

Foreign Investment and Development Strategy for Indonesia's Banking Sector: Between Constitutional Supremacy and Economic Reality

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ABSTRACT: Liberalisation of financial services has benefitted Indonesia's banking sector from competitive advantages and economic growth. The ownership of private banking by foreign investors has given positive implications to the Indonesian economy. However, the increase does not augur well with the Indonesian political aspiration. Foreign investors hold almost 50% of the total number of Indonesian national private banks. The domination of foreign investors in Indonesian private banking is not consistent with Article 33 of the 1945 Constitution and Pancasila Economics. The discussion employs a doctrinal perspective. This article analyses and evaluates the relationship between national interests and foreign investment in the banking sector of Indonesia and whether the national development strategy is in line with the aspirations of Article 33 of the 1945 Constitution to increase Indonesia's participation in domestic banking. A historical approach is applied that involves an objective study of past facts, events, and institutions. This article finds that there is a need to boost the competitiveness of local participant through Indonesia's development strategy. Besides, there are already mechanisms in place which allow Indonesia as a host country to increase participation while at the same time committed to the economic liberalisation and free capital flows for investment.

KEYWORDS: National interests, Self-reliant, foreign capital, Economic liberalisation

I. Introduction

The capital inflows may bring about a dilemma whether they serve the best interests of developing countries, especially from a perspective of the individual host country. Many of the literature of financial liberalisation is dealing with the view of economic development that argues for the economic benefit and risks such as vulnerability to external factors [1].

Indonesia has a distinct experience concerning financial liberalisation agenda. One of the national interests of Indonesia, as stipulated in the Preamble of the 1945 Constitution, is "welfare interests in improving public welfare." The Economic Sovereignty of Indonesia means Indonesia does not depend on the economics of a foreign power and can be only achieved if Indonesia is consistent in implementing Article 33 of the 1945 Constitution.

Indonesia's economic development, according to the 1945 Constitution, must be based on the resources within Indonesia. Article 33 (4) of the 1945 Constitution states: "The national economy shall be organised based on economic democracy with the principle of togetherness, the efficiency with justice, sustainability, environmental, friendliness, independence and balancing progress and national economy unity [2]." The national development of Indonesia must involve the participation of all the people of Indonesia. Foreign investment is supposed to be supportive and temporary. Because

of that, despite foreign investors have brought various benefits to the Indonesian economy, regarding the condition there is a domination of foreign ownership in national banking; hence the need for a national banking strategy to reconcile between the national interest and foreign investor can be achieved.

The word reconcile means restoration of harmony between persons or things that had conflicted [3]. Therefore, reconcile means to restore or resolve the opposite situations between national interest and foreign investment to exist together. With this reconciliation, Indonesia's shareholding is expected to be increased, and foreign investors can still participate in the Indonesian banking sector.

This article contributes to finding a way forward how to reconcile national interests and foreign investment in Indonesia's banking sector, through national development strategy and legally recognised measures available within the financial system to be ultimately in line with the aspirations of Article 33 of the 1945 Constitution.

II. Methodology

This research is doctrinal research. The materials are available in libraries, archives, and another database, such as books and journals [4]. This research used descriptive, explanatory, analytical, and historical studies. The focus of analysis is to find a way forward how to reconcile national interests and foreign investment in Indonesia's banking sector, whether the national development strategy is in line with the aspirations of Article 33 of the 1945 Constitution.

The research involved an examination, evaluation, and judging of regulations, national development strategy, Pancasila Economics, and foreign investment in Indonesia's banking industry to understand or explain it [5]. Besides, it used a historical approach that describes the history of national development strategy and foreign investment in Indonesia's banking industry were understood through a form of analysis that contains a reshaping in the context of a set of transformation, where the stopping pattern and unfold over several years.

This research used Indonesian Law and Regulations as primary sources. As for secondary sources consist of works that write about or explain primary sources that relevant to the study, such as books, journals, and other library-based sources related to Article 33 of the 1945 Constitution, Pancasila Economics, national development strategy and foreign investment in Indonesia's banking industry.

This research is qualitative. The data is in the form of notes or some textual material in the form of words, descriptions, or narratives.

III. Reconciliation Between National Interest and Foreign Investment In The Banking Sector

The term national interests is associated with the states, and all nations, at a minimum, typically seek not only to survive, but also to achieve economic vitality (or at least viability), and the protection of what they deem to be their core values. Given the general nature of interests, objectives are more specific goals that any international actor may choose to pursue [6].

Furthermore, national interests can be defined as the objectives to be achieved concerning the needs of the nation/state or in connection with the things that are aspired. In this case, the national interests that are relatively fixed and equal between all countries or nations are security and prosperity [7].

