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EQUITY PRINCIPLE AS TRUST CONTRACT PRINCIPLE IN BANKING AND ITS IMPACT TO NATIONAL CONTRACT LAW RENEWAL

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Abstract: *National bank industry need a strong legal principles to run its function as intermediary institution in supporting national development and global access in order to be able to compete in welcoming ASEAN Banking Integration Framework (ABIF) in 2020. To anticipate that, Banking develop banking services based on contract. One of many, is Bank Indonesia which has issued PBI No. 14/17/PBI/2012 regarding deposit and managing (Trust) which then revised with POJK No: 25/POJK.03/2016 regarding revision of POJK No: 27/POJK.03/2015, which brought forward equity principle. This activity brings impact in contract law development. In its implementation, equity principle was troubled with the difference its definition or application in Indonesia and other countries with common law legal system. The issues to be discussed are (1) How is the implementation of equity principle in trust agreement to push the development of national banking? (2) how is the urgency of contract law system renewal in accommodating trust agreement? Based on the previous research, the result is: there is difference in definition and scope of equity in its implementation based on Indonesian contract law. The implementation of equity principle hasn't been performed optimally, remembering Indonesian legal system which doesn't recognize dual ownership which is the essence in trust agreement. Because of this, certain effort is necessary to implement equity principle concretely. It is time for Indonesia to renew its contract law to be able to compete the vast development of banking activity or other rapidly developing business.*

Keywords*: Equity Principle; Legal Renewal Contract; Trust*

INTRODUCTION

Indonesian Bank has strategic role to support national development in improving development harmony and its results fro economic growth, national stability with the society. This is in line with the three functions of bank, as agent of development, agent of services and agent of trust. Based

on Indonesian economic history, Indonesian economic moves in line with Bank industry. Bank moves the economy with its main function as intermediary institution that is to collect fund from society in savings, and provide them back to the society in credit form or other form in order to improve the living rate of society (Article 1 (1) Act of Banking). This is the main function of Bank as intermediary institution where the Bank is as the collector and provider of the society fund and the connector between those who in need of money and those who have the money.

On the other side, Indonesian economy is bank based economy, which means that the economy depends on the existence of bank as financial source. Because of that, the effort to strengthen healthy, efficient, and useful bank system for the economy, is becoming the main key in the success in maintaining economic growth in Indonesia. The government, in order to improve the quality of banking regulation, has revised Act number 10 of 1998 regarding the revision of Act number 7 of 1992 of Banking (Banking Act) the reason was for seeing the practice has became liberal and in need of reconditioned to be controlled. The design of the Act was to make efficient the nationa banking operation and to widen the area of business industry so it will not only depend on the fund collecting and providing activity.

Reformation of banking regulation has been the concern of the leader of G20 since High Level Conference held in Washington in 2008, this was based on the importance in keeping the health and stability of national and global finance. The role of capital and bank liquidity is so important that each member of G20 was asked to fulfill the recommendation of *Basel Committee on Banking Supervision (BCBS)* regarding the international banking standard. By applying international banking standard framework, healthier and stronger in crisis and more competitive Indonesian Banking system is expected in global financial industry. This banking condition will then improve the Indonesian financial system.

In line with the goal, for 2020 Indonesia has agreed to be involved to improve ABIF which is part of Asean Economic Community (AEC) framework. In the agreement, it was explained that Indonesia will implement ASEAN *Banking Integration Framework* (ABIF) with bilateral agreements forming chosen banks as Qulified ASEAN bank (QAB). There are 4 steps agreed to be prepared in welcoming ABIF which are: First, to improve the capacity and competence of individual and institution. Second, harmonization of banking regulation so it will have the same

standard and definition, third, building financial infrastructure. Fourth, preparing Indonesian Bank to fulfill QAB category. Because of that, National Banking must be able to improve its legal standing, prepare strong banks in their assets and capital to be able to compete with ASEAN banks in 2020.

