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THE PHILOSOPHY VALUE OF BANKING'S CONTROL AND SURVEILLANCE BY FINANCIAL SERVICE AUTHORITY

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Abstract
The background of this research is related to banking regulation and supervision in Indonesia, which is currently divided macroprudential under the authority of the Financial Services Authority, and macroprudential is the authority of Bank Indonesia. This study aims to analyze and find the philosophical value of banking regulation and supervision by the Financial Services Authority using an analysis of legal ideals in the form of the importance of justice, the value of legal certainty, and the value of the benefit. This research uses normative legal research methods with statutory and conceptual approaches. The results of this study indicate that the division of regulation and supervision in a macroprudential manner is in the authority of the Financial Services Authority, and macroprudential is in the jurisdiction of Bank Indonesia that it does not fulfill the value of justice, legal certainty, and benefits. At the end of this study, the researcher provides recommendations to revise articles in the Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority, which contain conflicting norms and are ambiguous. The researcher also recommends the unification of banking regulation and supervision under the authority of Bank Indonesia, however strengthening data sharing and banking evaluation reports that can be accessed by the Financial Services Authority, as well as the realization of a blueprint for financial system stability and banking.

Keywords: *Financial Services Authority, Value of Justice, Legal Certainty, Benefit, Banking Regulation, and Supervision*

Background

Philosophical value is etymologically derived from two syllables, namely "value," which can be defined as characteristics that are important or have a use. Meanwhile, according to Herowati Poesoko, Philosophy comes from the word Philosophy, which means "love of wisdom" or "love of knowledge."[1] The function of law is none other than to create a community order so that they can live in a safe, peaceful, orderly, and just

[1] Herowati Poesoko, *Ilmu Hukum Dalam Prespektif Filsafat Ilmu*, (Yogyakarta, Laksbang Presindo, 2018), p. 2.

manner. Based on Rudolf Steamler's theory of legal ideals, the ideal of law (Rechtside) functions to determine the direction for achieving the goals or ideals of society. However, it must be realized that the endpoint of society's ideals is an impossibility if everything can be made. Still, this legal ideal also has a definite use because the models of this law have two aspects: testing the positive law that is currently in effect. Besides that, it is also useful for directing positive law as an effort to regulate the order of life in society or nation. Thus there is an understanding that law can be fair if the code is by the ideals of law that accumulate in achieving the goals of society.[2] Gustav Radburch also emphasized that a legal model or rechtsidee has a function that is used as a regulatory measure or is intended as a fair test of whether a law is positive and has a role as a constitutive basis to explain that if not. Following the ideals of law, of course, this law cannot be said to be law because it loses its meaning.[3]

The objective of banking regulation and supervision is primarily to provide legal protection to customers who deposit funds at the bank, so that the funds that have been deposited in the bank can be appropriately managed based on the principle of prudence so that the bank where the public funds are kept remains healthy, and the funds can be appropriately managed. Used by customers who deposit funds when needed according to the provisions of the type of banking services they participate in, to ensure the trust of the depositing customer in the bank. Armed with the public's faith, which saves funds in banks, it is hoped that banks can continue to grow and develop. Public trust is essential for the existence of banking in Indonesia because banks can only operate optimally with federal funds stored in banks, therefore banking regulatory and supervisory instruments are needed to ensure bank health to prevent bank runs due to the lack of public trust in the banking world. In connection with the intended objectives, it cannot be separated from the theory of legal objectives because banking is a legal system in the economic sector. Talking about the purpose of the law is inseparable from the nature of each society's law because it has characteristics or is called specific because of the influence of a philosophy that is transformed into the ideology of social and functions as a legal ideal.

In connection with the division of banking supervision regulations between macroprudential and macroprudential, it is the authority of two different institutions, namely the Financial Services Authority and Bank Indonesia, whereas, between macroprudential and macroprudential as a closely related system, it is necessary to have an in-depth analysis concerning three philosophical values, namely justice, legal certainty, and its benefits.