Dewi Fortuna Anwar states that the national interests could be interpreted subjectively; they

are always subjective preference changed following the decision-makers' national interests. Although on the other side, national interests can clearly be defined with criteria that are objective and tend to be constant over time [8]. In realising the national interests, it cannot be separated from the influences of current liberalisation, especially in the banking sector[9].

Miki Hamada states that foreign capital entry into the Indonesian banking sector is fully liberalized; as a result, most major commercial banks in the Indonesian banking sector are owned by foreign capital through the acquisition of Indonesian local private banks [10]. The current study related to foreign investment in Indonesia's banking industry only discusses related to reducing and limiting international share ownership, which are allowed up to 99%. Perdana suggests the possibility of imposing limitations on foreign investment in Indonesia's national banking. The paper found that Indonesia has liberalised foreign investment in the banking sector [11]. At present foreign investor owns many national private banks. Furthermore, Murdadi explained the need to review the terms and practice of national banking share ownership by foreigners that at present may extend to a maximum of 99% [12].

In this era of globalisation, Indonesia has joined several international organisations, including the WTO. The Government of Indonesia has signed the WTO together with all the undertakings and ratify it with Law No. 7 of 1994 on the Ratification of Agreement Establishing the WTO.

Additionally, Indonesia joined ASEAN since August 8, 1967. Indonesia has ratified the ASEAN Charter with Law No. 38 of 2008. Indonesia has actively participated in ASEAN regional cooperation by ratifying the ASEAN Framework Agreement on Services (AFAS), which has been endorsed by Presidential Decree No. 88 of 1995.

In its participation in WTO and ASEAN, Indonesia has commitments in the banking sector, including in acquisition of existing local bank. The commitments are as follows [13]:

- a. GATS: The purchase is in the stock exchange and allow up to 49% of the listed shares in the stock exchange;
- b. AFAS: The purchase is in the stock exchange and allows up to 51% of the listed shares in the stock exchange.

These commitments show that Indonesia's commitment to the AFAS provides higher portions than the involvement in GATS in purchasing of National Bank shares by foreign investors through stock exchange.

Reconciliation between national interests and foreign investment can be implemented in several ways, as follows:

3.1 Adjustment of foreign capital restriction with Indonesia's commitment to GATS and AFAS

The foreign investors can purchase national banking shares up to a maximum of 99% of the shareholdings is based on the Government Regulation No. 29 of 1999, as the result of amended Law No. 7 of 1992, and part of a commitment of Indonesia with IMF at the time. On July 28, 2003, the Government of Indonesia decided to no longer solicit new loans from the IMF after the restoration of economic program in cooperation with the IMF ended in December 2003 [14]. It is submitted that at the expiration of the agreement with the IMF, provisions on foreign investment in the banking sector can be adjusted to the current conditions. At this time, Indonesia's economic status has increased compared with the financial crisis of the year 1998. It can be determined based on Indonesia's economic growth since 1998.

Data from the Central Bureau of Statistics compiled by Katadata informs that, in 1998, the Indonesian economy experienced negative growth of 13.13%. After 1998, Indonesia's 20-year

economy recorded an average economic growth of about 5%. Until the quarter I year 2019, the Indonesian economy grew 5.07% from the target of 5.2% until the end of 2019 [15].

Based on the interview with OJK, a decrease in ownership of foreign investors may jeopardise Indonesia's liberalisation commitments because Indonesia commits in international treaties of Trade and investment. Referring to Indonesia's commitment to the GATS and the AFAS, there is a difference between the obligations and the prevailing laws. The following table explains the difference between the responsibility and the law, as follows:

Table: The Differences Between the Commitment and the Law of Foreign Investment in the Banking Sector

GATS	AFAS	Article 3 and Article 4, Government Regulation No. 29 of 1999
Foreign investors are allowed to purchase <u>up to 49%</u> of the shares of a national bank listed <u>in the stock exchange</u> .	Foreign investors are allowed <u>to purchase up to 51%</u> of the listed shares of the national bank <u>in the stock exchange</u> .	Foreign investors are allowed to have as much as <u>99% shares of banks via the stock exchange or direct placement</u> .

Based on the table, it can be determined that the opportunity given to foreign investors to have a national banking share is higher than what is Indonesia's commitment to GATS and AFAS.

