Legal Transplant of Modern Banking Concepts in the Culture of Mutual Cooperation Communities in Micro, Small and Medium Enterprises: The Idea of Partnership of Cooperative and Bank/Non-bank Financial Institutions as Micro Finance Institutions

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Abstract. This study aims to give a solution for a government that has established a Micro Financial Institution (MFI). In development, the purpose of this MFI is to fund micro-scale businesses for which Micro, Small and Medium Enterprises (MSMEs) do not work at their maximum. This thing caused development in technology and information, which MFIs should give service operational by digitalization. MSMEs, on the other hand, must obtain service financial security quickly and affordably. The normative juridical study was conducted in the form of an exploratory study, complete with regulation and conceptual approaches. Research results show that in the MSME community they still apply the concept of mutual cooperation as reflected in the principles of cooperative as well as trust in the Constitution. They do not yet know whether to draft financing or bank based on western concepts that are individual, absolute, and capital as well as cost-effective operational as in practice financing generally. Research conclusion: the idea of Partnership of Cooperation and Modern Bank/Non-Bank Financial Institutions (LKBB) to enter the MSME community with a culture of mutual cooperation is necessary. For support cost operational for LKBB in doing service to the public (public service obligation-PSO) is recommended for the government through the Financial Services Authority (OJK). Operational costs are agreed upon jointly by cooperatives and modern LKBB, rather than by government regulation.

Keywords: cooperative · finance institution of bank/non-bank · MSMEs · public services · subsidies

1 Introduction

In 2013, the government issued Constitution Number 1 of 2013 concerning Financial Institutions Micro (MFI Law). His business could be in the form of a business entity, such as a cooperative or limited liability company. Financial institution establishment as a destination. The Micro (MFI) is to increase access to funding scale micro for

A. J. Meliala et al. (Eds.): INCOLS 2022, ASSEHR 688, pp. 50–70, 2023.
https://doi.org/10.2991/978-2-494069-23-7_6

communities, to help empower the economy and productivity of the community, and to help improve income and welfare, particularly for poor people and/or low-income individuals. In progress, there are as many as 221 MFIs, with the majority as many as 146 MFIs operating conventionally and the remaining 81 MFIs operating according to Sharia. In fact, the majority of legal entities.

There are legal entity forms such as cooperatives with as many as 183 MFIs and limited liability companies with as many as 44 MFIs. The distribution of MFIs is as many as 174 MFIs on the island of Java, which consists of 29 MFIs in Central Java, 29 MFIs in West Java, and 24 MFIs in East Java. Borrowers' conventional customers number up to 70,474 and borrowers' conventional customers number up to 11,987. If the MFI is being implemented in tandem with the advancement of information and data processing technology, then the existence of an MFI for Micro, Small, and Medium Enterprises (MSMEs) must be supported by appropriate regulations that reflect current conditions and developments, as well as future changes that may occur happened on the century front. This thing requires empowerment and improved access to service finance to MSMEs, so that requires institutional and operational strengthening, including digitalization in MFIs. The goal is for MFIs to contribute to and provide service finance to community and MSME businesses as effectively as possible. There are a number of problems that have been inventoried by Secretariat General of the Regional Representative Council of Indonesia, and one of them is an MFI located in the middle of the public with low literacy and specifically segmented public medium, which has hindered MFI development with limited market segment.

The question in the study of this is what causes the public's literacy in finance, especially in the segment medium-down very low.

According to sociological research, the public, specifically the public media, is becoming more aware of and accepting of the form of business cooperative in the loan business as well as for necessity consumptives such as the cooperative program of saving and borrowing. This thing is in accordance with what is already mandated by the Constitution of 1945 Article 33 Paragraph (1), namely: based on mutual cooperation. It is also a question whether the concept of mutual cooperation can work as a trust under the Indonesian Constitution, although the form of his business is cooperative and does not dominate the western concept activity economy in Indonesia. In this study, researchers try to study the application draft of modern banking in the community of mutual cooperation culture of MSME businesses. Study conducted with a study based on the theory of legal transplant or drafting modern banking into the culture of mutual cooperation.

In practice, businesspeople transplant deep western concepts into culture and law into Indonesian people who still apply law and custom, which could be anticipated by a Notary in inventing the law. This is because the role of a Notary Public is to serve the community so that activities in the economy or business do not get hampered because of problems with the law. As an example could be seen how the Notary Public anticipates the concept of validity of land purchase in the activity business is western law as the Civil Code to the object of purchase, such as land, that refers to the law of customs (adat law) based on "light and cash". If there are conditions that are not "clear and cash", then the Notary Public, based on invention law, makes an institution called "Binding Agreement to Purchase" as a pre-formal Purchase Agreement, of which the party as the candidate

of seller gives power to sell to the party of the buyer if the element of pre-conditions of "bright and cash" has been achieved.