Bank Indonesia (BI) at finally agreed general criteria of Bank included in QAB category which are:

1. Well Managed
2. Well Capitalized
3. Recommended by Authorities
4. Basel Provision Approved; and
5. and important bank in its home country

In line with the demand of regional and global, the regulation in bank has regulated some bank activities outside the function of bank as intermediary institution as mentioned in Article 6 (i) Act of Banking that explains that bank business of general, one of any is to do deposit for the interest of other based on contract; to place the customer fund to others in effect not registered in stock exchange. This is to be further regulated with the enactement of PBI No. 14/17/PBI/2012 regarding the activity of Bank in deposit and trust, revoked with POJK No : 25/POJK.03/2016 regarding alteration on Financial Authority Service Regulation regarding Bank activit in deposit and trust. In conducting trust activity, bank, as the trustee accept the property of the settler by register it separately from the propert of the bank, and the bank will accept the commission or fee from the given service, and by that the bank will get the benefit from fee based income. The development of trust is one policy which indirectly strengthen the capital asset of national bank, remembering that this activity has the potential to take the funds managed by trust bank overseas. The stronger the national bank, it is easier for the bank to fulfill the criteria of Qualified ASEAN Bank (QAB) which has been the requirement to be included in ASEAN Banking Integration Framework in 2020. Furthermore, legal relation as the base of bank action as trustee in managing the funds from parties who deposit the funds (settler) is put in written agreement called trust agreement.

The development of trust as one of the developing agreement in banking practice has occurred legal issue, remembering Indonesian legal system that knows no trust element, so that it needs adjustment or renewal to provide strong legal standing for its existence. Trust came from Anglo Saxon legal system from equity legal source. Equity is a regulation created and developed to decrease common law

rigidity. In the moment, common law was seen as unable to respond the need of society so the society complained the their legal issue to the kings and to the Lord Chancellor which then resolved with general justice and equity principles based on moral and natural justice. Indonesia which is still a developing countries has one challenge when the legal products from international institution with different legal system with Indonesia are to be applied to Indonesian legal system. With that, its is necessary to adapt well in its implementation to avoid clash or disharmony with the used legal system.

In Indonesia, equity means one decency principle as the abse of agreement in general, regulated in contract law as part of Private Law Book. In Indonesian legal system adhering civil law system, Act is the main legal source. In Indonesian contract law, equity is one principle as the base off Indonesian contract beside good will principle. This is mentioned in Article 1339 Private Law Book stating:

> 'one contract is not only binding for the matters clearly mentioned but also for anything forced by equity, customary or law in its character'

The meaning of decency in Article 1339 is still referring to the provision of Article 1338 regarding good will that one contract must be implemented rationally and decently according to the life of society. A good contract is a contract fulfilling the decency. The difference between equity position in Indonesian legal system caused legal implication in the implementation, including trust agreement in banking sector. Because of that, based on the explanation above, the issue to be discussed in this article is: How is the implementation of equity principle in trust agreement and the impact in national contract law renewal?

METHOD

This research is analytic descriptive that is to give means systematically, factually and accurately regarding the facts. Because of that, this research is to review and serve many issues and facts and other symptoms related to legal aspects in the development of banking service and then analyze it to obtain complete picture of legal issue related to the implementation equity principle in trust activity done by Indonesian Bank. The approach method used is normative legal approach so the approach used is using primary legal materials which are legislation, and secondary legal material such as journal or previous research and also tertiary legal material. The method of normative legal approach is using two ways: research in pulling one legal principle on written or unwritten law and understanding law

material in acts, law history used to analyze legal events chronologically and looking its relation to existed social symptom and also knowing the development of trust regulation based on one agreement in other country so that the background and principles can be noticed to be made as the basis to resolve the legal issues related to trust activities in Indonesia. Besides that, there is also approach with synchronization of legislation both vertically or horizontally. The data obtained especially the secondary data both in primary, secondary, tertiary legal material as the supporter of secondary data in analysis of judicial qualitative.

ANALYSIS AND DISCUSSION

Implementation of equity principle in Trust Agreement to support the development of national banking.

National economy development cannot be separated from the development of the world economy which currently in economic crisis triggered by *subprime mortgage* case in United States. Because of that, many chances and policies are taken by monetary authority in Indonesia to strengthen national economy especially in monetary sector, such as issuing PBI No: 14/25/PBI/2012 Regarding acceptance of foreign exchange of the export and foreign exchange pulling of overseas debt, stating that the foreign exchange of export and overseas debt can provide optimum contribution nationally in the placing if done from Indonesian Banking.