Discussion

1. The Value of Banking Regulation and Supervision Fairness by the Financial Services Authority

Justice is a fundamental issue in law and the most substantive, according to Dominikus Rato.[4] The conventional theory of justice is needed to analyze the objectives of banking regulation and supervision concerning the value of fairness for society, especially fund deposit customers. Talking about justice, there is an ethical theory put forward by Aristotle for the first time in his book entitled "Rhetorica and Etica Nicomacher" which states that what is the ideal or goal of law is to realize justice.[5] Based on Aristotle's opinion that what is meant by justice is "unicuique suum buere '(giving rights to everyone regarding everything that is their right) and" neminem laedere "(an order not to harm others), it can be said that the focus

[2] Roeslan Saleh, *Pembinaan Cita Hukum dan Penerapan Asas-Asas Hukum Nasional*, Majalah Hukum Nasional No. 1 Edisi Khusus 50 Tahun Pembangunan Nasional, (Jakarta, Pusat Dokumentasi Hukum BPHN Departemen Kehakiman, 1995) p. 50.

[3] Soejono Kusumo Sisworo, *Mempertimbangkan Beberapa Pokok Pikiran Pelbagai Aliran Filsafat Hukum Dalam Relasi Dan Relevansinya Dengan Pembangunan/Pembinaan Hukum Indonesia* dalam "Kumpulan Pidato Pengukuhan Guru Besar Fakultas Hukum Universitas Diponegoro Semarang, Compiled by Soekotjo Hardiwinoto, (Semarang, Badan Penerbit Universiatas Diponegoro, 1995) p. 121.

[4] Dr.Dominikus Rato, S.H., M.Si., *Filsafat Hukum Suatu Pengantar Mencari, Menemukan Dan Memahami Hukum* (Surabaya, Laksbang Justitia, 2014) p. 59.

[5] H.Muksin, *Iktisar Ilmu Hukum* (Jakarta, Badan Penerbit Iblam,2006) p. 12.

of the fighters for justice is trying to fight for the state to provide justice for those who have the right to obtain it.[6] About rights, it can be divided into two types, namely rights that are carried naturally from birth (rights obtained because they are human) and are natural legal subjects called Human Rights. The second right is a right that is born due to law, namely rights obtained by and based on law.[7] Regarding the rights of depositors in banks that must be protected through banking regulatory and supervisory efforts, it can be categorized as the other right. It is protected based on the legal relationship between the bank and the customer if the customer has achieved by saving the money in a banking institution. Still, when the funds are needed, the bank is unable to prepare it because it is not managed based on the prudential principle without a banking regulatory and supervisory mechanism; hence this is said to be contrary to the sense of justice for fund depositors.

According to Aristotle, fairness has more than one meaning; that is, legally fair can also be considered reasonable because it receives something that is comparable or what it should be. According to him, justice is a political policy in which rules are used as guidelines or which base measures of state regulations regarding what is meant by rights or what is not right, so that there is justice, people will understandably get benefits, while moral virtue is as a basis for judgment.[8] Aristotle distinguishes two kinds of justice: distributive justice (justitia distributiva) and corrective justice (Justitia correctiva), which have similarities with Thomas Aquinas' commutative justice or Justitia commutativa. This justice is also called refractor justice; namely, justice, based on the existence of transactions (sunullagamata) either by coercion or voluntarily. This justice is in the field of private law.[9] If this differentiation of justice is viewed from the regulation and supervision of the bank, the justice obtained by the depositing customer is inevitably distributive, namely justice for customers or people who have opened an account and have deposited their funds with the bank, then judgment will be obtained when the bank can maintain public trust. managing a bank with prudential principles which in turn creates a sound banking system, customers will always be able to retrieve their deposited funds and the benefits obtained by entrusting funds with the bank, and through bank regulation and supervision it can be guaranteed that customer funds are always in a "safe position."

Jeremy Bentham gave an idea about the theory of happiness (utility), which is individual. The law must be able to create happiness for individuals and be in line with the interests of society, so it can be said that requirement must be able to provide benefits for human happiness so that both the theory of justice and utility are the manifestations of code that must be applied in social life.[10] Regarding banking regulation and supervision, which is currently into two, namely macroprudential control and guidance at the Financial Services Authority and macroprudential management and monitoring at Bank Indonesia, according to the author, can injure a sense of justice and benefit to the public in the absence of clear boundaries regarding the scope of macroprudential in all legislative products. The legislation includes the Financial Services Authority Law as explained in Article 7 of the OJK Law, while these macroprudential and macroprudential arrangements have not previously recognized in banking-related legislation, this can result in an antinomic of authority between OJK and BI, and can even shift responsibility which in the end can harm the public or customers who deposit funds.