Land purchase and changing the name of the certificate and the price of purchase agreed upon have already been implemented and could be implemented. Another example is the draft ownership of a house or apartment, which is unit ownership. The House of Condominium ("Hak Milik atas Satuan Rumah Susun") can be owned individually, though in fact, by physical and legal, the condominium or apartment is owned jointly.

Based on the background above, the researcher is trying to study the idea of the form or the shape of a business entity which is a partnership between a cooperative and a modern bank/non-bank financial institution (LKBB) as an MFI. The goal is to implement the concept of modern banking in the culture of mutual cooperation that still exists in the public medium, specifically in public MSME business. Based on the theory of legal transplant, the ideas could be implemented in a new business entity containing the concept of mutual cooperation through service modern banking. The study of law is also expected to be based on the destination of law that alone is a non-legal matter, so that the trust of the Constitution as a product of law is for the prosperity of people in a prosperous (state of welfare). The study was conducted by juridical normative under exploratory explanation and supported by regulation and concept approaches.

2 Legal Materials and Methods

2.1 Concept Cooperative

In Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is affirmed that the economy is arranged as a business together based on the principle of kinship. Provision in accordance with the principle of cooperative, because cooperatives have a mission to play a role in a community-based economy based on principles of family and democracy, an economy that prioritizes public prosperity and the prosperity of the people. In the mission, cooperatives do not incessantly attempt to develop and empower themselves to become strong and independent so they are capable of the well-being of the members in particular and society in general. Furthermore, cooperative attempted to play a role in real developing and empowering the economic system based on family and democracy principles in order to realize a public advanced, just, and prosperous. To achieve this goal, the cooperative's entire activity must be based on the values stated in the Republic of Indonesia's 1945 Constitution as well as cooperative values and principles.

Many factors hinder the progress of cooperatives.

That resulted in the development and empowerment of cooperative members; however, it is difficult to realize a strong and independent cooperative capable of developing and improving the members' work equal, potential, and ability economy in order to increase economic and social well-being. Regulation legislation is one of the roadblocks. The Constitution of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic of the Republic. The provisions of the Constitution, as a system, are no longer adequate to make base law for cooperative development and empowerment, especially when faced with economic

development in an increasingly national and global dynamic and full challenge. That thing could be seen in stipulations governing the values and principles of cooperatives, granting legal entity status, capital, management, activities of the program of save and borrow in cooperatives and the roles of government. Because of that, to resolve various factors blocking cooperative progress, we need to update law in the field of cooperative through determination base law as a new form of Act. Law must be updated to meet the demands of cooperative development while also keeping pace with national and global economic development.

A cooperative is a legal entity established by an individual or legal entity, with separation wealth of members as capital for operating effort, which fulfills aspirations and needs together in the fields of economic, social, and culture in accordance with the values and principles of the cooperative. Specifically, (a) kinship; (b) self-help; (c) responsible response; (d) democracy; (e) equation; (f) fairness; and (g) independence.

The Indonesian Cooperative Principles are in Article 5 of Law No. 12 of 1967, which says that the Indonesian Cooperative Principles are Family and Teamwork. In the explanation, Article 5 of Law No. 12 of 1967 describes principle kinship and mutual cooperation as follows: First, by adhering to the principle of kinship and cooperation in accordance with Indonesian personality, cooperatives do not abandon nature and conditions the economy, resulting in a loss of efficiency. Second, Indonesian cooperatives should realize that inside of themselves there is something Indonesian, as a reflection of the growth line Indonesian nation, which is determined by the life of the Indonesian nation and is influenced by the circumstances of the Indonesian environment and atmosphere all the time, with characteristic features like Almighty God's Oneness, mutual cooperation, and family, as well as what the Bible says is "Bhinneka Tunggal Ika".

For cooperatives, the principle of gotong royong means that at the cooperative there is awareness and awareness spirit, cooperate and take responsibility.

As a result of creation without thinking about self-interest alone, but always for happiness together. In sharing the results of his work, each member accepts part in accordance with his work or service. Family principles reflect existence awareness from the mind, heart, and conscience for all things cooperative by all for all, under the leadership of management, as well as ownership from the members based on justice and truth, as well as courage to sacrifice for the sake of the group's interest.

With that, the principle of gotong royong and kinship in cooperative must be a dynamic understanding that describes something created together, the charity of which is based on a sense of justice and love inside in the implementation, through all power as well as work and heart conscience man to cultivate it, and where needed, dare self to use his rights alone, within the boundaries of such justice and love.

Cooperatives (Cooperative Law) According to Article 2, cooperatives are founded on Pancasila's philosophy, the 1945 Constitution, and the principle of kinship. Until now, the basis of Pancasila, the 1945 Constitution, and the principles of the family still apply in establishment cooperatives. The Cooperative Law still applies as the positive law of cooperatives in our country. The destination of cooperatives is in Sect. 3, which says that: "Cooperatives" "aim adva the well-being of being members in particular and society in general as w the building follow build arrangement of to national an economy

in realize advanced, just and prosperous society that based on Pancasila an the 1945 Constitution".

