Implications of GATS Principles in the Liberalization of Foreign Investment: A Case of Current Indonesian Banking Law

Acep Rohendi[1]
[1]*Management Program, Universitas BSI, Jalan Sekolah Internasional No. 1-5, Bandung, Indonesia*

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Abstract: The purpose of this study is to examine the implications of General Agreement on Trade and Service (GATS) as a part of World Trade Organization (WTO) principles in the foreign investment principles in the liberalization of current Indonesian banking law. This research is supported by the normative legal method. The results of this study shows, first, Indonesian banking legislation originally embraced limited liberalization (partial liberalization) becomes full liberalization. Second, the mastery of Indonesian banks by foreign investors jeopardizes the existence of national banks in Indonesia.

1 INTRODUCTION

Banking liberalization in foreign investment in national banking is still a pro-contra-liberalization issue of the economy in Indonesia. A country that runs a capitalist economic system is a country that carries out economic liberalization. According to the United Nation, Economic liberalization "encompasses the processes, including government policies, that promote free trade, deregulation, elimination of subsidies, price controls and rationing systems, and, often, the downsizing or privatization of public services" (The United Nation, 2010).

Economic liberalization in Indonesia was agreed in the Uruguay Round Ministerial Meeting on April 15, 1994 in Marrakesh, Morocco. The Government of Indonesia has participated in the signing of the Agreement Establishing the World Trade Organization (WTO) and all the agreements made in Annexes 1, 2 and 3 as a part of the Agreement (see considerations Item e Act Number 7 of 1994 on Ratification of Agreement Establishing WTO). The liberalization of foreign investment in Indonesian banks is the Government's commitment to the liberalization of Indonesia's economy with the IMF, which includes, among others, banking liberalization and compliance with WTO provisions, when the Government of Indonesia requests financial assistance to the International Monetary Fund/IMF (IMF, 1998). Demand for assistance to the IMF occurred after the crisis that occurred in Asia that hit Indonesia in 1997 (Priyatno, 2017).

Foreign investment in the banking sector is currently a hot issue to date relating to the limitations and percentage of foreign capital allowed in the Indonesian banking industry and its negative impact on the viability of local banks. It is also related to the sovereignty of the state in economic development to improve people's living standards by strengthening the dominance of foreign investors in the national banking system. It is also even linked to a sense of economic nationalism that builds the economy that prioritizes national interests. This is because in Indonesia, there is still a conflict between nationalism and globalization (Hendrastomo, 2007)

As the impact of the globalization era and the need for foreign investment, the government of Indonesia ratified the WTO Establishment Agreement through Law Number 7 of 1994 on Ratification of Agreement Establishing the World Trade Organization. This law creates the obligation of Indonesian government to provide wider opportunities for foreign investors to invest in national banks.

The Indonesian government, aware of the importance of banking support in financing national development, through its laws and regulations in order to support the developing world has opened up to foreign investors in the banking business in Indonesia. Factors limited domestic investment capital for the establishment of the Indonesian banking became one reason. The government hopes to create a sound banking system, efficient and able to compete in the era of globalization and free trade. After the 1997 economic crisis, the Government

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issued Government Regulation No. 28 of 1999 concerning the Merger, Consolidation and Acquisition Bank

The process of acquisition related to the share purchase of the commercial bank in Indonesia is stipulated in Government Regulation No. 29 of 1999 concerning the Share Purchase of Commercial Bank. Article 3 of Government Regulation No. 29 of 1999 allows foreign investors to purchase shares of commercial banks as maximum as 99%. Similarly, the implementation of foreign investors and domestic investors to buy shares of commercial banks is one of the consequences of the liberalization of banking ratification of the WTO (World Trade Organization) agreements, including the GATS (General Agreement on Trade and Service) agreement and the agreement with the IMF (International Monetary Fund). As the consequence, foreign investors are allowed to acquire a bank and buy bank shares and a maximum of 99% of shares owned banks. The bank is a national bank known as private bank, because Govern Banks and Rural Banks are not allowed for foreign investment and the Government Bank is limited to only 49% (Rohendi, 2016).