Based on the provisions referred to in article 40 paragraph (1) of the OJK Law, which regulates bank inspection by BI to carry out its authority and duties, as Lender Of The Last Resort, who must submit written permission first to the OJK. According to the authors' opinion, this has the potential for the length of time required by Bank Indonesia to provide short-term Shari'ah-based credit or financing loans to banks with

[6] Dominikus Rato. *Op.Cit*.
[7] *Ibid* 59-60.
[8] Aristoteles in Darji Darmodiharjo, *Pokok-Pokok Filsafat Hukum* (Jakarta,PT Gramedia Pustaka Utama, 2006) p. 156.
[9] Dominikus Rato, *Op.Cit* p. 64.
[10] Suhariningsih, *Tanah Terlantar, Asas dan Pembaharuan Konsep Menuju Penertiban*, (Jakarta, Prestasi Pustaka Publisher, 2009) p. 43.

liquidity problems, and this is very dangerous for the sustainability of the bank, immediate efforts must take so that their liquidity can be saved in a specific position especially if it is a systemic bank so that it does not harm the public or customers who deposit funds. The potential imbalance in the length of time to handle systemic banks in facing short-term funding or liquidity difficulties is increasingly evident in Article 20 paragraph (1) of Law of the Republic of Indonesia Number 9 of 2016 concerning Prevention and Management of Financial System Crisis (from now on referred to as UUPPKSK) which stated that if a systemic bank experiences liquidity problems, the bank can submit a request to Bank Indonesia to obtain a liquidity loan or short-term liquidity financing based on sharia, according to the author's opinion, because BI does not have the authority to regulate and supervise a bank microprudential. Further procedures OJK will still conduct an assessment regarding compliance with the solvency requirements and soundness levels for systemic banks. Regarding solvency and bank health assessment, the OJK's authority regarding stability is regulated in Article 7 Letter (b) of the OJK Law, which states that Bank Indonesia cannot provide an assessment of the soundness level of a bank. The next step, BI and OJK, will conduct a joint evaluation of all requirements related to use. The assessment is also carried out jointly regarding the estimation of the ability of a Systemic Bank to repay liquidity loans or short-term liquidity financing based on shari'ah principles following the provisions in Article 20 number (2) letter (b) UUPPKSK. In the Elucidation of Article 20 paragraph (2), it is explained that regarding the collateral assessment and the estimated ability of a systemic bank to repay liquidity loans or short-term liquidity financing based on shari'ah are the needs of Bank Indonesia so that the regulation is based on Bank Indonesia Regulations, however, Bank Indonesia does not being able to do it independently requires cooperation with the OJK because of OJK as the microprudential supervisor who knows the current conditions concerning assets, bank liabilities and current conditions regarding finances in systemic banks. So that BI in carrying out its function as Lender Of The Last Resort, according to the author, the procedure that is passed is like a ping pong ball between BI and OJK; as a result BI as the central bank does not have the authority for microprudential supervision of the bank. Returning to the issue of justice for depositors of funds, this convoluted procedure can bring losses because the condition of a systemic bank in which they deposit their funds cannot immediately be resolved with liquidity problems, which result in a systemic bank that can worsen its condition. Thus, the value of fairness for depositors of funds through banking regulation and supervision that is separated between microprudential and macroprudential does not provide a sense of justice for the community.

2. The Value of Legal Certainty for Banking Regulation and Supervision by the Financial Services Authority

Talking about legal certainty can only be explained normatively and cannot be explained using a social lens. Legal certainty based on normative studies is realized when regulation is made and then promulgated because it regulates things clearly and logically. The meaning of the rules made does not cause doubts or multiple interpretations. Laws are also said to be logical if the statutory regulations made are a system of norms, and the other requirements of these rules with different standards do not conflict, or it can be said that there is no norm conflict. The meant by norm conflict may take the form of norm contestation, norm reduction, or norm distortion as a result of legal uncertainty. It can be said that legal certainty refers to a consistent, transparent, and permanent application of the law. Subjective conditions cannot influence the consequences of its implementation.[11]