OJK has issued Regulation No. 56/POJK.03/2016 That stipulates that the ownership of the maximum shares of the banks will be based on the category of, and the relationship between the shareholders are 40%, 30%, and 20% [16]. Nevertheless, those restrictions are for all the parties, regardless of whether the party is foreign or domestic. These provisions still provide opportunities for foreign investors to have a share of up to 99%, with approval must be obtained from OJK, and additional requirements must be fulfilled. However, the regulation does not substitute the provisions that foreign investors can purchase Indonesia's national banking shares up to 99%. Concerning the condition, if Indonesia wants to adjust the percentage following the commitment in GATS and AFAS, it is necessary to be outlined what is meant by international treaties.

From the general legal view, the WTO and ASEAN agreements are one of the Treaties that have legally binding for the countries that sign it. The international treaties made by Indonesia Government are established on the sovereignty of Indonesia. The Indonesian state has full freedom to bind itself or not to bind itself to other countries in an international treaty, enters or not to join, participate in or opt-out of existing international agreements as it has been explained that Indonesia has ratified both treaties. Thus, the final act has been part of the Indonesian national law.

Based on Article XXI GATS, commitments that have been committed in the framework of the Uruguay negotiations and have become an annexe of GATS, in principle, cannot be withdrawn, altered, and or reduced. Revision is only achievable to raise commitments. Withdrawals and or modifications to the obligations provided can only be made with the payment of compensation to an injured member [17]. Adjustments that need to be made do not withdraw, alter or reduce Indonesia's commitment to the GATS but adjust current regulations with a commitment to GATS. With his ratified GATS as part of WTO, it has become a part of Indonesia's national law. With the ratified GATS as part of the WTO, it has become a part of Indonesia's national law.

The similar condition is applied with the commitment in AFAS. The provisions of Article 1 number 5 of ASEAN Charter are intended to make ASEAN member countries a free trade area is covering the flow of goods, services, and investments, facilitating the movement of business people, professionals, experts, personnel, and more free flow of capital. Each Member State of ASEAN must also do like the principle stated in Article 2 paragraph (2) n of ASEAN Charter of that says: "adherence to multilateral trade rules and ASEAN's rules-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration, in a market-driven economy [18]."

Based on these provisions, the establishment of the ASEAN trade area depends on ASEAN Member State in carrying out the provisions of the ASEAN Charter. The implementation of the ASEAN Charter still relies on in each ASEAN the country to make its rules as stipulated in the article 5 paragraphs (2) of the ASEAN Charter. Therefore, the Indonesian government formulating rules must comply with national interests in the 1945 Constitution. By adopting current regulations with commitments to GATS and AFAS, this does not close the opportunity for foreign investors to own shares in national banks. Foreign investors still have a chance to participate in national banks but do not like the majority of shareholders.

3.2 Divestment of Shares

Black's Law defines divestment as: "A corporate finance transaction where a company sells a subsidiary or a portion of its operations to a third party... [19]" Thus, divestment of shares in national banks is released, and a reduction of capital for companies whose shares are wholly owned by foreign investors by transferring these shares to local partners. Provisions regarding divestment of banking shares in Indonesia have not explicitly been regulated in separate regulations, but rules regarding divestment are contained in various laws and regulations, including:

- a. Government Regulation No. 20 of 1994 on Ownership of Shares of Companies Established in the Framework of Foreign Direct Investment.
- b. Regulation of Investment Coordinating Board of Republic of Indonesia No 13 of 2017 on Guidelines and Procedures of Investment Licensing and Facility.
- c. OJK Regulation No. 56/POJK.03/2016 on Ownership of Shares in Commercial Banks (OJK Regulation 56/2016).

Refer to the three regulations mentioned above, then divestment in the banking sector is currently not mandatory, except if there are the decline in the soundness of banks and corporate governance assessments of banks with shares of more than 40%. This provision applies to all banks, not only banks whose shares are controlled by foreign ownership. Divestment is not mandatory for foreign investors in certain conditions. Based on interviews with OJK, they stated that national capital to buy back shares owned by foreign investors was insufficient. A different opinion was expressed by INDEF researchers, that if the transition period for divestment remained realistic and carried out in stages for foreign investors to divest their shares, there would be no disturbance to the public banking sector.

To increase the participation of Indonesian share ownership in Indonesian banks, then this divestment of shares needs to be done. As has been explained that to realise the national interests contained in 1945 of the Constitution, namely the welfare state, economic sovereignty is needed as a "means" to recognise these national interests. Financial independence includes the ability and the spirit of self-reliance. Economic autonomy is achievable if Indonesia implements Article 33 of the 1945 Constitution.