2.2 The Concept of Financial Institutions and Banking

A financial institution is a business entity that has riches in the form of financial assets. The assets are in the form of financial assets. This is used for operating businesses in the fields of service finance, the provision of funds for financing business productive and consumptive, as well as service finance. So, the activities put more emphasis on function finance, namely service finance financing and services finance non-financing. While financial institutions focus more on function financing. He does activity financing in the form of provision of funds or capital goods with no withdrawal of funds from society. So, becoming a financing institution is part of the financial institutions. Other institutions that fall under financial institutions include banking. Banking is all things concerning the bank, including institutions, activities, as well as methods and processes in doing activities.

Banks are defined as a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms that increase the standard of life a lot. First, the bank will conduct an application credit analysis. Credit analysis includes: (a). Background information on the customer/company customer; (b). Plan the effort that will be funded; (c). (d) Guarantees are provided. Other matters determined by the Bank. The purpose of credit analysis is to convince the bank that credit applied is that which is deserved and trusted as well as not fictitious.

On the basis of the results of credit analysis, the bank provides consideration with careful application to the customer's worth for grant. This thing needs attention seriously. The bank remembers risk of credit default and inclined jamming. Basic credit considerations are based on the concept of the 5 Cs: (1) character; (2) capacity; (3) capital; (4) collateral; and (5) condition. Besides, the concept of 5 C rating is available again for evaluation credit to a number of aspects concerning that business candidate debtor, namely: (a). Aspect Marketing; (b). Technical Aspect; (c). Aspect Management; (d). Aspect Juridical; (e). Aspect Socio-Economic.

2.3 Concept Public Service Obligations and Subsidies

The government finished privatizing the tools of the welfare state, from which the question, whether companies belong to the country must keep going, continuing service provision to ensure users of these services are paid in full. Should companies provide something for business that is social, or distribute non-profit sources, such as services to distant residents, residents in a village, residents that are poor, destitute, and so on? These services are called "service obligation for the public" or "public service obligation" (PSO), and must be provided by newly privatized companies. The activity keeps the influence of profit.

The PSO concept implemented in Portugal is the concept of "essential public service" as applied in regulations ("Decre-Law 23/96 of July 26, 1996" with scope protection for end-users in providing water, electricity, gas, and telephone services. Based on the

concept, the implementation operations in the market must ensure service in accordance with quality standards and tasks:

a. They must always act in good faith with the customer.
b. They must provide users with information about the terms and conditions of the services they provide.
c. Service providers do not service that day without announcement first.
d. In the event that a user fails to pay in state default, service delays that occur only after service users are warned in writing with at least 8 (eight) days' notice from the date of delay, and
e. Service providers do not impose minimum consumption or cost requirements.

Then also mention all costs implementation service management on behalf of economy in general, implemented with Mission and Responsibilities:

a. Ensure services in the interests of general throughout the region, without discrimination between regional areas and cities.
b. Increase accessibility to goods and services 3. Based on availability and economic conditions, looking for, when possible, equality and non-discrimination in treatment for all users of goods and services.
c. Ensure the availability or management of this service's profit is not guaranteed, especially in the event of necessary investment in infrastructure or network distribution, or in the event of the need for solution activities that are not efficient in the economy.
d. Oversee the efficiency management of the public service network, specifically the production, transportation, distribution, and development of infrastructure from an organizational standpoint change, technologically driven or innovative technology, and
e. Meet special obligations related to guarantee (security), quality, continuity, and accountable services, as well as in relation to the destination protection environment. Obligations must be clearly defined, transparent, non-discriminatory, and when needed, control the object.

The presence of PSO is in the keeping of activities that provide public goods and services, in particular the provision of transportation services and communication, available in a sufficient amount that even though they do not give enough profit for the service provider to permanently operate their activities. PSO on offer for routes that are not financial, no profit must be provided, because in this case, the expected will have a multiplier effect on the economy for communities in the area the route passes through.

Related to the assignment, Government to State-Of course, the government must provide the amount of funds in the Budget State Revenue and Costs (APBN) post of disbursement. Budgeted funds, including output post subsidies, for assistance to SOEs in the case of running PSO, and outside type subsidies provided by the government in the form of electricity, oil and gas, fertilizer, postal subsidies, and other.

Giving such subsidies actually causes a dilemma for the government, where on the one hand, gift subsidies and PSO are consequences and tasks as well as a responsibility for the other hand, the government is constrained by the limited available budget.

A number of problems that arise related to PSO and subsidies, among others, are: the lack of clear and firm government policy on PSO activities and subsidies; a number of types, patterns, and mechanisms implementation subsidies implemented by the government; a gap between big needs for subsidies for PSO activities and the ability to finance them; less firm and clear distribution duties; powers and responsibilities on implementation subsidies and PSO; and the lack of coordination between agency government and BUMN in planning, implementation and monitoring as well as evaluation of its implementation.