Gustav Radburch, as quoted by Sudikno Mertokusumo, divides the definition of legal certainty into two, namely legal certainty by law and legal certainty in or from the law. It is said to be a useful law when the constitution guarantees a lot of legal confidence in society, on the other hand, it is noted that legal certainty can be achieved if the code is mostly contained in the law, whose provisions are not contradictory in the sense that it is a logical and practical system, the requirements Another thing that laws made based on the actual

[11] L.J.Van Apeldorn, *Pengantar Ilmu Hukum*, (Jakarta, Pradnya Paramita Cetakan XXX, 2004) p. 11.

conditions of legal validity or rechtswerkelijkheid and in the law should not contain multi-interpretive terms, or in other words, they can be interpreted differently[12] In his book Sudikno Mertokusumo also discusses the opinion of Friedericht Julius Sthal. A pioneer of Continental European law, he revealed the characteristics of the rule of law, including the separation of powers, protection of human rights, government based on statutory regulations (wetmatigheid van bestuur), and the existence of administrative justice in law enforcement. Dispute resolution. Following the concept of a law state based on social welfare (welfare state), currently, it is also moving towards the publication of provisions related to respect and protection of human rights which are contained in a written constitution in the state, so that in this case the nation in addition to having a duty to improve the welfare of society and providing social justice, must also protect human rights as stated in Article 28 I paragraph (5) of the 1945 Constitution (UUD 1945) which is known as the principle of a democratic rule of law.[13]

Based on Satjipto Rahardjo's opinion that to establish a rule of law state requires a long process, not limited to legal regulations that must be managed appropriately, it also requires a reliable and robust institution with independent and extraordinary powers, free from all kinds form of intimidation and interference from the executive and legislative branches, and carried out by human resources who have good morals and are tested. This is to anticipate falling outside the scheme or purpose intended for him to realize a legal certainty filled with a sense of justice. Law does not only connote business matters but also behavior.

OJK regulation and supervision is based on the OJK Law according to the author's opinion, some provisions are not legally specific, this is because the issuance of the OJK Law was not accompanied by revising other banking-related laws, for example the Banking Law and the Syari'ah Banking Law, the Bank Indonesia Law and The Deposit Insurance Corporation Law (LPS Law), this legislation has the authority to implement regulation and supervision at Bank Indonesia, and based on the OJK Law the regulatory and supervisory authority is the authority of the OJK, such conflicts of norms can result in overlapping powers, even though in the Law The OJK stated that several articles in the Banking Law, the Islamic Banking Law, the BI Law and the LPS Law were not applicable according to the lex posteriori derogat lex inferiori legal principle that the new law can override the old law, but it should pay attention to other policies lex speciali derogat lex generaly that the statutes are Specifically, it can also put aside general rules, in this regard banking regulation and supervision, of course, the specific provision must be based on the Banking Law, therefore it is necessary to synchronize with other related laws in order to create legal certainty. The formation of the OJK is a mandate of Article 34 of Law Number 3 of 2004 concerning Bank Indonesia which mandates the establishment of a financial services sector supervisory institution, which must be formed no later than 31 December 2010 but OJK was only established on 22 November 2011, so in the opinion of the author, This is also not following the mandate of the UUBI as the juridical basis for the formation of the OJK. The inconsistency in the structure of the OJK is due to the expiration factor, which contrasts with the values of legal certainty. The mandate for the formation of the OJK, which was initiated by the provisions in Article 34 UUBI 1999 if further examined, actually contains a conflict of norms with Article 8 UUBI 1999. If you look at the provisions of article 7 UUBI 1999 that achieving and maintaining the stability of the rupiah value is the goal of BI, and to achieve and maintain the balance of the rupiah value consists of 3 (three) BI duties as stipulated in Article 8 of the 1999 UUBI, namely to determine and implement monetary policy, regulate and maintain a smooth payment system, as well as regulate and supervise banks. Regarding the duties of BI to regulate and supervise the bank, there is a conflict of norms if it considers the provisions in Article 34 of the 1999 UUBI, which mandates the task of managing banks in the financial services sector supervisory institution. After the enactment of the OJK Law, regulation and supervision become integrated under the authority of the Financial Services Authority. Conflict of norms also occurs if you look at the provisions of Article 7, which states that OJK has the power to

