

Traditional Market Presence in Retail Trade Crush

Kajagi Kalman,* Aminuddin Ilmar **, Ahmadi Miru,*** Juajir Sumardi,****

*PhD student, Postgraduate Hasanuddin University .

** Professor on Legal Science, Faculty of Law Hasanuddin University, as a Promotor.

*** Professor on Legal Science, Faculty of Law Hasanuddin University, as a Co-Promotor.

**** Professor on Legal Science, Faculty of Law Hasanuddin University, as a Co-Promotor.

Jl. Perintis Kemerdekaan Km. 10 Tamalanarea, Makassar

Abstract

Economic activity regardless of the market is basically concerned with the advantage of economic actors of the market. It is very difficult to find economic welfare if it is seen from the existing market mechanisms. Welfare is one aspects that is quite important to maintain and foster the social and economic stability. These conditions are also necessary to minimize social tension in society. The market mechanism is vital to embody the economic welfare. The problem arises is how to fulfill it due to externalities and public goods factors that should be considered. The externalities factors will bring two effects – both positive and negative impacts. The externalities is one indicators of the existence of competitive of traditional market in retail trade crush. The existence of traditional markets as an asset of the nation which is the economic base of the people and institutions of social security as well as the institution endurance cultural can only exist amid the splendor of the retail trade. It will exist if there is concern for the government and the local government, both in the form of policies and concrete actions to protect the existence of the traditional markets. The traditional market management policies must be based on alignments to the public under both merchants, consumers, and community members of other market users. Construction of the traditional markets must consider factors favorable to the market and should be managed professionally with good management.

Keywords: Presence Traditional Market; Retail Trade; Crush.

1. Introduction

State is established, maintained, and developed for the benefit of the whole people. It is to warrant and promote the public welfare. It is obviously set forth in the preamble of the 1945 Constitution which reads: "subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, peace, and social justice, therefore the independence of Indonesia shall be formulated into a constitution of the Republic of Indonesia".

The creation of the State law also means compliance with rule of law¹ in all activities of the State and its citizens. The rule of law elements include (1). legal supremacy; (2). equality before the law; (3). ensuring of human rights.² Harmony and balance between the rule of law and social justice or the public welfare are absolutely necessary to guarantee the rights of citizens. The harmony amongst them can be realized when meet the requirements such as (a). Legal rules and its implementation to approach the image of society; (b). Implementation of law enforcement to do the task of it based on the goals and desires of the law; (c). The communities is abiding and being conscious to the law for justice and prosperity. Therefore, it canbe said that the scope of welfare is broad range to reach spiritual and physical meaning of it. The public welfare must recognize and respect to basic rights of citizens and the availability of goods and services for the sake of affordable necessities of life that people's purchasing power.

The concept of welfare (well-being) is often interpreted differently by different people and countries. Referring to Spicker states that the welfare state "... stands for a developed ideal in which welfare is provided

¹ See Djokosutono, *Constitutional Law*, Ghalia Indonesia, Jakarta, 1959.

² See SatjiptoRaharjo, *Other Sides of Legal Science in Indonesia*, Kompas, Jakarta, 2003, p.1.

comprehensively by the state to the best possible standards."¹ Midgley, Tracy and Livermore,² Thompson,³ Suharto,⁴ and Suharto,⁵ also agree to the Spicker point of views. The welfare's definition has at least 4 (four) meaning, as follows:

1. A condition of welfare (well-being). It usually refers to the term social welfare as the condition of the fulfillment of material and non-material. Prosperous condition occurs when human life secure and happy for the basic needs of nutrition, health, education, housing, and appropriate income; and when human beings get protection from major risks that threaten his life.
2. A social service. In the United Kingdom, Australia and New Zealand, it generally includes 5 (five) forms of it - social security, health services, education, housing, and personal social services.
3. A social benefits. It is particularly given to the poor in the United States (US). It is because the majority of welfare recipients is the poor people, disabled, and unemployed. This situation then causes a negative connotation in terms of welfare, such as poverty, laziness, and dependency.
4. A process or a planned effort. It is undertaken by individuals, social institutions, communities and government agencies to improve the quality of life (first sense) through the provision of social services (sense into two) and social benefits (third sense).

In the UK, the concept of the welfare state is conceived as an alternative to the Poor Law that often leads to stigma. It is because it is only intended to provide assistance to the poor.⁶ According J.M. Keynes and Smith,⁷ the basic idea of the welfare state moved from the 18th century when Jeremy Bentham⁸ promoting the idea that the government has a responsibility to ensure the greatest happiness (or welfare) of the greatest number of their citizens. Bentham uses the term 'utility' (usefulness) to explain the concept of happiness or well-being. Based on the principle of utilitarianism that he developed, Bentham⁹ found something that could lead to extra happiness is a good thing. Instead, something causing pain is bad. According to him, the actions of the government should always be directed to increase the happiness of many people as possible. Bentham notion about law reform is the role of the constitution and social research for the development of social policy. His contribution makes him - known as the "father of the welfare states".