Based on the case above mentioned, we need to conduct a study as well as an evaluation of the implementation of PSO in relation to gift subsidy so that we could expect to give strategy and policy recommendations for system implementation of PSO activities in relation to subsidies.

2.4 The Concept of a Prosperous State

The definition of a welfare state has been given by many experts from various disciplines. First, it is generally accepted that the notion of a welfare state is one in which the government plays a positive role in promoting social welfare. The welfare state is also something that provides full equality for all people. The welfare state must remove the obstacles that prevent full equality and have a strong vision and drive in addition to the process of institutionalizing the welfare state. Second, the welfare state is also defined as a minimum standard of social welfare. In many countries, the essence of the welfare state lies in the minimum standards the government protects: income, nutrition, health, housing, and education. Third, the welfare state is concerned with the transfer of payments and direct provision of social services. Fourth, a prosperous state is where every political community in principle provides or tries to provide for the needs of its members according to what its members want. Fifth, as a model for society. Safri Nugraha quotes Briggs as giving the meaning of the welfare state as:

> "… in which organized power is deliberately used (through politics and administration) in an effort to modify the play of the market forces in at least three directions—first, by guaranteeing individuals and families a minimum income irrespective of the market value of their property; second, by narrowing the extent of insecurity by enabling individuals and families to meet certain "social contingencies" (for example, sickness, old age and unemployment) which otherwise lead to individual and family crises; and third, by ensuring that all citizens without distinction of status or class are offered the best standard available in relation to a certain agreed range of social services".

Safri Nugraha also quotes Kaufmann, who tried classifying perception of the dominant welfare state as follows:

a. A state that provides economic security and social services for certain categories (or all) of its citizens.
b. A state that takes care of a substantial redistribution of resources from the wealthier to the poor.

c. A state that has instituted social rights as part of citizenship.
d. A state that aims at security for all and equality among its citizens.
e. A state that it is assumed explicitly responsible for the basic well-being of all its members.

Thus, the welfare state involves a lot of government activities. The concept of a prosperous state has developed extensively everywhere. Many countries have tried the implementation of the welfare state. During the late 1980s, a strong belief in checking the strength of the nation's welfare state and strengthening the existing private sector emerged in many countries. An illustration of how people in these countries believe that:

Unless the welfare state is tempered and the role of the private sector is strengthened, poverty and dependency will increase, not diminish, and the role of the government will grow more intrusive and produce further unforeseen negative consequences.

3 Results and Discussion

Indonesian people in particular, public class medium or lower. This case could be seen from the COVID-19 pandemic condition that the public helps affected citizens of the COVID-19 outbreak, especially those who live in isolation at home. Residents help and give each other food and medicine as neighbors. However, in businesses like cooperatives and cooperative institutions, there will still be a mutual cooperation culture that works well, but the role of government in cooperatives is not yet maximum. Culture the true law of mutual cooperation required for public MSME business in business financing.

The culture of mutual cooperation that exists in the Cooperative Institute could help the concept of modern financing from LKBB, where service modern financing is not in line with the mutual cooperation concept. The concept of modern finance is very individualist and highly costly, as well as complicated and rigid bureaucracy. This case shows the perpetrators' MSME businesses are not so interested in modern financial institutions, so they are more interested in online financing or online loans without collateral, although with very high interest. This case makes many involved cases not able to pay with execution by creditors who violate the rights of human beings. Based on the case before mentioned, it needs the idea of the Partnership of Cooperation and Modern LKBB as a MIF. The idea of this through something transplantation of the concept of modern banking in community of mutual cooperation culture of MSME business.

3.1 Discussion

The Idea of Partnership of Cooperatives and Modern LKBB as MIF, in practice, business once occurs in a collaboration between private parties that interested in managing the business operation of road toll infrastructure based on the law which is the authority of BUMN PT. Jasa Marga. In the construction of the law that doesn't allow for private participation to manage the business of toll roads, the government then issued a legal instrument by Presidential Decree in 1987. Based on the Presidential Decree Law, a Public-Private Partnership was formed, with the government represented by PT. Jasa

Marga as BUMN and PT. Citra Marga Nusaphala Persada as a private party managing the toll road business. The form of partnership is a joint venture agreement or joint venture company.

In the idea of Partnership of Cooperation and Modern LKBB as a MIF, the need for study in Laws, regulations, institutions, and contracts that are effective and efficient, as well as reliable, are implemented as framework work.

3.2 Research Results

The culture of gotong royong is still culture.

3.2.1 Transplantation of the Concept of Modern Banking into the Culture of Mutual Cooperation of the MSME Business Community

The culture of gotong royong is already there in public, specifically in public media above. Culture that's what's there in the Cooperative Institute, needs optimized return in something system law. In the theory of the legal system (the legal system), as a legal framework for researchers, Friedman stated that the legal system consists of three elements, namely:

a. The structure of the legal system is in the form of a legal structure, which is related to government institutions and agencies related to financial institutions such as the Ministry of Finance, OJK.
b. Substance from system law in form substance law (legal substance), namely related laws and regulations and related finance and financing micro.
c. Culture from system law in form culture law (legal culture), namely: culture that must life in the process of financing and finance micro good to government, MIF and society.