The long-term consequence of the National Private Bank acquisition by foreign investors is that the shares of the National Private Bank fall into the hands of foreign investors compared to domestic investors, as foreign investors have strong capital. The impact is deadly national private business actors to have banking, as the cooperative business actors who have long been marginalized in the Indonesian banking business. Whereas in 1978, there was still a number of Non-Foreign Exchange Banks Cooperatives amounted to five banks (Budianto, 2004). There are approximately 100 commercial banks in Indonesia, and almost half of commercial banks are either part or majority controlled by foreigners (Madian & S, 2012).

The facts are incompatible with one of the basic principles of national economy stated in 1945 Constitution, which is “independence” as stated in Article 33 Paragraph 4. The main source of development funds comes from within the country. The main source of development funds coming from within the country, however, does not reject the source of economic development funds from abroad, as a complementary source of development funds in the country if not sufficient.

Indonesian Banking is one of the sources of domestic financing to fund the development of the economy. Existence of banking is a one of strategic sources of national development. Banking in Indonesia law does not merely provide the function of the type of business that do business intermediation of funds in the community, but there is more to social function to improve the lives of people (Widiatedja .I.G.N., 2011). The banking sector is an integral part of the broader financial system and constitutes a key provider of finance to business. The Indonesian banking law of “democracy and economic independence” is the foundation of banking laws that apply to limited liberalization (partial liberalization). Liberalization limited (partial liberalization) is in accordance with the basic principles of democracy and economic independence as stipulated in Article 33 of the 1945 Constitution.

The law of foreign investment in Indonesia's banking sector is currently very liberal compared to other ASEAN countries. In comparison, the following limits of ownership of foreign banks in some ASEAN countries, with the exception of the Philippines, which sets foreign ownership limits 51%, Thailand 49%, Malaysia 30% and Vietnam 30% (Syamsul Hadi, 2012).

Mastery of the banking system is essential for the independence of the management of economic policy (Adityaswara, 2013). If banks are 80% controlled by foreigners, the national credit distribution will be determined by the head office where the banks are located. The banking sector is a very important sector in Indonesia, as nearly 80 total financial assets are regulated by banks. Therefore maintaining banking stability is a vital element for maintaining financial sector stability in Indonesia (Santoso, 2010).

Expansion of Indonesian banks through APIs and Services Sector Master Plan 2015-2019 Financial Indonesia is a guideline and the banking industry to change the relevant legal theory development has statutory functions as a means of social change. Its role is very important and still relevant today to be guidelines for the drafting of foreign investment in Indonesian banks, which at the moment the regulation of foreign investment in the banking sector is still disagreement as to show up today between the view of the national interest and in terms of Indonesia's readiness in the face of economic liberalization

The approach in this study is normative. The analysis was based on normative analysis. Qualitative study of normative law is supported by the historical method of law, comparative law and futuristic legal method. Based on this background, the problems identified include: the application of the principles of GATS-WTO in the liberalization of Indonesian banking law, and the legal consequences on the banking sector associated to the ownership of private commercial banks in Indonesia.

2 LITERATURE REVIEW

2.1 GATS and Foreign Investment Law in Indonesia

Investments are a source of driving economic growth towards sustainable development in the global era. Investments in a country can be sourced from both domestic and foreign funds (foreign investment) Investments are a source of driving economic growth towards sustainable development in the global era. Investments in a country can be sourced from both domestic and foreign funds (foreign investment) (Zarsky, 2015).

Foreign investment is asset flows from one nation to other nation with the aim of gaining profit with the supervision of the fund owner. The flow of assets in the form of physical property is a direct investment. The flow of assets to purchase shares of a company in other country is a portfolio investment (Sornarajah, 2010).

Foreign investments provide advantages for the host country in the form of transfer in production technology, skills, labors, and expansion of industrial base and competitiveness as well as accelerated development. Other advantage is to help overcoming "*savings–investment gap*" in the development and open access to a country's export market (Kehal, 2004).