Furthermore to be able to manage the foreign exchange and used to improve national economy, it is hoped that the stock exchanges of debts and export can be optimized with bank activity of deposit and trust regulated in POJK No : 25/POJK.03/2016 regarding the alteration of POJK No : 27/POJK.03/2015 regarding bank activity in deposit and trust. Furthermore, by managing the funds placed in Trust Banks overseas, national banking has the chance to improve the asset to support the improvement of competition of banks in the country, financial deepening, and the realization of active and healthy capital market. The trust activity by bank is a development from bank service regulated in Article 6 (i) regulating the service of “doing activity of deposit for the interest other party based on a contract”. In trust activity, it is widened by adding managing activity in the asset. Based on Trust Regulation of Financial Authority Service, the asset deposited to the trustee is limited to financial asset which means that it is in from of funds, bills and/or effects.

Based on trust Regulation, of Financial Authority Service, the Bank activity in deposit and managing called as

trust, is an activity of deposit by managing the property of the settler based on written agreement between the bank as trustee and settler for beneficiary purpose. Settler is the party who own and deposit his property to be managed by the trustee.

The trustee is the bank doing the trust activity according to the provision in Bank Indonesia Regulation. The beneficiary is the party accepting the benefit of the trust activity. As explained before, the trust element is unknown in Indonesian Private Law especially in Book II and Book III of Private Law Book, because of that, trust agreement in banking is the result of adaptation of trust element in Anglo Saxon legal system countries. in the home country of trust where it was was born and developed, England, trust was born from moral and natural justice values.

The origin of trust from equity, was started in middle ages in England which has only common law court, led by one judge, the royal judge with the royal law. Common law was developed and made as the based on the predecessor. The judge followed the judgment made in the cases in front of them with the existence of one entity functioned as an institution collecting previous verdicts and made them as the law so that the court will follow what has been the verdict of previous cases. In the matter of the judge is considered as not fair then the parties claiming the injustice can propose option to appeal to the King, and the King will decide based on his conscience according to the judgment. For that, more appeal applications were proposed to the king. In the development, the impact of the many proposals the king started to delegate the authority to department secretary in the kingdom under the supervision of Lord Chancellor.

The Royal Secretary is becoming a judicial entity so that in the fifteenth century, chancery court was occurred led by a Lord Chancellor. This court is not like Common Law court with lawyers regulated by one precedent, chancery court was led by Lord Chancellor from religious character and joined in Christian Church and has no background of formal law education. Because of that, at the moment, new law developed, that was equity, and two legal systems were in effect, which were equity and common law, dealing with the matters clearly stated and regulated based on common court and equity regarding justice and conscience in chance court. Furthermore, the essence and definition of equity is translated as:

> *"The law of equity called such because of its basis on the principles of impartiality and fairness, seemed to be almost entirely dictated by the chancellor's own personal moral*

> *code. This highly unsatisfactory state of affairs continued right up until the end of the sixteen's century, when a lawyer, Sir Thomas More, was appointed Lord Chancelor and a new precedent was set. Sir Thomas, strove to provide the Court Chancery with a more ordered, a legal framework, and records of proceedings started to be kept. This turn led to the development of a number of equitable rules, or doctrines, and to the formation of the maxims of equity..".*

It is called equity for the neutral principle and fairness depend on personal judgment of one Chancellor morally. But this will not satisfy the country in solving an issue, so that in the sixteenth century, a lawyer was appointed by Lord Chancellor to lead Chancery Court to be more efficient, has legal framework and better process of chancery court. Lawyer is seen as having decent formal law knowledge and in its leadership some developments occurred from fair regulations or doctrines along with the forming of maxim equity.