[12] Sudikno Mertokusumo, *Mengenal Hukum*, (Yogyakarta, Universitas Atmajaya, 2010) p. 161.
[13] *Ibid* 147.

carry out regulatory and supervisory duties in the banking sector; however, Article 39 is inconsistent with Article 7. Based on Article 39 of the OJK Law, it states that OJK coordinates with BI in making supervisory regulations in the banking sector which include carrying out its duties, including the obligation to fulfill the minimum capital requirement of a bank, an integrated banking information system, banking products, and other banking business activities derivative transactions which include credit cards. , debit cards and internet banking, policies for receiving funds from abroad, foreign currency funds, and international commercial loans, determining which bank institutions are categorized as systemically important banks and other data exempt from the provisions of the law. Systematically prominent bank as explained in Article 39 letter (e), namely a bank that is due to several factors, including the size of assets, capital, and liabilities, the complexity of transactions on banking services and the extent of its network, there are links with other financial sectors, experiencing disruption or failure, such conditions. Will also fail all or part of other banks or the financial services sector. The inconsistency of the provisions in article 39 of the OJK Law shows that there is no institutional independence in the OJK so that in certain conditions it still requires BI to regulate it other than in essence the microprudential and macroprudential control and supervision are interrelated or constitute a system that is difficult to separate. Besides, there are also problems regarding the unclear boundaries and scope of macroprudential supervision regulations which of course can lead to multiple interpretations and the potential for antinomic authority between BI and OJK if we look at article 7 of the OJK Law in its explanation, it only states that the regulation and supervision of institutional, prudence, bank soundness, and bank inspection are the scope of microprudential management and guidance which are the duties and authorities of the OJK. In contrast, regulations and supervision other than those stipulated in this article are the scope of macroprudential management and control and are the duties and authorities of BI. Unclear boundaries related to macroprudential regulation and supervision have the potential to result in an overly broad scope for BI in carrying out its duties and authorities. Still, it is also vulnerable to unclear influence over a problem that occurs in banking, so that it makes banking regulation and supervision, not legal certainty.

Based on the Banking Law, it states that the task of regulating and supervising a bank is the duty and authority of Bank Indonesia, as stipulated in Article 7. Article 8, Article 11, Article 13, Article 16, Article 18, Article 19, Article 20, Article 22, Article 27, Article 28, Article 29, Article 30, Article 31, Article 31 A, Article 33, Article 34, Article 35, Article 36, Article 37, Article 37A, Article 38, Article 41, Article 41A, Article 42 Article 44, Article 52, and Article 53 of Law number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, hereinafter referred to as the Banking Law of 1992, there is a conflict of norms. Provided that Article 6 of the OJK Law stipulates that OJK must regulate and supervise activities in the financial services sector. There is also a conflict of norms with the provisions of Article 7 of the OJK Law that to carry out regulatory and supervisory duties, OJK has the authority to conduct bank regulation and supervision in all its scope concerning the institution, bank soundness, prudential aspects, and bank inspections so that there appears to be no synchronization between the Banking Law and the OJK Law.

Thus, there appears to be a dualism of authority in the field of bank regulation and supervision between Bank Indonesia and the OJK. The occurrence of disharmony in statutory regulations can result in different interpretations in their implementation, resulting in legal uncertainty. Besides, legislative provisions are not implemented effectively and efficiently, and in the end, there is legal dysfunction, namely, the law cannot function to provide behavioral guidelines to the community, cannot carry out its function as social control, dispute resolution and as a means of orderly and orderly social change[14]. The various articles of the Banking Law related to the authority of Bank Indonesia after the enactment of the OJK Law changed and became the

[14] Oka Mahendra, Harmonisasi Peraturan Perundang-Undangan, http: www.djipp.depkumham .go.id/htn-dan-puu/421-harmonisasi-peraturan perundang-undangan. lihat pula http: //perpustakaan.bappenas.go.id/lontar/file?file=digital /130881-[_Konten_]- Konten%20C9218.pdf diakses pada tanggal 24 September 2017.

duties and powers of the OJK as stipulated in article 69 of the OJK Law. This kind of arrangement is following the lex posterior derogat legi inferiori principle that the new law overrides the old law. But suppose we are further related to the principle of good legislation. In that case, there is also a principle, namely the principle of lex specialis derogat legi generali. This principle implies that a specific legal rule will override general legal practices. With the provisions of Article 69 of the OJK Law, which eliminates the duties and authority of BI, turning into the responsibilities and powers of the OJK, according to the author's opinion, not only is there a conflict of norms but also results in a conflict of principles of good laws and regulations in Indonesia which can result in the absence of legal certainty related to authority. Banking regulation and supervision.