Foreign investment illustrated the paradox with a country's dependence on foreign funds to finance domestic developments. There is a clear distinction in interest between foreign investors and the domestic governments. The main interest of foreign investors is to increase profitability, competitiveness, and access to international market. On the other hand, the interest of the developing countries is to encourage domestic economic growth (Kehl, 2009).

For the first time, Indonesia arranged for foreign investment in 1967, with the enactment of Law Number 1 Year 1967 concerning Foreign Capital Investment. Foreign Capital Investment acknowledged in the Law only covers direct investments. The participation of Indonesia as a member of WTO based on the Law Number 7 Year 1994, Law Number 25 Year 2007 on Capital Investment reflects several principles in GATS-WTO among others:

a. The principle of "*most-favored-nation"* (MFN) is set forth in Article 3 Paragraph (1) letter d, which reads" equal treatment and does not distinguish the origin of the country".
b. The principle of *National treatment* is set forth in Article 4 Paragraph (2) that the Government "gives equal treatment for domestic investors and foreign investors with due to regard to the national interest".
c. The principle of *Transparency* is set forth in Article 4 Paragraph (2) letter b that the Government "ensures legal certainty, business certainty, and security for investors since the process of licensing until the end of investment activities in accordance with the provisions of legislations."

2.2 Liberalization Era in Banking Law

The liberalization of Indonesian banks is a commitment of the Government of Indonesia to the IMF, which includes, among others, banking liberalization and compliance with the WTO provisions, when the Government of Indonesia requested financial assistance to the IMF (IMF, 1998). The request for aid occurred after the crisis that occurred in Asia which then hit Indonesia in 1997.

Indonesian banking liberalization involves opening market access and non-discriminative treatment to foreign parties, giving greater opportunity to foreign parties to participate in owning national banks so that partnerships with national parties remain. For this purpose, adjustments were made in the regulations of the national banking, among others: Amendment of Law Number 7 of 1992 with Law Number 10 Year 1998 concerning Amendment of Act Number 7 of 1992 on Banking. The amendment of this provision gives more opportunity for foreign citizens and foreign legal entities other than banks to establish a mixed bank as well as permitting foreign investors to buy shares of commercial banks (Rohendi, 2012).

It is stated in Article 3 of the Government Regulation that foreign investors may purchase shares of commercial banks up to a maximum of 99% of the total shares of the bank concerned. The same is regulated in Bank Indonesia Regulation Number 2/27/PBI/ 2000 concerning Commercial Banks (PBI 2000) (Rohendi, 2012).

Law Number 25 Year 2007 on the Investment Law no longer distinguishes foreign investors and domestic investors. Presidential Regulation Number 77 Year 2007 provides that foreign investors may acquire bank ownership up to a maximum of 99%, as the banking sector is included in the open business field with conditions (Rohendi, 2012). Due to the amendments to the banking laws, currently in Indonesia there are three types of foreign-owned banks that have foreign capital, which are branch

offices of foreign banks, mixed banks, and foreign-owned national banks such banks mentioned above.

3 RESEARCH METHODS

The research method used to answer the identification of research problems in this study using normative legal research methods or literature law research (secondary data only) (Soekanto & Mamudji, 2000). Using a descriptive-analytical research specification (Soemitro, 1994), which attempts to describe and analyze secondary data on foreign investment law in the national banking sector in relation to banking liberalization and its implications for the existence of national banks. The secondary data includes prevailing laws and regulations, legal theories, expert opinion and practice of the implementation of positive law concerning the above issues.

The approach method is normative juridical. This means that doctrinal legal research is usually used only secondary data sources that are legislation, legal theories and opinions of leading experts while the analysis is done in the form of normative-qualitative analysis (Soemitro, 1994). Secondary data used as primary data sources consist of: primary legal material (current law), secondary legal material (books or research) and tertiary legal materials. Secondary data were obtained by legal research in the Library Research and Internet Research (Stim, 2003). Secondary data were obtained by legal research in the Library Research and Internet Research (Stim, 2003). Technique of collecting data is done by searching library materials. Data analysis was done to data that have been obtained by analytical descriptive with normative juridical approach, using power abstraction and interpretation/ construction.