The transition period certainly needs to be considered for readiness for national banks to do this divestment. The period for a maximum period of 15 years, provided by Government Regulation

No. 20 of 1994 can be used as a guideline in determining the transition period for the divestment of shares. Thus, divestment of shares in national banks is released, and a reduction of capital for companies whose shares are wholly owned by foreign investors by transferring these shares to local partners.

3.3 Employee Stock Option Program (ESOP) and Management Stock Option Program (MSOP)

One of the benefits of foreign investment in national banking is to create job opportunities. This consequence is in line with Article 3 (2) Law No. 25 of 2007 that the purpose of the conduct of investments, among other things, is to create job opportunities.

The majority of employees, directors, the board of commissioners, and executive officers in national banking are Indonesian. The divestment obligations outlined in the previous section can be implemented by divesting shares to employees and management. Divestment of shares to employees can be achieved through the ESOP mechanism. Cambridge Dictionary defines ESOP as “a benefits plan in which employees own a percentage of their company’s shares, which are bought and managed for them by a trust [20].”

In Indonesia, there are no regulations that specifically regulate ESOP and MSOP, including in the banking sector. However, several laws support this ESOP and MSOP. As a business entity in the form of a Limited Liability Company, the following rules also apply to banks.

One of the regulations that govern employee ownership of company shares is stipulated in Article 43 (1) and (3) Law No. 40 of 2007. There are exceptions to the obligation of offering at first to each shareholder or employee by issuing shares to increase capital. If employees already own shares, they will be treated as their status as shareholders following their rights and obligations. Regulations govern that not all employees can request to take part in the shares of the company where the employee works unless it is possible or offered by the company [21].

Other than Law No. 40 of 2007, ESOP is regulated in OJK Regulation No. 38/POJK-04/2014. This OJK Regulation govern on share ownership to employee, directors, and commissioners in Public Companies. Although there are provisions regarding ESOP in Law No. 40 of 2007 and OJK Regulation No. 38 of 2014, however, the ESOP concept issued in the context of increasing company capital, not a buy-back for shares issued by the company, as referred to in Article 37 Law No. 40 of 2007. OJK has not yet issued regulations governing ESOP and MSOP in closed companies, because not all national banks whose shares are controlled by foreign investors have become Public Companies.

ESOP and MSOP have been carried out by several national banks whose majority shares are owned by foreign investors, including Danamon Bank and CIMB Niaga. With the implementation of ESOP and MSOP for employees, directors, and commissioners from Indonesia, the participation of Indonesian in the ownership of national banking shares can be increased. The increase is progress in the context of carrying out independent development to realise the welfare of the Indonesian, as mandated by the 1945 Constitution.

3.4 Pre-emptive Right

Pre-emptive right grants shareholders the right to purchase additional shares in the company before shares being made available to other people to buy. These definitions are adopted in Law No. 40 of 2007. Article 43 (1) states: “All shares issued for the increase of capital must first be offered to each shareholder in proportions to their share ownership for the same classification of shares.” In the capital market, pre-emptive right is regulated on OJK Regulation No. 14/POJK.14/2019 on Amendment on OJK Regulation No. 32/POJK.04/2015.

Therefore, in the context of private company and public company, pre-emptive right is shareholder's right to "order" on shares' of the company at the first choice. If a company issues new shares to obtain investment, the pre-existing shareholders' power to govern the company may be weakened, and the current share value may be diluted. Accordingly, pre-emptive rights are required to allow the company to protect pre-existing shareholder interests at the same time as satisfying the demand for investment [22].

In Indonesia, pre-emptive rights apply in conditions: (1) In order to increase of capital; (2) Preemptive right is not shareholder's inherent right, but a mere statutory right given by the law in jurisdiction; (3) The offer is proportional with share percentage and classification; (4) Exception of Pre-emptive Rights

Article 43 (3) Law No. 40 of 2007 states that the pre-emptive right does not apply for the issuance of shares: Addressed to the employees of the Company; Addressed to bondholders and other securities which are convertible into shares, that were issued with the approval from the General Meeting Shareholders (GMS); or Conducted in the context of reorganization and/or restructuring with the permission from the GMS. Reorganisation or restructuring means amongst others Mergers, Consolidations, and Acquisitions, setting off of receivables, or a Demerger.

The 1945 Constitution of Indonesia establishes independence in Indonesia's development, including in the banking sector. For this ground, the dominance of foreign share ownership in national private banking needs to be adjusted by increasing Indonesia's participation in national banking ownership. One of the other that can be implemented is to adopt the concept of preemptive right. In this case, the idea of pre-emptive right is indeed not fully taken because it can lead to share dilution when Indonesia's existing shareholders purchase shares that do not match the proportion of their shares in the bank. However, the point is giving the first pre-emptive right to existing shareholders from Indonesia, while foreign existing shareholders get preemptive right if Indonesian existing shareholders are not willing to purchase.