According to Friedman's explanation, the third element, namely the legal system as a production process, is represented by a machine as a legal structure, then the product produced is as legal substance, and the machine used is a representation of an element of legal culture. In apply the concept of modern banking in a culture of mutual cooperation, SMEs need a transplantation process of the concept of modern banking in public SMEs with a culture of mutual cooperation.

In the application of concepts and laws of modern banking in public and MSME businesses, we can analyze based on theories that become the reference analysis for making such regulation. This analysis can be studied from the theory of the pattern of movement norms of law or specific laws, for example, from one country to another during law making or legal reform (legal transplant). There are two theories in the approach that will determine whether such legislation is successful or not. The first theory is from Alan Watson and the second theory is from Otto Kahn-Freund.

Watson's theory begins with the assumption that there is no inherent relationship between law and society in its implementation. Watson believes that law by wide character autonomy deals with his life alone. Watson stated that the law is based on method transplantation:

The law developed by transplanting not because some such rules were an inevitable consequence of the social structure and would have emerged even without a model to copy, but because the foreign rule was known to those with control over law making and they observed the (apparent) benefits which could be derived from it. What is borrowed, that is to say, is very often the idea.

Based on Watson's theory, rules of the law (legal rules) are transplanted by simple reason because they are good ideas. Kahn-Freund does not agree with Watson's assumptions. Kahn-Freund claims that the law must not be separated from its goal or from the circumstances where it is made. He argues that we could not ensure the rules or institutions could be transplanted (we cannot take for granted that rules or institutions are transplantable) and that there are levels of transfer the rules or institutions (there are degrees of transferability). It can be seen here that Kahn-Freund was influenced by the ideas of Carl Von Savigny, a German adherent of the law history sect who claimed that law positiva originated from the spirit of the people (volkgeist).

In the theory of legal transplant, Alan Watson explains that the public does not want to borrow something with lots of rules because of the discrepancy. In fact, the factors determining the loan system often have no relationship with the needs of the borrowing community. In experience, the influence of the law of Germany on Japan and Greece (Greece), it turns out that the reception of the system of law is not a problem of quality but a problem of power (power), as called by Alan Watson:

In other words, a foreign law is received not because it is regarded as the best. Much more, the receptivity of a foreign legal system is a question of power, the result of at least a spiritual and cultural power position of the receiving law, a position of power which again is conditioned by the fact that the law is that of a strong political power, whether that power is still real or at least there exists a living memory of it and its culture.

Alan Watson proposed the legal theory of power, and Alan Watson described Napoleon's conquest of territory. The conquest of the territory by Napoleon helped the deployment law of France. Besides territory conquest, the dominant influence of the law of France in the 19th century was more because of the strength of the "*Code Civil*" and also the absence rival.

The transplantation concept of modern banking in public SMEs in the legal system is hoped to give benefit as mandated by the Constitution, which is for the maximum benefit of the people. In law enforcement, legally and theoretically, there are 3 (three) elements that need to be noted: (1) Principles of Legal Certainty (*Rechtssicherheit*), (2) Principles Expediency (*Zweckmassigkeit*), and (3) Principles Justice (*Gerechttigkeit*).

Injustice contained in laws and norms will invalidate laws and norms and lose their legal character, as Gustav Radbruch said in the "Radbruch Formula": *appropriately enacted and socially effective norms lose their legal character or their legal validity when they are extremely unjust*.

Prioritizing the benefit principle as a dialectic between justice and legal certainty will lead the country to a prosperous state. Professor Organski sees a model in the modern nation. He sees that a modern nation in its political development goes through three stages: (1). *The politics of primitive unification*; (2). *Industrialization politics*; and (3) *social welfare politics.*

To reach the third step (social welfare), it needs quite a long time, as experienced by the United States (United States). Japan, Western Europe, and the Soviet Union are examples of countries that cannot be reached in a reasonable amount of time and require first and second steps. The United States of America alone started step one to uniting a divided nation (unification) with the civil war to reach the second step, which is the step of industrialization, in the 1840s, which was a past era take-off according to Walt Rostow. At a second stage, this to reach the third step (social welfare), it needs quite a long time, as experienced by the United States (United States). Japan, Western Europe, and the Soviet Union are examples of countries that cannot be reached in a reasonable amount of time and require first and second steps. The United States of America alone started step one to uniting a divided nation (unification) with the civil war to reach the second step, which is the step of industrialization in the 1840s, which was a past era take-off according to Walt Rostow. At the second stage, this will be marked with (based on statistics): the statistics of pig iron, railroads, capital growth, and urbanization. Along with industrialization, the flow of a free economy (laissez faire) and private enterprise developed. At this stage, there are many laws that regulate industrialization issues, such as banking laws and capital market laws.