4 RESULT AND DISCUSSION

4.1 Result

4.1.1 Application of the Principles of GATS WTO in the Liberalization of Indonesian Banking Law

The liberalization of the banking application of the principles of the GATS -WTO in the legislation include: Principles of market Access, Principles Most Favored-Nation, National Treatment principles in the banking law.

Principles of Market Access set out in Article XVI (1) GATS relates to the opening of market access services according to mode of supply of services (supply of service) to any countries other members equally, without any conditions except to the terms agreed upon in the "schedules of specific Commitments "as stipulated in Article XX.

Market Access in banking legislation, namely:

a. A market-access commitment
Foreign banks are allowed to open branches in Indonesia, set forth in Article 20 of Law No. 7 of 1992 as amended by Act No. 10 of 1998 and Government Regulation No. 24 of 1999, and Article 6 Paragraph 1 of Law No. 21 Year 2008 on Bank Sharia.

b. a market-access limitation
   1) Foreign investors to partner in the commercial banks and the mixture are allowed to have a maximum stake limit with the composition of 99% and 1% in the hands of domestic investors. Article 22 Paragraph 1 (b) of Law No. 7 of 1992 as amended by Act No. 10 of 1998 and Article 9 Paragraph (1) of Law Number 21 Year 2008 on Bank Sharia, Bank Indonesia Regulation Number 11/1/PBI/2009 concerning Commercial Bank; Bank Indonesia Regulation Number 15/13/PBI/2013 on Amendment to Bank Indonesia Regulation Number 11/3/PBI/2009 on Islamic Banks.
   2) Foreign investors may purchase shares of commercial banks in Indonesia in the majority, stipulated in Article 26 paragraph 2 of Law No. 7 of 1992 as amended by Act No. 10 of 1998 and Article 14 of Law Number 21 Year 2008 on Islamic Bank. Limitation of the maximum number of shares that can be purchased is 99%, the rest is still owned by domestic investors (Government Regulation No. 29 of 1999 on the Purchase of Shares of Commercial Bank and Bank Indonesia Regulation Number 14/8/PBI/2012 on Shareholding Commercial Banks.

c. an exception to the national treatment principle
   1) The foreign investor can have only commercial banks and rural banks are not allowed under Article 22 and Article 23 of Law No. 7 of 1992 as amended by Act No. 10 of 1998
   2) Foreign investors are only allowed to have Islamic Bank, and not Rural Bank, set forth in Article 9 of Law No. 21 of 2008.

4.1.2 Principles of the Most-Favored-Nation

This principle is outward looking, without discrimination that the Government's policy is not to discriminate between foreign investors from one country to another. Several principles of Most-favored-nation (MFN) that played a role in the liberalization of the Indonesian banking in foreign investment include:

a. Article 20 of Law Number 7 of 1992 is amended by Law Number 10 of 1998 that foreign investors in the form of foreign banks domiciled abroad may open Branch Offices, Branch Offices and Representative Offices with the permission of Bank Indonesia

b. Article 22 Paragraph (1b) of Law Number 7 of 1992 is amended by Law Number 10 Year 1998 that domestic and foreign investors may establish Commercial Banks in partnership. Article 22 Paragraph (1b) of Law Number 7 of 1992 as amended by Law Number 10 Year 1998 does not distinguish the origin of foreign investors. This means that foreign investors, both foreign citizens and/or foreign legal entities originating from any country can partner with Indonesian citizens and/or Indonesian legal entities can partner in establishing a commercial bank.