As analogy, Article 10 (1) Presidential Regulation No. 44 of 2016 grants pre-emptive right to a foreign investor if domestic investor cannot participate. Thus, foreign investors are still allowed to own shares in Indonesian banks.

3.5 Right of First Refusal

The right of first refusal involves the selling shareholder is under an obligation to offer its share to the other shareholders before it can transfer its shares to a third party. The offer must be on the same term and condition as those offered by the third party. The other shareholders with the right of first refusal then have a fixed period in which to accept. If that shareholder does not acquire the shares of the selling shareholder, it will find itself in a company with a new co-shareholder [23]. In the Right of First Refusal, there was no additional in capital or new shares in the portfolio. This right applies only if the Articles of Association regulate this right, which is the main difference between the two.

Law No. 40 of 2007 regulates the Right of First Refusal in Article 57 and Article 58. That article implies that Article of Association can stipulate transfer of rights to shares. Thus, this provision is said to be the right of first refusal. This provision may not be regulated in the Articles of Association if the shareholders do not desire the power to be adjusted. Under these conditions, then the right of first refusal is not needed in regulating the requirements on the sale and purchase of shares in the company.

Associated with the increased participation of national ownership of bank shares by Indonesia, the concept of Right of First Refusal may also be applied. If the shareholders in a bank want to sell the shares, the right of first refusal may be given to the existing shareholders of Indonesia

first. If the Indonesian shareholder does not acquire the shares of the vendor shareholder, the current foreign shareholder has the right to purchase the shares. Furthermore, as is the case with a pre-emptive right, Article 10 (1) Presidential Regulation No. 44 of 2016 can be applied for a third party, that if the domestic Investors cannot participate, then the provision on pre-emptive will apply to foreign Investors [24]. Based on Indonesia's Company Law, it should be listed first in the Articles of Association of the bank concerned. This concept does not eliminate the right of foreign shareholders or foreign investors to own shares in Indonesian banks.

3.6 Consolidation of Banks

The Indonesian Banking Architecture (API) as a blueprint for the Indonesian banking consists of six pillars. Pillar 1 API is to create a healthy domestic banking structure that can meet the needs of the community and encourage sustainable economic development. To strengthen the formation of these banks, it is necessary for bank consolidation. Additionally, this consolidation can also support the effectiveness of bank supervision.

In the banking sector, Article 1 point 25 Law No. 7 of 1992, as amended by Law No. 10 of 1998, defines Merger as "the combining of two or more Banks by retaining the existence of one Bank and winding up the other Banks with or without liquidating them [25]." Furthermore, Government Regulation No. 28 of 1999 on Mergers, Consolidation, and Acquisition of Banking stipulates precisely this definition.

On the other hand, Article 1 Law No. 7 of 1992, as amended by Law No. 10 of 1998 junctioArticle 1 point 3 Government Regulation No. 28 of 1999 defines consolidation as "combining of two or more Banks by establishing a new Bank and winding up such existing Banks with or without liquidating them."

Regulations in Indonesia additionally regulate the legal cause of mergers and consolidations. Article 122 Law No. 40 of 2007 juncto Article 2 Government Regulation No. 28 of 1999 stipulates that the expiry of the Company because of mergers and consolidations without any prior liquidation, will cause:

- a. the assets and liabilities of the merging or consolidating Company shall pass in law to the surviving company or the consolidated Company;
- b. shareholders of the merging or consolidating Company shall by operation of law become shareholders of the surviving or consolidated Company;
- c. the merging or consolidated Company shall expire by operation of law as from when the Merger or Consolidation comes into effect.

Based on an interview with OJK, Indonesia encourages banking consolidation forward, so it is expected that the majority of domestic ownership banks will have the competitiveness to compete against the majority of foreign-owned banks. Efforts for product development and innovation, technology utilisation, and quality improvement of human resources are necessary to be carried out to improve the efficiency and competitiveness of the domestic majority ownership bank. Therefore, the consolidation and capital support became indispensable for the development of the local ownership bank.

Besides, to strengthen durability and competitiveness, OJK also demanded that banking continue to perform efficiencies in every operational activity. Therefore, the National banking consolidation program is still the priority of OJK to create banks that can control the domestic market. The importance of banking consolidation is also in line with the evolution of the financial industry leading to digital. Moreover, banking that cannot conform to the development of this digital trend, then it is ensured to be missed and abandoned by its customers. This problem must necessarily

be the primary concern of banks.