Japan attempted to hasten these stages by sending a large number of human resources abroad to study.

Japan invested in science and technology after the Meiji restoration in 1868, so that by 1890, Japan had become an industrial country. In Indonesia, after the 1997 Reformation, they tried to implement the three stages in parallel (unification, industrialization, and the welfare state). This can be seen from the many laws issued at once, namely: foreign investment laws, capital markets, labor, regional autonomy, pensions, and others, which were issued in a short time. This will be difficult if it is not supported by adequate human resources and budget.

In industrial development in Europe, it turns out that consistency and enforcement of established laws (legal norms) are important elements. For this reason, create a concept regarding the relationship between law and development so that the law is conducive to development. He suggested five qualities of law for conducive development: (1). Stability; (2). Predictability; (3). Fairness; (4). Education; and (5). The lawyer's special development abilities.

First are two so-called qualities. First are requirements necessary for the system economy to function. In the context of the legal framework above, the development of financial infrastructure, especially MFIs in Indonesia, is in the second stage, namely the industrialization stage, although Indonesia is currently trying to enter the third stage (welfare state). At this stage, the law for the MIF requires five legal qualities as stated by Max Weber above, namely: stability, predictability, fairness, education, and the special development abilities of the law.

3.2.2 Economic Equilibrium Doctrine in Cooperation Partnership and Modern Banks

In the implementation of the Partnership of Cooperative and Modern Banks, the required application of the doctrine of economic equilibrium in MFI operations for public MSME

businesses is required. This case required framework work of laws, regulations, institutions, and contracts related to the implementation of the MFI financing model for public MSME businesses. The government and MFIs must provide standard services to public MSME businesses in the form of PSO. The costs in the case of implementation of the PSO for MFIs must be supported by the government in the form of subsidies that come from APBN. The PSO concept and subsidies could be categorized as achieving the necessary principle of economic equilibrium in the Partnership of Cooperative and Modern Banks so that the purpose of the partnership will be achieved.

The emergence of the legal doctrine The "Critical Legal Studies" and movement based on the Pacta Sunt Servanda doctrine "Critical Legal Studies", which for researchers is a movement on thinking about law, is in line with the legal framework that the researcher has explained previously, namely: legal system theory, theory of legal change, and legal characteristics, which viewed at a macro level in the context of law and the development of a nation (state), as well as legal and economic development as a grand theory in a legal framework.

It was mentioned that there is a shift from "Sanctity" to "Fairness" in IX century Contract Law and Its Modern-Day Adaptations. It is also stated that:

"Pacta sunt servanda" is not really a rule on its own, but is merely a reflection of the nature of a contractual obligation. "The problem is to decide when the rule admits exceptions."

Dr. Nagla Nassar explains:

A meticulous and talented comparative lawyer from Egypt (who possesses a commendable grasp of both civil law and common law doctrine), addresses some of the sanctity-and-freedom-of-contract-oriented issues in modern contract law. In the introductory chapter, by drawing upon a vast array of sources, the author has sought to encapsulate, with commendable brevity, the salient features of contract law through various phases. According to her, contract law, traditionally viewed in all Western legal systems as a body of basic concepts and doctrines for giving effect to voluntary agreements according to the intent of the parties, has fought in the twentieth century to adapt itself to a wholly new economic situation.

Of course, the law did not remain static, and alterations can be observed to be in response to social change. The doctrines of pacta sunt servanda and sanctity of contract reinforced to their widest possible extent by such rigid devices as unlimited stabilization and freezing clauses, would seriously collide with the concepts of fairness or economic equilibrium in global developments".

Problems in contract investment could be seen from Professor Dr.'s argument. Klaus Berger, in his writing regarding "Renegotiation and Adaptation Clauses in Investment Cont acts, Revisited". He argues that

1. Because these contracts typically are of long duration, the political, economic and social climate could change radically during this period and dramatically alter the economic benefits that the parties originally envisioned would flow from the agreement.
2. A negotiation clause may both protect a state's sovereign right to change laws that may affect the agreement and provide a measure of protection to the private investor.

He see that with existence clause the as clause stabilization where if Government change the law will influence the balance of economy (economic equilibrium). In problem law and economics, Kostritsky think that problem economy has proved great value, however in this case if placed on the stated "moral framework" by assertive in legal and not possible will reduce equilibrium economics. He describes legal and economic failures by giving priority to legal issues over economics in the analysis of "incomplete contracts".

Problem economic/financial equilibrium this in agreement are:

1. Will a minor impact caused by a change in law trigger off renegotiation?
2. Who determines when the economic equilibrium of the financial position has changed? The host government, investor or third party?