c. Article 26 Paragraph (1b) states that domestic and foreign investors may purchase shares of commercial banks in partnership. Article 26 Paragraph (2) shall not distinguish the origin of a foreign investor country. This means that foreign investors, both foreign citizens and/or foreign legal entities originating from any country are permitted to purchase the Bank's shares. This provision allows foreign investors to own shares of Commercial Banks established under Article 22 Paragraph (1) to be able to partner with Indonesian citizens and/or Indonesian legal entities can partner in establishing a Commercial Bank.

d. Law Number 21 Year 2009 concerning Sharia Banking:
   (1) Article 9 (1b): "Sharia (Islamic) Commercial Bank may only be established and/or owned by: a. Indonesian citizens and / or legal entities of Indonesia with foreign nationals and/or foreign legal entities in partnership;" or
   (2) Article 14 Paragraph (1): "Indonesian citizens, foreign citizens, Indonesian legal entities, or foreign legal entities may own or purchase shares of Sharia Commercial Bank directly or through the stock exchange.

e. The words used in to show foreign investors in the banking sector using the terms "foreign nationals" and "foreign laws", do not indicate a country. No rules that treat discrimination against fellow member countries of WTO members relating to their banking sector policies.

4.1.3 The Principle of National Treatment

This principle is inward looking without discrimination, meaning the state of Indonesia as a WTO member states treats equally to domestic investors and foreign investors in the banking business.

Some of the principles of National Treatment arranged in Article 17 GATS that play a role in the Indonesian banking liberalization in foreign investment include:

a. Article 6 Bank Indonesia Regulation Number: 11/1/PBI/2009 concerning Commercial Bank (regulatory implementation of Article 22 paragraph 1b of Law No. 7 of 1992 amended by Act No. 10 of 1998). Foreign investors similarly to domestic investors can set up a commercial bank in partnership. Foreign investors can even have a Commercial bank in partnership with the ownership of bank shares amounting to 99% of paid up capital.
b. Article 6 Bank Indonesia Regulation Number 11/3/PBI/2009 on Islamic Banks as amended by Bank Indonesia Regulation Number 15/13/PBI/2013 on Amendment to Bank Indonesia Regulation Number 11/3/PBI/2009 on Islamic Banks, states that Foreign investors similarly to domestic investors can establish Sharia Commercial Bank partnerships. Foreign investors can even have Islamic Banks in partnership with the ownership of bank shares amounting to 99% of paid up capital.
c. Indonesian Government Regulation No. 29 Year 1999 on Purchase of Shares of Commercial Bank. Government Regulation is an implementing regulation of Article 26 of Law No. 7 of 1992 as amended by Act No. 10 of 1998.
d. Government regulations do not distinguish between foreign investors and domestic investors in the purchase of shares of Commercial Bank.
e. Article 3 of the Indonesian Government Regulation No. 29 of 1999 the number of shareholding commercial banks by foreign citizens or foreign legal entity which is acquired through purchase directly or through the Stock Exchange was as much as 99%. Article 10 of

Government Regulation No. 28 Year 1999 on Merger, Consolidation and Acquisition Bank (The implementing regulation of Article 28 of Law No. 7 of 1992 amended by Act No. 10 of 1998). This provision does not distinguish between foreign investors and domestic investors to acquire commercial banks provided it meets certain requirements of Article 10 of Government Regulation No. 28 of 1999.

Harmonization of banking law with the provisions GATS embraces full liberalization and applies one form of economic liberalization through the GATS, which has been ratified by the Government of Indonesia. Actually, Law No. 7 of 1992 before it was changed in 1998, embraced liberalization but not in full (partial liberalization) as foreign investors allowed to buy shares of commercial banks but should not have a majority.

GATS commitment is to implement the provisions of the banking law of Indonesia to implement economic liberalization, which in this case, intangible banking liberalization means "opening up" to the rest of the world related to banking activities. Economic liberalization of banking services makes it easier to invest and conduct banking business (Nguyen, 2018) as in the country of Indonesia. Indonesia's economic system should embrace a mixed economic system in accordance with Article 33 1945 Constitution, but in fact implement liberal economic system, as has been adoption in banking legislation relating to foreign investment.