Furthermore, OJK argues that the development of Indonesia's banking industry continues to develop rapidly, among others, with digitalisation, interest rate competition, and the competition for funding. To endure the challenge, the bank must find a way out. The deception is to increase the capital to compete. Besides, banks are also advised to look for partners in this consolidation or merger with a large bank that has substantial wealth.

Therefore, the main objectives of OJK encourage a merger and consolidation of banking is to create healthy banking with substantial capital. This merger and consolidation can be conducted to the bank that included in BUKU 1 and BUKU 2. The majority of BUKU 1 and BUKU 2 consists of banks that majority shares owned by Indonesian capital. If they merge or consolidate, it can create national banks with substantial equity.

When associated with reconciling between the national interest and foreign investment, the main objective is to increase domestic ownership participation in national banking, to achieve independence in implementing the economic development of Indonesia. Therefore, to determine if a merger and consolidation of banking can increase the participation of domestic ownership, it is necessary to ensure the result of a merger and consolidation as explained that shareholders of the merging or consolidating Company should by operation of law become shareholders of the surviving or consolidated company. If the merger and consolidation have increased the participation of domestic ownership in the bank, then the merger and consolidation can be performed to reconcile between national interests and foreign investment in Indonesia's Banking Sector.

3.7 Indonesian Employment and Transfer of Technology and Knowledge

In addition to ownership of shares in national banking, related to national interest is employment opportunities for Indonesian citizens in the banking sector. Foreign investment has given positive implications to the Indonesian economy, including job opportunities. Article 10 (1) Law No. 25 of 2007 regulates that investment companies must give precedence to an Indonesian citizen, in addressing their employee needs. However, it may utilise foreign experts for particular positions and skills per prevailing laws and regulations [26].

OJK through Regulation No. 37/POJK.03/2017 states the particular positions and skills as directors, commissioners, executive officers, and expert advisors or consultants. Thus it can be said that although foreigners are allowed to have jobs as employees or management, the opportunities provided are in a limited portion. The most significant part is still given to employees who come from Indonesia [27]. Article 33 of the 1945 Constitution contains values of economic democracy, and it means production is acted by all and for all Indonesian people, including for employment and management. The majority of employees, directors, the board of commissioners, and executive officers in national banking are Indonesian.

The other favourable implication of foreign investment is the transfer of knowledge and technology. Article 10 (3) Law No. 25 of 2007 states that foreign workers must conduct training and transfer technology to Indonesian-national workers per provisions of laws and regulations. Furthermore, OJK Regulation No. 37/POJK.03/2017 Regulates that the bank must ensure transfer of knowledge occurs from the utilisation of foreign workforces. This obligation applies to Banks that utilise Foreign Workers as Executive Officers and Experts or Consultants.

Foreigners who work in Indonesia must transfer technology and knowledge to Indonesian employees. This requirement is also in line with Law No. 25 of 2007 that the purpose of the conduct of investments is to increase the capacity and capability of national technology. In other words, there is knowledge and technology transfer, and it can be obtained from foreign workers. Therefore, investment companies that employ foreign employees must conduct training and transfer technology

to Indonesian employees.

If the foreign employee is for the position of Executive Officer and Expert or Consultant, then the bank must guarantee the transfer of knowledge. Furthermore, banks are required to report the results of the implementation of the obligation to transfer knowledge at the end of each year in the Report of Bank Business Plan Realization. After the issuance of OJK No. 37, the OJK issued Circular Letter No. 42/SEOJK.03/2017. It sets out that expatriates may be employed in banking-sector positions related to the treasury, risk management, information technology, lending and financing, investor and customer relations, marketing, and finance functions.

With more significant opportunities for Indonesian employees to work and be in management in the banking sector, as well as the obligation to transfer technology and knowledge to Indonesian employees, then the participation of Indonesian citizens in the can be increased, and foreigners still can participate.

IV. Indonesia's National Development Strategy in the Banking Sector

Before the year of 2004, Broad Outlines of States Policy (GBHN) was the state's point of state administration in the outline as a comprehensive and integrated statement of the will of Indonesia's people and governed by Decree of People Consultative Assembly (MPR) No. IV/MPR/1999. With the amendment of the 1945 Constitution, the GBHN is no longer valid.

4.1 National Development Strategy Under Law No. 17 of 2007 on The Long Term National Development Plan 2005-2025 (National RPJP)

Refer to the basis of Article 4 of Law Number 25 of 2004, the Long-Term National Development Plan for a period of twenty (20) years ahead (2005-2025) is formulated as a further specification of the goals for establishing the Government of the Republic of Indonesia in 1945 into the vision, mission, and direction of national development. This is reaffirmed in Law No. 17 of 2007.

