank Perekonomian Rakyat. Furthermore, the P2SK Law regulates the ownership of BPRs, where BPRs can be established by: (a). Indonesian citizen and/or, (b). Indonesian legal entity. BPR ownership arrangements under the P2SK Law do not emphasize foreign restrictions for shareholders in BPRs. This is in contrast to the Banking Law which explicitly stipulates that BPRs can only be established by Indonesian citizens, Indonesian legal entities whose owners are all Indonesian citizens, local governments or can be jointly owned between the three.

A broader understanding of foreign ownership of Indonesian Commercial Banks emerges from the above. It shows that having a stranglehold of foreign capital in Indonesia can threaten the economic sovereignty of the Indonesian people. According to Adhitya Wardono, it is very difficult to carefully explain the logic of economics and democracy in one term that is easily understood by the audience. It is inevitable that various interpretations will arise. Most people think that popular sovereignty in the economic sphere is the basis of understanding economic democracy. The sovereign people are in control of all economic and political resources. However, the concept of economic democracy in Indonesia is increasingly complicated and difficult to apply. There is no solid basis for applying clear conceptual boundaries. The elaboration of the concept of economic democracy and the products of development policies in Indonesia often deviate from its constitutional lines.

There is no definition of economic democracy in the Banking Law or its explanation. However, Sharia Banking Law No. 21 of 2008 explains economic democracy as sharia economic activities that contain the principles of justice, equity, and utilization. From a fairness perspective, the foreign ownership rule should be unfair to Indonesian citizens as it allows foreigners to own up to 99% of shares. In addition, it is possible that BPR shares are also owned by foreigners. Plato saw justice as something that requires rules that reflect a sense of fairness because according to him laws are not merely to maintain order and stability of the state, but the most important purpose of laws is to guide people to achieve virtue, so that they are worthy of being citizens of an ideal state. The moral life of every person is inextricably linked to law and legislation (Nasution, 2014).

Judging from the characteristics of the Pancasila economic system, one of them is the priority of economic policy to develop a strong and resilient national economy. As a result, economic policy has always been driven by nationalism, and significant foreign ownership of Commercial Bank shares and perhaps even BPRs is not an economic policy that has nationalistic values. There is a need for a consistent economic policy in the midst of rapid economic growth around the world, which poses challenges to the banking world. This policy is based on the principles of economic democracy.

During the COVID-19 pandemic, more flexible banking services are needed to meet customer needs while still protecting employees from virus attacks. One form of technology-based banking services that can adapt to the COVID-19 pandemic is *internet banking* (IB). Internet banking user decisions are influenced by demographics and information and communication technology, such as gender, age, education, marital status, mobile phone ownership, and the percentage of villages with 4G/LTE networks and BTS. Cell phone ownership and education are the most influential factors on internet banking usage. Therefore, banking institutions must provide online banking applications that are easy to use and accessible to the entire community.

While modernization in the banking industry is inevitable, regulations that can take banking principles into account consistently are necessary. Customers must be protected as their trust in the bank is the "heart" of banking.

When compared to ordinary criminal offenses such as fraud, theft, extortion, or robbery, the effects and victims of economic crimes, including banking crimes, can be more dangerous and threatening. Banking crimes have certain characteristics, such as *white collar crimes* or *new dimensions of crimes*. As such, these new types of crimes can wreak havoc on the banking system, causing widespread disruption to a country's financial and economic system, as well as the global economic system (Kristian, 2018).

When a bank goes bankrupt due to a riot, it will have an impact on other banks, especially if the bank is a systematic bank. The resulting effect is also known as the *domino effect*, which will spread rapidly to other banks and even to other financial institutions. The country's financial system will be further affected. According to the Preamble of the 1945 Constitution, the 4th paragraph, the national goal of the Indonesian nation is to protect the entire Indonesian nation and promote the general welfare. Therefore, the modernization of the Indonesian state, especially in the banking sector, must take this goal into consideration.

CONCLUSION

The study concludes that while Indonesian national banking laws make efforts to incorporate economic democracy principles, substantial gaps remain in their practical application. Although Article 33 of the Constitution emphasizes economic democracy as a foundational concept, current banking laws fall short in fully realizing fair access, financial inclusion, and consumer protection. The persistence of challenges—such as significant foreign ownership and potential regulatory inconsistencies—highlights the need for reinforced policies to ensure that economic benefits are equitably distributed across all societal levels. Strengthening the regulatory framework is crucial for achieving a truly inclusive banking system that aligns with Indonesia's constitutional commitment to economic democracy.

REFERENCES

Abbas, T., & Manan, W. K. (2005). Keterkaitan antara demokrasi politik, demokrasi ekonomi dan sistem ekonomi kerakyatan. *Mimbar: Jurnal Sosial Dan Pembangunan*, *21*(3), 429–439.

Dewantara, R. (2014). Rekonseptualisasi Asas Demokrasi Ekonomi Dalam Konstitusi Indonesia. *Arena Hukum*, *7*(2), 195–209.

Djoni, G. S., & Rachmadi, U. (2010). Hukum Perbankan. *Jakarta: Sinar Grafika*.

Djumhana, M. (1993). Hukum perbankan di Indonesia. *(No Title)*.

Elyana Novira, S. H. (2024). *Asas–Asas Hukum Perbankan pada Era Modernisasi dan Globalisasi*. CV. Green Publisher Indonesia.

Hadi, S. (2004). Strategi pembangunan Indonesia pasca IMF. *(No Title)*.

Hasanah, U. (2017). *Hukum Perbankan*.

Imaniyati, N. S., & Adam, P. (2021). *Pengantar hukum Indonesia: Sejarah dan pokok-pokok hukum Indonesia*. Sinar Grafika.

Kristian, S. H. (2018). *Tindak Pidana Perbankan Dalam Proses Peradilan di Indonesia*. Kencana.

Nasution, B. J. (2014). Kajian filosofis tentang konsep keadilan dari pemikiran klasik sampai pemikiran modern. *Yustisia*, *3*(2).

Nurullah, N. (2017). SISTEM EKONOMI DAN DEMOKRASI EKONOMI INDONESIA. *Hikamuna: Jurnal Pengkajian Hukum Islam*, *1*(1).

Priowirjanto, E. S. (2022). Urgensi Pengaturan Mengenai Artificial Intelligence Pada Sektor Bisnis Daring Dalam Masa Pandemi Covid-19 di Indonesia. *Jurnal Bina Mulia Hukum*, *6*(2), 254–272.

SS, K. (2009). Peranan Hukum dalam Penyelesaian Krisis Perbankan di Indonesia. *Rajawali Pers, Jakarta*.

Usman, R. (2001). *Aspek-aspek hukum perbankan di Indonesia*. Gramedia Pustaka Utama.

Wijoyo, N. A. (2015). Referensi Risiko Sistemik Perbankan. *Penerbit Universitas Indonesia. Jakarta*.

Winarno, R. (2005). Penerapan Prinsip Demokrasi Ekonomi, Keadilan dan Kepastian Hukum Dalam Hukum Penanaman Modal. *Perspektif*, *10*(4), 385–398.