The current economic system with the agreement of both cross country in regional and multilateral liberalization economic contains changing economic legal system that is based on Article 33 of the 1945 Constitution, into a legal system based on liberalism and capitalism are contrary to Article 33 of the 1945 Constitution. The development of the Indonesian economy under Article 33 UUD 1945 is the mandate of the proclamation that aims to prosperity. Indonesian economic liberalization is ultimately gradually integrated into the global market economy system based on capitalism (Baswir, 2006).

4.2 Discussion: Impact of Banking Liberalization on the Ownership of National Commercial Banks

4.2.1 Domination of Acquisition Process of National Private Banks by Foreign Investors

One of the consequences of the liberalization of banking in Indonesia is that foreign investors are more interested in buying shares of National Private Bank, which at the same time can also do acquisitions and proceeds through a previous merger and ending with the acquisition process. The procedure is simple and low cost. Foreign investors prefer to purchase/do acquisition of the commercial banks than set up new ones.

If foreign investors want to own/establish commercial banks, it is enough to buy bank shares 25% of the paid up capital of the bank, then the investor has the ability to control, and also to maximize profit. Foreign investors can buy shares of commercial banks up to a maximum of 99% of the bank's shares. There is no need to research the market, because banks are already known publicly, already know the advantages and disadvantages of their products, knowing the performance of management, including personnel in it.

The dominance of the acquisition of commercial banks is in contrary to Pillar I of the Indonesian Banking Architecture that is "healthy banking structure" with a vision: "Creating a healthy domestic banking structure that is able to meet the needs of the community and encourage sustainable economic development". How to achieve this vision is done either by bank merger (see Merger provisions set forth in Government Regulation Number 28 Year 1999 Concerning Merger, Consolidation and Acquisition of Banks)

4.2.2 Denationalization Share of the National Private Bank

The acquisition process of the National Private Bank does not occur prior to the liberalization of banking sourced to Law No. 7 of 1992 as amended by Act No. 10 of 1998 on Banking and Law No. 21 of 2008 concerning Islamic Banking, and its regulation implementation is set purchase of shares of commercial banks and Mergers and Acquisitions.

The provisions concerning the purchase of shares of commercial banks is originated from Article 26 of Law No. 7 of 1992 as amended by Act No. 10 of 1998 on Banking and its implementation regulation, that is

Government Regulation No. 29 Year 1999 on Purchase of Shares of Commercial Bank which allow foreign investors to buy Shares of Commercial Bank 99%, the rest is still owned by 1% by domestic investors.

The legal consequences of these provisions could happen to all bank institutions, where initially both the National Private Commercial Banks of Conventional and Islamic Banks can be purchased and acquisitions at the same time take over by foreign investors from different countries.

Denationalization of National Private Commercial Bank shares, to replace the role of the national private sector with foreign role is in contrary to the principle of independence as set forth in Article 33 Paragraph (4) of the 1945 Constitution and Article 2 Paragraph (1) of Law No. 25 of 2004. Foreign capital in the principle of self-reliance is still needed for the development of Indonesian banks, for foreign capital in the banking industry as the private sector should remain a complement, and not become owners of major capital in the development of the private banking business

Denationalization of National Private Commercial Bank shares contrary to the People's Consultative Assembly Decree of the Republic of Indonesia Number XVI/MPR/1998 on Political Economy in the Context of Economic Democracy as a legal source material and focuses on people's economy in economic development

4.2.3 The Control of National Banks by Foreign Investors

Economic sovereignty in the long term will evolve eroded by the private sector in the banking control, where control is taken over by foreign investors. The holding in the Indonesian banking is almost 50% in Foreign Exchange Commercial Bank (Otoritas Jasa Keuangan, 2015).

Foreign investors correlated with gains from the banking business in Indonesia will be transferred to the foreign investor's home country (capital flight). Supposedly if the commercial bank shares are held by domestic investors, it can at least be used to develop banking business in Indonesia, especially to improve banking intermediation function.