As explained before, in its journey, implementation of equity led by a lawyer who understand law in order to create one 'maxim equity' which is the guidelines to decide a legal matter included in chancery court. The maxim equity means:

1. *Equity will not suffer a wrong without a remedy*

   The first equity (maxim) is closely attached to the origin of equity. This one is regarding the fact that. This rule is regarding equity that specially designed with the intention as the complement of legal court when common law is no longer able to provide legal action
2. *He who comes to equity must come with clean hands*

   This is one of the most known rule from other equity rules, which explains that the idea behind this rule is anyone who has wrongfully conducted any action or done any mistake may not get any benefit from the wrongdoing, for example, a woman who kills the husband has no right to take claim on the insurance with the consideration that he should not be allowed to be benefited from the crime ha committed.
3. *He who seeks equity must do equity*

   This rule is closely related to the previous rule, which is *who*

comes to equity must come with clean hands which means that if someone files suit in equity then he must be subjected to the decision of the court and respect the rights of other parties doing the same action. So, if anyone claiming legal action fairly regarding to one doing, then he must be ready to fulfil the contract and also their obligations according to the contract. The point of this rule is that the harmonization of parties in legal actions.

4. *Equity regards as done that which ought to be done*

   This rule is quite important since it has the meaning of the parties of the contract in doing certain legal action, according to equity the legal action will begin at when the parties bound themselves, not when the action being conducted.

5. *Equity follows the law*

   This rule said that in providing one view of the answer in equity issue, equity court will always see the first position of law, if necessary, then the steps will be taken from what has been regulated in common law. According to this rule, *equity follow the law* is functioned to assert that equity will not allow a compensation that contradicts the law. Because of that, the role of equity is to work as the complement of common law.

6. *Equity will not permit a statute to be used as an instrument of fraud*

   This rule is functioned to prevent someone from depending on the provision od law which cause injustice to the third party if conducted.

7. *Equity looks to substance not form*

   This rule describes important trait of equity justice which is able to analyze the sighthing of any condition of parties based on the position of the parties. *Equity* will not only subject to the strict legal position but also see the bigger picture.

8. *Equity acts in persona*

   Equity court made the judgment of individual, which means that judgment will be done individually. On the other side, court can oblige anyone to obey their judgment.

9. *Equality is equity*

Harmony is equity, this rule is to ensure that in case of property issue occurred that one party gets bigger portion than the other, and the purpose is similar, there would be a way solving it unless there is sufficient evidence that the property will be shared equally

10. *Delay defeats equity*

    When there is anyone bringing the claim on equity court, they have to do it without any delay, otherwise they will have to face the risk of rejected claim.

11. *Equity will not assist a volunteer*

    The term of volunteer is someone who accept the benefit without consideration namely no need of compensation because the character is similar as a gift.

12. *Equity will not want for a trustee*

    Equity court will not let trust fail in finding appointed trustee since the court will have the power to appoint a trustee.

13. *Equity Imputes an intention to fulfill an obligation*

    This rule states that whenever someone is on one obligation to commit an action, no matter how he does it, it will still be counted as fulfilling the obligation which is part of the equity.

Remembering the trust activity in banking practice, it is one adaptation of Anglo Saxon legal system, so it must be reviewed especially in the equity implementation in trust existed in banking practice as mentioned in Trust regulation of Financial Service Authority. In Indonesian context, the deposit contract with trust management has some limitations: 1. Must be based on written agreement; 2. Bank as the trustee is not allowed to commit any legal action to the asset unless it is based on written order from the settlor. With that, there is substantial difference, which is Bank as the trustee has no freedom in managing the deposited asset, because it must be with the consent of the settler or asset owner. Besides that, the legal source as the legal standing of the trust activity is contract law regulated in Private Law Book, so it will be also subjected to the principles of contract law. This is different from trust in common law system based on maxim of equity. By that, it is clear that there is difference in meaning and position of equity in tryst in Indonesian legal system with the legal system of common law.

Mariam Darus used the term fairness and decency in contract law. Fairness in one contract means to be able to be understood rationally, while decency is

to be able to be understood based on feeling, politeness, decent and fair. By that, fairness and decency is including anything that can be caught, both intellectually and emotionally.

Basically, trust regulation of Financial Service Authority can adapt some maxim equity as explained above to fulfil the essential factor of trust agreement. The rule of Financial Service Authority of trust is only regulating the trust principles technically as mentioned in Article 4 Financial Service Authority Regulation that Bank committing trust activity must fulfill the principles of:

1. Trust activity done by working unit separated from other Bank activity unit.
2. The property deposited by settler to be managed by trustee is limited to financial asset;
3. The property of settler which is to be managed by trustee is listed and reported separately from the property of the bank.
4. in the matter of Bank to do liquidated trust activity, none of the property of trust is to be included in the property of bankruptcy and to be given back to the settler or transferred to the replacing trustee appointed by settler.
5. Trust activity is to be put in one written agreement between the trustee and the settler.
6. Trustee is to keep the secrecy of the data and explanation regarding trust agreement as regulated in trust agreement unless for the purpose of report to Financial Service Authority; and
7. The Bank committing trus is subjected to the provision and regulation of enforced legislation.