In application theory contract mature this, depends from a number of qualifications criticized by Robero M. Unger in his book "The Critical Legal Studies Movement", namely:

1. There are the exclusions: whole area of law, such as family law, labor law, antitrust, corporate law, and even international law, which were once regarded as branches of unified contract theory but gradually came to be seen as requiring categories unassimilable to that theory.
2. There are the exceptions: bodies of law and social practice such as fiduciary relationships that come under an anomaly set of principles within the central area of contract.
3. There are the repressions: problems such as those of long-term contractual dealings that, though resistant to the solutions provided by a theory oriented primarily toward the one shot, arm's-length, and low-trust transactions, are nevertheless more often dealt with by ad hoc deviations from the dominant rules and ideas than by clearly distinct norms.

Doctrine analysis contract by Robero M. Unger in his book "The Critical Legal Studies Movement", through a number of Step namely:

1. It enumerates the two dominant pairs of principles and counter-principles that inform this entire body of law.
2. It examines points of controversy in the law that bring into focus an ambiguity in the relation between the principles and counter principles. Although the counter-principles may be seen as restraints upon the principles, they may also serve as points of departure for a different organizing conception of this whole area of law.
3. The analysis generalizes this alternative conception by discussing the theory of the sources of obligation and the nature of entitlements that it implies.
4. Test and refines this alternative by applying it to problems other than the points of controversy that provided the occasion for its original formulation.
5. In a sense, the first, it offers retrospectively a more complete justification for the direction in which all steps of the analysis move.

In analysis to principle and counter- principle, mentioned:

1. About the principle of "Freedom of Contract" and "Community": hence counter principle "Freedom of Contract" against "Community" are: "That the freedom to choose the contract partner will not be allowed to work in ways that subvert the communal aspects of social life".
2. About the principle of "Freedom of Contract" and "Fairness": hence counter principle "Freedom of Contract" against "Fairness" are:

"The law governing discharge for changed circumstances and mistakes about basic assumptions, and the law of durations, whose problems extended into labor law". "Fairness means not treating the parties, and not allowing them to treat each other, as pure gamblers unless they see themselves this way and have the measure of equality that enables each to look out for him-self". "Fairness also means that inequality between the parties renders a contract suspect and, beyond a certain measure of disparity in power, invalid".

The Contract is something a balanced system (equilibrium) for the parties as previously described by John Rawls. With so, at the time there is unpredictable risk, then will arise injustice for one party. For that's needed Economic Equilibrium as exception (exception) from the concept of Pacta Sunt Servanda – Freedom Contract. This is thinking from the movement sect law of Critical Legal Study and Legal Realism.

3.2.3 Law, Regulation, Institution and Contract Framework: Effective, Efficient and Reliable

In the application of MFIs to public MSME businesses with the partnership model of a cooperative and modern bank, there is a need for some framework work for laws, regulations, and contracts that are effective, efficient, and reliable.

In the formation of useful, effective, and efficient regulations, a number of necessary guidelines that noticed in the approach to law and economics (economic analysis of law) can be made into an approach to answer the problem of law with expressly different definitions and assumptions of law for getting satisfaction and improvement of happiness (maximization of happiness). This approach close relationship with justice within the law. To do it, then the law made economic tools to reach the maximization of happiness. Such an approach and use of this analysis must be conducted with considerations of economy with no element of justice removed, so justice could become the economic standard based on three basic elements, that is value, utility, and efficiency based on the rationality of humans. The approach of law and economics developed by Richard Posner, later known as the economic conception of justice, is based on this basic concept, with the conclusion that law is created and applied with the primary goal of increasing the public interest as widely as possible (maximizing overall social utility).

The economic idea of justice becomes the standard for figuring out how much of an effect something has on the public when it comes to laws and rules. From here, it would be easier to figure out how society reacts to laws and how they can help people. "…we can easily predict how people will feel about a proposed act by looking at how much of what they want they will get from the proposed act from an economic point of view."

When a law is able to adapt, it means that it works well and responds to changes and needs of the time. This is what it means for a law to be progressive. It means the product

of the law (regulation) must be reliable. So, for enforcement regulation to work, there must be: (1) rules; (2) the rules must apply to the future, not the past; (3) there must be a way to enforce the rules. The rules must be published: (4). The rules must be intelligent; (5). The rules must not be contradictory (6). Compliance with the rules must be possible; and (7). The rules must not constantly change; (8). (8). must be consistency between what the rules say and what the people who are in charge of applying and enforcing those rules do.

3.2.4 Law, Regulation, Institution and Contract Framework: Effective, Efficient and Reliable

The 8 (eight) devices above are mentioned as a filter for filtering and analyzing to become the principles of law. There are five (five) principles of the law that become one unity: (1) Equilibrium Principles composition: presence gap rationality to definition, perception of basic interests and goals divided into two criteria, that is, a definition with criteria for interested people and for state interests(2) Principles Gap-Filling: occurred in realizing and implementing law between enforcer law and users law. The product of efficient law that must load all provisions of law by explicit, easily understandable, and easily accessible. The law as "rules of law" is not built from interpretations (rules of interpretation) so as to give wrong expectations or practices of wrong discretion with no basis. (3) Principle Hypothetical Bargains: the product of law is ready to use without hesitation, assists with the guarantee of existence enforcement law to achieve the goals, (4) Principle Correlated Productive: productivity of regulation through increasing community "legal awareness". (5) Principle Extensive Ken: absolutely not reliant on the existence of legal regulations that provide a hazy understanding, causing people to have unrealistic expectations.