Further, "the 2005-2025 Long-Term National Development Plan is the continuation of the preceding development aimed at attaining the goal of development as stipulated in the Preamble of the 1945 Constitution of the Republic of Indonesia". Law No. 17 of 2007 states that one of the National Development Vision is Self-reliant. Self-reliant is elaborated as: "A nation is self-reliant if it is capable of realising a life that is equivalent and equal to that of other nations that are already advanced by relying on the nation's capability and strength [28]."

All economic activities of Indonesia should be based on Article 33 of the 1945 Constitution. This article provides Pancasila economics, which is the primary reference for Indonesian economics. Bung Hatta said that economic sovereignty could be achieved in our possession if Indonesia implements Article 33 of the 1945 Constitution as the primary system for the political economy and social politics of Indonesia. Economic sovereignty contains "the ability of society and nation with the spirit of self-reliance, have individuality, autobiography, have self-esteem, self-belief, and the soul of a personality.

Law No. 17 of 2007 is not explicitly explained about national development strategy in banking. Instead, it tells the economic field in general. National development strategy in the economic area under Law No. 17 of 2007 is by "strengthening the domestic economy with a global orientation and competitiveness". It is developed based on the economic democracy principles, and investment is directed at supporting, including foreign investment.

Law No. 17 of 2007 states that The National RPJM as referred, is the guideline for formulating the Medium-Term National Development Plan (RPJM) which contains the Vision, Mission, and Program of the President. The necessary scale of priorities and strategies of the respective RPJM are divided into four periods:

- a. The First RPJM (2004-2009);
- b. The Second RPJM (2010-2014);
- c. The Third RPJM (2015-2019); and
- d. The Fourth RPJM (2020-2025).

Every period is regulated by Presidential Regulation. Similar to national development strategy based on Law No. 17 of 2007, the banking sector is not explicitly regulated in every RPJM.

Article 33 of the 1945 Constitution contains values, among others, are economic democracy and self-reliant. In the democracy of economics, production is acted by all and for all Indonesian people. Policies in the economic sector are in the hands of the Indonesian people. Economic actors are all citizens of Indonesia. The role of the state and the economic apparatus is essential but not dominant. If Indonesia consistent in implementing Article 33 of the 1945 Constitution in all economic activities, then economic sovereignty can be achieved. Economic Sovereignty of Indonesia contains "the self-reliant," means Indonesian nations do not depend on the economics of foreign power. The part of foreigners is necessary, but also not dominant. Foreign elements, such as foreign investment, and foreign workers, are only complementary and temporary.

The spirit of economic democracy and self-reliant are implemented in Law No. 17 of 2007. As previously explained that Law No. 17 of 2007 mentioned that one of the National Development Vision is "Indonesia that is Self-reliant." Law No. 17 of 2007 explains the concept of self-reliance, among other things by "increasing reliance on domestic sources for the financing of development, so that dependence on foreign sources continues to decline". The self-reliant is supported by essential assets that are owned by Indonesian nation, among others are the territory of Indonesia; natural resources and bio-diversity; large number of the total population with a diverse culture and political development. National development strategy in the economic field under Law No. 17 of 2007 is by "strengthening the domestic economy with a global orientation and competitiveness". It is developed based on the economic democracy principles and investment to support "the realisation of a high, sustainable, and quality economic growth".

Furthermore, in Presidential Regulations that regulate RPJM, national development strategy in banking are set more to "encouraging the restoration of the banking intermediation function." For example, Regulation of President No. 7 of 2005 states that the program is strengthening the structure of banks and other financial institutions by enhancing supervision to the application of the minimum capital requirement, and increasing the quality of the management and operations of a bank. Regulation of President No. 5 of 2010 does not explain national development strategy in the banking sector, instead of increasing investment for all industries.

The spirit of self-reliant is also implemented in Regulation of President No. 2 of 2015. One of the vision is "self-reliant," and it is explained in the priorities of programs that one of the priorities is to realise economic independence by moving the strategic sectors of the domestic economy. Furthermore, this presidential regulation states that it will reduce the negative impact of foreign direct investment domination of the national economy, which will gradually be carried out through channels of the diversion process, namely: ownership transfer to the domestic investor through the capital market; transfer of technology/ expertise to employers and domestic workers; and transferring the production process by gradually increasing the portion of local suppliers for the needs of raw materials, semi-finished goods, and industrial services. In terms of bank ownership, there will be restrictions on foreign ownership in national banks so as not to exceed specific amounts or proportions [29].