Mastery of ownership National Private Banks equals to hand over the banking intermediation Indonesia to foreign investors, the fact that foreign investors doing business in Indonesia purely business motives. Internal bank policy makers are certainly the majority or under the influence of foreign investors. The practice of MSME credit channeling at lower rates than commercial banks is controlled by domestic investors

National banks which acquired the top foreign investors are banks that already have offices/ branches throughout the archipelago. This means that banks controlled by foreign investors can reach the entire archipelago and compete with banks not only Govern banks, but also by the Rural Banks. The banks controlled by foreign investors, who have a tendency to be oriented more to consumer credit, compared with productive credit to support economic development, would adversely affect the development of Indonesia's economy.

4.2.4 Difficulties of SMEs in the Ownership of National Banks

Mastery of national banks by foreign investors, the presence of Indonesian banks to improve people's living standard will certainly be disrupted. Welfare of the people through the implementation of economic democracy will not be realized because the banks owned by foreigners do not automatically improve the welfare of the people.

The welfare state is a country that has a huge role to regulate all aspects of life of its citizens in order to achieve the greatest prosperity of the people. The concept of the welfare state concept was originally an attempt to overcome the negative effects of the capitalist economic system. The welfare state is often cited as one of the variants of capitalism, capitalism in a kinder and more humane face (compassionate capitalism).

Indonesia's economic development as a means or process running the country's economy today, and forever shall refer to Article 33 and Article 34 of the Constitution 1945, as the foundation of economic development and social welfare development. Economic development is one of the efforts to achieve the welfare of all the people of Indonesia, which is a manifestation of preamble of paragraph IV of 1945 Constitution. Foreign investment liberalization of the banking sector to the development of the Indonesian economy in the goals of the welfare state results in Indonesian banking law to be liberal and is contrary to the essence and spirit of the State of Indonesia in Destination Welfare State, as contained in the essence of the welfare state in paragraph I to IV of the 1945 Constitution.

Liberal laws on banking liberalization are contrary to ideal law of Pancasila (the Indonesian state philosophy) and Justice Theory of Pancasila. The liberal law can hardly be expected to support the essence and spirit of the State of Indonesia in

Destination Welfare State, as contained in the essence of the welfare state in paragraph I to IV of the 1945 Constitution. The concept of foreign investment in banking law on the development of the Indonesian economy in the era of economic liberalization is limited and needs to be returned to the national banking principle of economic democracy that reflects the Justice of Pancasila. Indonesian economic actors together take part in supporting the national banking promoting the independence of the national banking system, especially empower Small and medium enterprises (SMEs) to take part in the ownership of private national banks, in addition to other domestic investors and foreign investors.

5 CONCLUSION

Implications of the application of GATS-WTO principles of economic liberalization in the economic development of Indonesia against the Indonesian banking system changed the law of Indonesian banks that originally embraced limited liberalization (partial liberalization) became full liberalization (full liberalization). It changed the foreign investment in the private national banks of only a minority into a majority shareholding in commercial banks.

The legal consequences on the banking sector associated to economic liberalization of the purpose of the welfare state, among others mastery of Indonesian banks by foreign investors, jeopardize the development of the national economy.

Liberalization on the Ownership of National Commercial Banks results in impact in various fields. First, foreign investors dominate the acquisition process of National Private Banks. Second is Denationalization of National Private Commercial Bank shares where foreign capitals are no longer act as a complement, but the major capital owners in private banking business. Third, the ownership of major capital of private banks by foreign investors results in the control of the private bank. This can affect the development of economy in Indonesia. The last is that the mastery of national banks by foreign investors makes it difficult for SMEs to take part in the ownership of private national banks, which also affect the welfare of the people of Indonesia.

This study is useful for the executive (Government), legislative body (The House of Representatives/DPR), and central bank (Bank Indonesia). The results of this study can provide benefits in the framework of drafting legislation in the field of economy, especially in the preparation and policy making involving foreign investment in the development of Indonesian banking in the era of economic liberalization.

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