The product of law that works well doesn't mean that you don't need to know the basics of law, but there are some things that every law must have:

a. The law must be accessible and so far as possible intelligent, clear and predictable;
b. Question of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion;
c. The of the land should apply equally to all, save to the extents that objective differences justify differentiation;
d. Minister and public officers at all levels must exercise the powers conferred on them in good faith, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably;
e. The law must afford adequate protection of fundamental human rights.
f. Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve;
g. Adjudicative procedures provided by the state should be fair;
h. The rule of law requires compliance by the state with its obligations in international law as in national law.

The theoretical framework of law of contract start from Thomas Hobes (book: "Leviathan" – 1651) developed by John Locke (1689) and JJ Rousseau (1762) in the theory

of the Social Contract. PS Atiyah developed the Thomas Hobes analysis, which shows that a contract is an obligation law for fulfilling an achievement contract and keeping the promises in accordance with hope profit (expected benefit). Economic Analysis of Law Against Contract Law could be used to analyze: (a) Exchange Process Rights and Obligations; (b) The reciprocals of Promises; (c) Loss as a result of breaking the promise; and (d) Contract Completeness.

The Complete Contract is working for reachable intent and purpose as well as the interest of the contract maker. Incompleteness contracts caused contracts to be used as tools in transactions that were not capable of formulating the goal of the contract. The contract could be said to be a complete contract when it loads the whole rights and obligations of the parties in a deep and explicit way, fulfilling essential requirements and elements. Otherwise, a contract that isn't complete or perfect (incomplete contract) is not loaded with the terms and conditions as well as the conditions that should be entered into the contract. Although the contract appears complete without gaps or emptiness, it turns out to not fulfil the terms and conditions as well as the conditions that should be. Then the contract could not give the power of use (utility), and the contract could not be reliable (not reliable). Contracts that are not reliable will potentially cause a dispute.

The Principles of Contract Law as a very useful remedy for repair, even to complete the contract, could minimize the cost and impact of risk in the activity of business at a time and become a reference to avoid the uncertainty of making the contract. There are some principles of contract law from an economic perspective: (a) Principle Information as Label: Information assists parties in making rational decisions; as an open label, true and sufficient information may aid in transaction accuracy; (b). Principle of Voluntary Transfers-The contract has value when its existence could be enforced by law; the exchange process is based on voluntary parties; (c). Principle of Bargaining Equality-Efficient contracts through interpretation are based on equality of the goal, mature in the bidding process, promise so that the parties that are eligible for each other swap promise so that they create the same position and as well as maintain mutual dependency; (d). Principle of Fulfilling Reasonable Expectations: The contract could be said have usefulness if it could be enabled in accordance with needs and goals of the contract. The parties who protect the contract that facilitates the exchange or transaction of profits (monetary and non-monetary).

Therefore, it could be concluded that

(a) Value: The contract can be enforced according to the law; (b) Efficiency: The contract can unite equality, will, and purpose through effective interpretation; and (c).The contract, in addition to being protected by law, may be enabled in accordance with its purpose.

The framework of laws, regulations, institutions and contracts must give the impact on the ability to pay of the community (ability to pay). The cost of the operational agreement was agreed jointly by cooperatives and Modern LKBB, because the form of which is a partnership model for public service, not by regulation by the government. The cost of the operation should be customized with the ability of the community (ability to pay). The rest of the cost in doing PSO will be supported by the government in the form of subsidies.

4 Conclusion and Suggestion

The study of legal transplant concepts and laws upon the services of financing modern banking in the system of law, that is: legal substance, structure of law, and legal culture, so that law will benefit law as destination law, that is for prosperous people, as stated in article 33 of the 1945 Constitution, is required. Implementing the partnership model necessitates the doctrine of economic equilibrium, which provides an economic balance for the government, MFIs, and public MSME businesses. The cost of the operational agreement was agreed jointly by cooperatives and Modern LKBB and not by regulation of the government. The operational cost should be tailored to the community's ability to pay), and the remainder of the cost of doing PSO will be subsidized by the government.

For that, it needs to study the framework of laws, regulations, institutions, and contracts that are effective and efficient as well as reliable. Specifically, in guarding economic equilibrium, that gives the balance of economy to the government, MFIs, and public MSME businesses so that the MFI's goals are achieved. In this case, it is to guard the service for the public or public service obligation (PSO) for MFIs in the pattern of partnership between cooperatives and modern LKBB with subsidies. It means PSO and subsidies must enter into the framework of laws, regulations, institutions, and contracts in the implementation of the Partnership model between Cooperative and Modern LKBB as an MIF for public MSME businesses.

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