Regarding the restriction of foreign ownership in national banks, Government Regulation No. 29 of 1999 is not revoked until this article is written. It means that foreign investors permit to buy a share in Indonesia national banking up to 99%. OJK Regulation No. 56/2016 stipulates that the ownership of the maximum shares of the banks will be based on the category of, and the relationship between the shareholders is 40%, 30%, and 20%. Whereas for the fourth RPJM 2020-2024, it has not been regulated yet. Based on the draft, the main priority in economic is encouraging investment.

4.2 National Development Strategy in Banking Sector under OJK Policies

Specifically, National development Strategy in the Banking sector is issued by OJK, as the regulator and supervisor in the banking system and banking activities in Indonesia, since 31st December 2013. While still under supervision by Bank Indonesia, Bank Indonesia issued The Indonesian Banking Architecture (API) to create a stimulus for the development of a sound, stable, and efficient banking industry.

National development strategy in the banking sector, are as explained in Table below:

Table: The Summary of National Development Strategy in Banking Sector under OJK Policies

Policy	National Development Strategy
The Indonesian Banking Architecture (API)	<p>There are six pillars in API to create financial system stability for the promotion of national economic growth, as follows:</p> <ol style="list-style-type: none"> 1) Healthy banking structure; 2) Effective regulation system; 3) Active and Independent Supervisory System; 4) Strong Banking Industry; 5) Adequate infrastructure; 6) Robust Customer Protection.
Indonesian Financial Services Sector Development Direction 2015-2019	<ol style="list-style-type: none"> 1) "Strengthen the capital and institutional structure of financial services institutions to enhance their role in supporting economic activities. 2) Structure financial services institutions ownership to support sustainable economic development 3) Strengthen the function and role of regional banks, rural banks, and microfinance institutions to support local economies. "
Roadmap for Indonesian Banking Development 2015 – 2019	<ol style="list-style-type: none"> 1) Optimise the role of banks 2) Enhance of bank ownership structure in support of sustainable economic development

- 3) Encourage the national banks to enhance their capacities.

Related to the national development strategy in the banking sector that issued by OJK, the existing policy is more to the strengthening of the banking industry. It is started in API with six pillars [30]. Furthermore, strengthening the banking industry is continued in the Indonesian Financial Services Sector Development Direction 2015-2019 [31]. It is stipulated in several programs, as mentioned above in the table.

Meanwhile, the focus of OJK in issuing Roadmap for Indonesian Banking Development 2015 – 2019 is to develop of the banking industry in the medium term and that are expected to be able to respond to changes in the internal and external environments of the banking industry. The programs among other things are optimising the role of banks; enhancement of bank ownership structure in support of sustainable economic development and encourage the national banks to enhance their capacities, in terms of capital as well as infrastructure, through the consolidation process to have stronger competitiveness in the ASEAN financial market [32].

V. Conclusion

This reconciliation aims to create a condition where Indonesian investors can participate in a more significant role in national banking, by increasing participation in the ownership of Indonesian shares and to achieve independence in Indonesia's development. On the other hand, it still provides opportunities for foreign investors to participate as supporters in Indonesia's national banking.

The alternative ways for reconciliation are through adjustments to the current provisions relating to the percentage of foreign share ownership in Indonesian national banks with Indonesia's commitment in GATS and AFAS. The other options include divestment of bank shares; implementation of ESOP and MSOP programs for employees, directors and commissioners originating from Indonesia; pre-emptive rights to Indonesian shareholders; right of first refusal to Indonesian shareholders; bank consolidation which resulted in the majority ownership of shares by Indonesian investors and healthy banking with substantial capital; Indonesian employment in banking sector and transfer of knowledge and technology.

As such, national development strategy in the banking sector still not entirely in line with the aspiration of Article 33 of the 1945 Constitution. The spirit of economic democracy and self-reliant based on Article 33 is applied in Law No. 17 of 2007 to increase the participation of Indonesian investors. The existing strategy is more focused on strengthening and developing the banking institutions, regardless of the ownership, whether it is from a foreign or domestic investment.

This article suggests that there is a need to boost the competitiveness of local participants among local banks and investors through Indonesia's development strategy. There are already mechanisms in place which allow Indonesians to increase their participation. In the meantime, Indonesia should remain committed to the liberalisation, and free capital flows for investment. The possession of national, private banking by foreign investors has, without doubt, given positive implications to the Indonesian economy. Indonesia has to face daunting challenges to step up its economic strength to get closer to the real spirit of its constitution while remaining committed to the economic liberalisation agenda.

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