Economic activity regardless of the market is basically concerned with the advantage of economic actors of the market. So it is very difficult to find economic welfare when we have to see from the existing of the market mechanisms. Welfare is one aspects that is quite important to maintain and foster the social and economic stability. These conditions are also necessary to minimize social tension in society.

Economy has a duty to give a rational principle for business as economic activities. So that the economic activity not only leads on the needs to individual human life and short-term, but also provide a surplus for the well-being of many people in the country.¹⁰ Market competitive to looking for profit is one factors to become an obstacle towards prosperity. Competitive in the market is a very reasonable thing because competition has become obligatory in the market mechanism. The competition in the market could also have a negative impact on the realization of economic prosperity, in which the market competition makes the social context that must be

¹ Paul Spicker, *Social Policy, : Themes and Approaches*, Prentice Hall, London, 1995.

² James Midgley, et.al., *Introduction: Social Policy and Social Welfare*, in James Midgley, et.al., *The handbook of Social Policy*, Sage, London, 2000, ppp.xi-xv.

³ Neil Thompson, *Understanding Social Work: Preparing for Practice*, Palgrave, New York, 2005.

⁴ Edi Suharto, *Development the Community, Empowerment the People: Strategic Analysis of Development of Social Welfare and Social Working*, Refika Aditama, Bandung, 2005.

⁵ Edi Suharto, *Theory of Feminist and Social Work*, Paper on Workshop on Feminist and Social Work, Pusat Studi Wanita – State Islam University Sunan Kalijaga, Yogyakarta, 13 April 2006.

⁶ Edi Suharto, *Development, Social Policy and Social Working: Thought Spectrum*, LSP Press, Bandung, 1997. See also Paul Spicker, *Poverty and the Welfare State:Dispelling the Myths*, Catalyst, London, 2002.

⁷ Michael P. Tadaro and Stephen C. Smith, *Development of Economy*, Erlangga, Jakarta, 2006.

⁸ Jeremy Betham, *An Introduction to theMorals and Legislation*, Batoche Book, Kitchener, 2000.

⁹ Edi Suharto, *Map and Dynamic of Welfare State inSome Countries: What Lessons can be studied to Develop Indonesia?*, Paper, Rediscussion Relevancy Welfare State and Decentralization-Autonomy in Indonesia, Yniversity of Gadjah Mada, Yogyakarta, 25 July 2006.

¹⁰ James Midgley, et.al., *Introduction: Social Welfare*, Prentice Hall, New Jersey, 2000.

considered in the achievement of economic prosperity. In this context, it is becoming more difficult to be achieved.

The market mechanism is vital to embody the economic welfare.¹ The difficulties found in terms of the market mechanism is how to realize it. It is because there are externalities and public goods should then be considered. The externalities will bring two effects, namely the impact and negative impacts. The externalities basically is one indicator of a perfectly competitive market to be seen in the embodiment of welfare economics. The discussion of welfare economics will continue to talk about how everything is running optimally and the market is so competitive running perfectly. When the market is not perfect, it will be more difficult to realize the economic well-being.

Most economists use Pareto efficiency² as their efficiency goals. According to them, a situation is optimal only if no individuals can be made better off without making others worse. These ideal conditions can only be achieved if 4 (four) criteria are met. The average marginal substitution in consumption must be identical for all consumers (no consumer can be made better off without making others worse consumer). The average transformation in production should be identical for all products (it is impossible to increase the production of any goods without reducing the production of other goods). Marginal cost of resources should be equal to the marginal revenue product for all production processes (physical marginal product of a factor should be equal to all the companies that produce the goods). The average marginal substitution in consumption must be equal to the average marginal transformation in production (the production process must be in accordance with the wishes of the consumer).

Indonesia as a state of law and the welfare state aims to achieve a just and a prosperous society material and spiritual in its implementation based on Pancasila and the Constitution of the Republic of Indonesia Year 1945. Article 33 UUD 1945 stipulates that the economic system adopted country is an economic democracy that aims to realize prosperity and social justice as the ideals of economic development. For that reason, formulating the economic policies of the state should always try to eliminate the negative traits embodied in liberal economic system and the economic system of socialism, i.e free fight liberalism. It justifies the exploitation of people and statism where the state and its apparatus minimize the potential and creativity of economic units outside the state sector. In this context, an economic concentration in one of the groups is monopoly that is detrimental to society.³

2. Traditional Market Presence in Retail Trade Crush

For the business world, competition should be seen as a positive thing. The competition is referred to as an essential element in the modern economy. Business actors realize that in the business world it is natural to seek maximum profit, but it should be done through honest business competition. The competition is beneficial to the businesses themselves and also to consumers. With the competition,⁴ businesses will be racing continuously to improve the products or services produced. It constantly innovates and works hard to provide the best products for services for consumers.⁵

Competition will have an impact on businesses to increase their products or services efficiently. On the other hand, the existence of competition makes consumers in the beneficial position due to they have the option of buying a particular product or service at a cheap price and good quality (defect information), which would be detrimental to the consumers.⁶ Business competition can indeed help to improve the quality of products and / or services produced by businesses at an affordable price for consumers. So, it is no exaggeration to say that the

¹ The market mechanism is a system to find out the formed price, including the process matters that is influenced by some things such as demand and supply, distribution, governmental policy, labourer, money, tax, and security. See also P3EI, *Economy of Islam*, Rajawali Pers, Jakarta, 2012, pp.301-345.