Besides the principles above, there are two main principles in banking activity, which are prudential banking principle and good corporate governance. Both principles are closely attached to the banking service managing the fund of the third party and bank responsibility.

Maxim equity is not a binding provision, but some guidelines made by equity court as moral limitation admitted as decent, so the character is not binding but beneficial to decide on lawsuit with personal moral consideration of the judge. So it can be suggested that, it is not hard to elaborate maxim in trust into contract law system in Indonesia. Adoption or adaptation of foreign law is possible in renewing or developing national law.

Referring to the opinion of Mochtar Kusumaatmadja, in order to build national law, the choosing of law fields to be developed should be neutral, that is not

interfere the cultural and religious life of the society. Neutral law field is seen as more precise to be renewed, since in this law field the foreign models of law in conceptions of processes or institutions can be approved. But then again, it should still see the obstacles of foreign model usage in adaptation. Because of that, the use of trust concept in Indonesia has passed the adaptation, but it will be more optimum by applying some maxim equity in trust practice of banking in Indonesia.

Urgency of Law Renewal in Indonesian Contract law in Accommodating Trust Agreement

Contract Law Renewal in Partial Codification

In accommodating contract development, including trust agreement in banking practice, private law renewal including object law and contract law is necessary to be adjusted to Indonesian philosophy. Legal development according to Satjipto Raharjo is one effort to renew positive law to be adjusted to the need in serving society with its development, one thinking which usually known as law modernization. The process of national law forming is not an easy process, remembering that Indonesia has pluralistic society, so that the forming of plural law is necessary. Looking at the forming of legislation in Indonesia, Private Law renewal is not done with complete codification, but a partial one. This way has been agreed in symposium of law renewal in 1981 by National Law Supervising Institution (Badan Pembinaan Hukum Nasional BPHN).

Partial codification is seen as more possible to be realized remembering the existence of some special Acts in certain fields such as Agrarian Law, Mortgage Right Law, Fiduciary Law, Banking Law, Capital Market Law.

Partial and open codification is done in steps according to the need and priority in national development, open codification means that to make possible similar law regulating issues in law specifically. And partial codification is a way to fasten codification in narrower law fields. Codification is the right method to improve legal certainty which is the goal of one legal system. So that codification is a must and must be contained with law which can fulfill legal awareness and justice of the society, the codification must reflect the living law in the society.

Open partial codification makes easier in making, revising, and revoking and always dynamic to harmonize with modernization process supported by science and technology. Renewal model of Private Law Book depends on legal policy of the forming of Private Law Book which

need to be directed to concern the rules in living law such as adat law, Islamic law or the existed national law.

Freedom of Contract principle as the basic in Trust Agreement Development

The existence of trust agreement in banking practice is possible in Indonesia because of the freedom of contract principle in contract law (Article 1338 (1) Private Law Book). Freedom of Contract Principle does not mean that it is limitless free, but must be implemented with good will, and bound to anything, which according to contract character, obliged with decency, customary, or law, namely, the contract made by the parties must not contradict the legislations, norms, and rules in society.

According to the freedom of contract principle and open principle in contract law, the contract development in banking practice has a strong legal standing. Friedman asserted that "*freedom of contract is an essential legal aspect of individual freedom"* freedom of contract as individual right according to Friedman is limited by standard contract. The opinion is not relevant with the condition in Indonesia. In Contract Law system in Indonesia, even in some other countries' contract law the freedom of contract is not only limited by standard contract, but also limited by decency, customary, especially the custom in international business practice and legislation as mentioned in Article 1339 Private Law Book.