3. Value of Use of Banking Regulation and Supervision by the Financial Services Authority

Jeremy Bentham (1748-1831) introduced the theory of Utilitarianism; according to him, the most objective basis of a policy or action, whether it does not bring harm to people, is related to other words, whether the policy or action brings benefits or useful results.[15] According to Jeremy Bentham, recognition as the law is if the law can provide significant benefits for as many people as possible.

Another character is John Stuart Mill who taught that an action should be aimed at achieving happiness, and it would be a mistake if on the contrary, with the sentence "move are right in proportion as thy then to promote man's satisfaction, and wrong, they ten to improve the reserve of happiness."[16] Based on the theory of benefit, it is also the basis for the author to analyze the benefits of the division of authority for banking regulation and supervision between OJK and BI, especially if it is related to BI's function as Lender OF The Last Resort, it will be disrupted due to too convoluted procedures both in the OJK Law and in the Law Law Number 9 of 2016 concerning Financial System Crisis Prevention and Management (hereinafter referred to as the PKSK Law) cannot be handled directly in the capacity of BI as the central bank as an independent state institution as stated in the constitution (UUD 1945 Article 28D) this could potentially not be immediate the handling of banks that have liquidity problems and can endanger the return of public funds deposited with the bank, as the authors of the analysis in sub-chapter of the value of fairness in regulation and supervision of repairs above, based on this idea, the division of authority between OJK and BI in regulating and supervising bank Sacrifice can be said to be useless, so there must be another concept in order to provide more benefit to the community, especially for customers who deposit funds.

Conclusion

Current banking regulations and supervision are separated between microprudential and macroprudential, which do not provide a sense of justice and are of no value to customers. It results in increasingly complicated procedures for Bank Indonesia to carry out its function as a lender of last resort. Article 40 paragraph (1) of the Financial Services Authority Law stipulates that BI must submit written permission to the Financial Services Authority. Besides, Article 20 paragraph (1) of the Law on Prevention and Management of Financial System Credit requires systemic banks experiencing liquidity difficulties in applying to Bank Indonesia. Elucidation of Article 20 paragraph (2) of the Financial System Credit Prevention and Management Law regarding collateral assessment and the estimated ability of a systemic bank to repay loans or short-term liquidity financing, Bank Indonesia cannot do it independently because the Financial Services Authority as the microprudential supervisor is aware of the latest conditions related to it. With assets, bank liabilities, and systemic bank financial conditions. The value of legal certainty related to Banking Regulation and supervision was also not achieved because there was no synchronization of the Financial Services Authority Law with

[15] Jeremy Bentham dalam Sony Keraf, *Etika Bisnis Tuntunan Serta Relevansinya* (Yogyakarta, Kanisius,1998) p. 93-94.
[16] Bernart L. Tanya, Dkk, *Teori Hukum, Strategi Tertib Manusia Lintas. Ruang dan Generasi* (Surabaya, CV Kita, 2010) p. 127.

other banking-related laws, potentially causing antinomies/overlapping of authority between the Financial Services Authority and Bank Indonesia, in addition to that there are obscure norms. Regarding macroprudential limits in the explanation of article 7 of the Financial Services Authority Law.

Recommendations

To achieve the value of justice, the amount of legal certainty, and the importance of benefit, the first can be done by synchronizing the laws and regulations concerning banking regulation and supervision. The second is the revision of article 7 of the OJK Law, the explanation of Article 7 of the OJK Law and Article 40 of the OJK Law because it contains conflicting norms and contains ambiguous meaning regarding the extent of macroprudential boundaries so that it does not provide legal certainty, does not separate between microprudential and macroprudential authority in the sense that it is returned to the duties of Bank Indonesia as the central bank, because the two are interrelated as a central bank legal system, however, there is a need for data sharing and bank evaluation reports that can be accessed by the Financial Services Authority.