Trust Agreement which is common law product came from equity. One of the unique features of the common law system is the existence of dual ownership of property. Ownership can be divided into the following: legal interest and an equitable interest.(Tang Hang wu: Introduction to Trust Law in Singapore; 2012) this was becoming an issue when trust agreement is to be adopted into banking activity, since Indonesia doesn't recognize dual ownership. Book II Private Law Book has closed character so that to renew object law, it can only be done with new Acts. Because of that, trust agreement in banking practice will bring impact in the need of law renewal of Private Law Book especially in Contract Law in Book III Private Law Book and Book II regarding object, remebering the object law doesn't recognize dual ownership that is the the legal owner and beneficial owner on one object. the admittance to dual ownership is becoming relevant to provide legal standing for bank as the trustee to do legal action for beneficiary purpose. Object Law system knows joint ownership (*mede eigendom*) on an object, different from dual ownership in trust**.**

Substance and Basic of Contract Law Renewal

Speaking about private law renewal, it can be suggested that when legislators are about to formulate legislation in realizing national legal system, they should hold on to Pancasila and Constitution of 1945. Besides that, the values contained in Adat law is not far from the priority of the legislators to put new law in the new law formulation as long as it is not miss from the priority of the legislator and not contradict Adat law and Constitution of 1945 or Pancasila. Beside Adat Law, the development of Private Law in Indonesia today cannot be detached from Islamic Law development which start to influence business sector known as Islamic Economy Law (Syari'ah).

Related to the development of economic activity in Indonesia, the opinion of Sunaryati Hartono can be referred that there are some law fiends need to be improved sich as contract law, remembering almost every economic activity is based on contract, so Contract Law should not only regulates planned contracts between Indonesian businessmen but also with the foreigners to respond the need of society of an innovation of private law especially in contract kaw which accommodate more on national interest. The main factor which becomes the reason why private law renewal urgent is that Indonesian Private Law is the heritance of Dutch Colonial, so there are a lot characters not reflecting Indonesian personality according to Pancasila.

Pancasila as the ideology of Indonesia is the media in uniting Indonesia even though it cannot be separated from the development of International society life. Because of that, Pancasila value must occur in norm system of legislation product. The forming of national law sustem must concern four things which are:

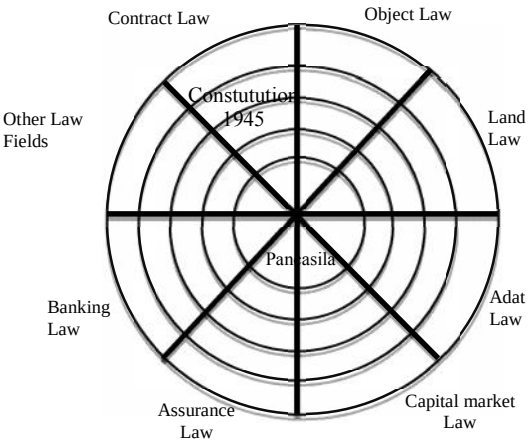
1. has the essence of Pancasila
2. has the insight of nationality
3. has the character of Bhineka Tunggal Ika
4. based on Constitution of 1945.

Private law renewal occurred because of the wider business and influenced by legal products based on common law legal system. Besides business activity which involves bank, there is other business activity related to capital market, insurance, social security, influenced by legal product of common law system. Adat law system today in the life of the society is still in effect and providing big impact especially in non-neutral fields such as marriage law, heritance law, and even land law including mortgage law with Adat Law substance. Besides Adat Law, Islamic Law system today has provided big contribution in

Indonesian law development. At the beginning, Islamic Law is only used in marriage and heritance law, but since 1990s, Islamic law has given contribution to economy development in Indonesia with the use of syariah principle in financial and banking sector. The enactment of Act number 21 of 2008 regarding Syariah Banking caused dualism in banking law, which is the enactemnt of more than one legal system, conventional banking law and syariah banking law. Besides banking law, all activity in financial secroe and economy has these dual legal systems. With that, syariahs ways began to enrich the development of contract law.

The definition of Western legal system which only used to be translated as the effect of Dutch Colonial system or Continental Europe also has some development. Along with the journey of developing and
improving Indonesia, western law here is not only based on continental Europe legal system, but has already shifted with the influence of common law legal system.

This is because Indonesia is part of the world society and involved in many international contracts which bring the impact of applied common law legal products in Indonesia the occurred implications are from some legal systems in Indonesia, so that the goal forward regarding national legal system can be described in the picture below:



Source: Processed by writer

Based on the illustration above, *ius constituendum* becomes more complete and will keep on going on number with new law fields according to the development of the eras as part of national legal system but will still be based on Pancasila and Constitution of 1945. If we look at the new law fields, they are all the fields which used to be included in Private Law.

In building national law, there has to be directed and regulated law renewal, this can be done with codification of certain law field. Codification is similar provisions in one law book systematically. By that, there must be steps in appointing legal policy will support the forming of national law to realize national law goal.

CONCLUSION

1. Implementation of equity principle in trust agreement as banking service

development is different from equity in trust concept in common law system. Decency or equity principle in banking activity is more precise to be said as a principle which must be concerned in making the contract which will be realized as the good will of the parties in implementing the contract. This is different from equity as the guidelines based on certain maxims to solve morally decent issues to fill the law emptiness.

2. Adaptation of trust concept in service development in Indonesia is implicated on Indonesian contract law development. National contract law needs to accommodate dual ownership concept to optimize trust element to provide stronger position in Bank as the trustee in managing the deposited fund. Besides that, national contract law needs to provide space to trust institution both in separated regulation or private law renewal especially contract law by adapting certain maxims appropriate to Pancasila philosophy.

BIBLIOGRAPHY

Books:

Emma Warner-Reed. (2011) *Equity and Trusts.* Pearson Education Limited.

Friedman. (1960) *Legal Theory.* Steven & Sons Limited. London.

Johnny Ibrahim. (2013), *Teori & Metodologi Penelitian Hukum Normatif*, Bayumedia, Malang.

Miriam Darus Badrulzaman. (2001). *KUHPerdata Buku III. Hukum Perikatan dengan Penjelasan.* Alumni. Bandung.

Mochtar Kusumaatmadja. (2002). *Konsep-konsep Hukum dalam Pembangunan.* Alumni.

Satjipto Raharjo. (2009) Hukum dan Perubahan Sosial Suatu Tinjauan Teoritis Serta Pengalaman-pengalaman Di Indonesia. Genta Publishing. Yogyakarta.

Sumadi. (1988). *Metode Penelitian*. CV Rajawali. Jakarta.

Sunaryati Hartono. (1991) *Politik Hukum Menuju Suatu Sitem Hukum Nasional.* Alumni. Bandung.

_____ (2011) Beberapa pemikiran tentang Pembangunan Sistem Hukum Nasional Indonesia. PT cCtra Aditya Bakti. Bandung.

Sri Mamudji. (2005). *Metode Penelitian Dan Penulisan Hukum.* Jakarta. Badan Penerbit Fakultas Hukum Universitas Indonesia.

Regulations:

POJK NO : 27/POJK.03/2016 Tentang Perubahan POJK No : 25/POJK.03/2015 Tentang Kegiatan Usaha Bank berupa Penitipan dan

pengelolaan (*trust).*(POJK NO : 27/POJK.03/2016 Regarding revision of POJK No : 25/POJK.03/2015 Regarding Bank Activity in Deposit and trust Management)

Peraturan Presiden RI No : 2 Tahun 2015 Tentang Rencana Pembangunan Jangka Menengah Nasional (RPJMN) Tahun 2015- 2019 (Presidential Decree RI No: 2 of 2015 regarding Medium term of National Development Plan 2015 – 2019)

Other:

Halim alamsyah, *Lima kriteria Qualified ASEAN Bank, diunduh dari http://finansial.bisnis.com/read/20140718/90/244401/ada-5-kriteria-qualified-asean-bank-apa-saja, (accessed 27 October 2016)*

Herry Prasetyo. (2015). *The branch Expansion and The Performance Of The Banks: The Case Of Indonesia.* Buletin Ekonomi Moneter dan Perbankan. Vol 18 Number 1: (85-105)

Elizabeth Tiur Manurung. (Tanpa tahun) *Hasil kajian Pusat Kebijakan Pembiayaan Perubahan Iklim dan Multilateral (PKPPM) BKF*. Cooperation with Universitas Parahyangan. Bandung.

Tang Hang Wu, An Introduction of Trust law in Singapore. diakses dari: shintakuhogakkai.jp/activity/pdf/vol40_Singapore2.pdf