REFERENCES

Books

Bernart L. Tanya, Dkk, *Teori Hukum, Strategi Tertib Manusia Lintas. Ruang dan Generasi* (Surabaya, CV Kita, 2010)

Darji Darmodiharjo, *Pokok-Pokok Filsafat Hukum* (Jakarta,PT Gramedia Pustaka Utama, 2006)

Dr.Dominikus Rato, S.H., M.Si., *Filsafat Hukum Suatu Pengantar Mencari, Menemukan Dan Memahami Hukum* (Surabaya, Laksbang Justitia, 2014)

Herowati Poesoko, *Ilmu Hukum Dalam Prespektif Filsafat Ilmu*, (Yogyakarta, Laksbang Presindo, 2018)

Jeremy Bentham dalam Sony Keraf, *Etika Bisnis Tuntunan Serta Relevansinya* (Yogyakarta, Kanisius,1998)

H.Muksin, *Iktisar Ilmu Hukum* (Jakarta, Badan Penerbit Iblam,2006)

LJ.Van Apeldorn, *Pengantar Ilmu Hukum*, (Jakarta, Pradnya Paramita Cetakan XXX, 2004)

Suhariningsih, *Tanah Terlantar, Asas dan Pembaharuan Konsep Menuju Penertiban*,(Jakarta, Prestasi Pustaka Publisher, 2009)

Special Publication

Roeslan Saleh, *Pembinaan Cita Hukum dan Penerapan Asas-Asas Hukum Nasional*, Majalah Hukum Nasional No. 1 Edisi Khusus 50 Tahun Pembangunan Nasional, (Jakarta, Pusat Dokumentasi Hukum BPHN Departemen Kehakiman, 1995)

Soejono Kusumo Sisworo, *Mempertimbangkan Beberapa Pokok Pikiran Pelbagai Aliran Filsafat Hukum Dalam Relasi Dan Relevansinya Dengan Pembangunan/Pembinaan Hukum Indonesia* in "Collection of Inauguration Speeches of Professor of the Faculty of Law, Diponegoro University Semarang, compiled by Soekotjo Hardiwinoto, (Semarang, Badan Penerbit Universiatas Diponegoro, 1995)

Internet

Oka Mahendra, Harmonisasi Peraturan Perundang-Undangan, http: www.djipp.depkumham .go.id/htn-dan-puu/421-harmonisasi-peraturan perundang-undangan. lihat pula http: //perpustakaan .bappenas. go.id/lontar/file?file=digital /130881-[_Konten_]- Konten%20C9218.pdf diakses pada tanggal 24 September 2017.

Legislation

1945 Constitution of the Republic of Indonesia

Law of the Republic of Indonesia Number 7 of 1992 concerning Banking, State Gazette of the Republic of Indonesia of 1992 Number 31, Supplement to the State Gazette of the Republic of Indonesia 3472

Republic of Indonesia Law No. 10 of 1998 concerning Amendments to Law No.7 of 1992 concerning Banking, State Gazette of the Republic of Indonesia of 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790

Act Number 23 of 1999 as amended by Act Number 3 of 2004 concerning Bank Indonesia, State Gazette of the Republic of Indonesia of 1999 Number 66, Supplement to the State Gazette of the Republic of Indonesia Number 3843

Law No. 3 of 2004 concerning Amendments to Law No. 23 of 1999 and amended again by Law No. 6 of 2009 concerning Stipulation of Government Regulations in Lieu of Law No. 2 of 2008 concerning the Second Amendment to Law No. 23 of 1999 concerning Bank Indonesia

Law Number 24 of 2004 concerning Deposit Insurance Corporation, State Gazette of the Republic of Indonesia of 1999 Number 96, Supplement to the State Gazette of the Republic of Indonesia Number 4420

Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter referred to as the OJK Law) as outlined in the State Gazette of the Republic of Indonesia of 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia 5253.

Law of the Republic of Indonesia Number 9 of 2016 concerning Prevention and Management of Financial System Crisis, State Gazette of the Republic of Indonesia of 2016 Number 70, Supplement to State Gazette of the Republic of Indonesia Number 5872