² M. Abdul Rosyid, *Overview of Islamic Economy Towards Pareto Analysis*, <http://al-zakaa.blogspot.com>, accessed 1 March 2014. See also GC van Kooten and Bulte EH., *the Economics of Nature*, Blackwell Publisher, Malden.

³ Ahmad Yani and Gunawan Widjaja, *Serial of Anti Monopoly Business Law*, Rajawali Pers, Jakarta, 1999, p.4.

⁴ See the LawNo. 5,1999 on Anti Monopoly Act.

⁵ Hansen Knud, et.al., *The Anti Monopoly Act*, 2nd ed., collaboration GTZ and Katalis Mitra Plaosan, Jakarta, 2002.

⁶ Ahmadi Miru and Yodo Sutarman, *Consumer Protection Law*, 2nd ed., PT. Raja Grafindo Persda, Jakarta, 2004, pp.54-55.

existence of fair competition is considered as a catalyst to the development of industry, business, and economics in general.

In the history of the Republic of Indonesia, President Soekarno realize how important problem of food needs for survival of his people. It was submitted by him in a speech at the ceremony of the groundbreaking development of the Faculty of Agriculture, University of Indonesia in Bogor, 27 April 1952, namely: "... , what I want to say it, is very important, even on a matter of life and death of our nation in the future Therefore, I want to talk about who was on the question of food supplies of the people ".

Micro, Small and Medium Enterprises (SMEs) have become the backbone of the Indonesian economy. History proves when the monetary crisis in 1998, many large businesses collapse because the crisis hit, but SMEs still exist and sustain the continuation of the Indonesian economy. It was noted that 96% of SMEs in Indonesia remained from the shock of the crisis. The same thing happened in the years 2008-2009, when the crisis came and the resulting slowdown in economic growth, SME was again the savior of the Indonesian economy.

The market literally means gathered to exchange goods or purchase once in 5 days of Java. The market words is regarded from *Sansekerta Pancawara*.¹ The market in the concept of urban Java is an event that repeats rhythmically where the transaction itself is not central, which is central to the activities of the market is a social and economic interaction in a single event. Gathered (meeting in the market) in the sense of mutual met face and sold and bought on the market to be periodically. In other words, the market is *peken* that means to gather.² The market has a very close relationship with economic activities, production, distribution and consumption. In this case the market can be interpreted as an arena for the distribution or exchange of goods, where the interests of producers and consumers meet and in turn determines survival, economic activity society.³

In general, the physical of traditional market⁴ is very far behind when compared with modern retail. This is because the physical life of the traditional market (buildings and infrastructure) is relatively old and lack of attention of local governments and managers to maintain the physical of traditional market.

Inadequate maintenance and old age of the traditional market creates an impression rundown, unsafe and uncomfortable. The condition is exacerbated by poor management professionals. The existence of traditional markets as an asset of the nation which is the economic base of the people and institutions of social security as well as the institution endurance cultural can only exist amid the splendor of modern retail, if there is concern for the government and local government, both in the form of policies and concrete actions to protect the existence of traditional markets. The traditional market management policies must be based on alignments to the public under both merchants, consumers, and community members of other market users. Construction of the traditional markets must consider factors favorable to the market and should be managed professionally with good management.

In general, the traditional markets are buying and selling markets areas developed and managed officially by the local government where these activities are supported only by the number of facilities and levels of comfort relative to taste. Development and management such markets include the regional market, the municipal market, the market area and the market environment. This market does not have the supporting infrastructure, regulation, or shopping convenience. This market is usually found around the formal market, hustle point on the highway or in the region of settlements. In the Ministry of Industry and Trade Nomor.23 / MPP / Kep / 1/1998 concerning trade institutions, the market is defined as the meeting place for buyers and sellers to carry out a transaction in which the selling process is established. Market pursuant to its class of service can be classified into traditional and modern retail market, while according to the nature of the distribution can be classified into the retail market and the market of wholesale.

¹ Sukrismanto, *an Analysis of Possibility of Revitalization on the Public market Gubug, District Grobogan*, Thesis, University Diponegoro, Semarang, 2012, p. 118.

² Herman Malano, *to Save Traditional Market*, Gramedia Pustaka Utama, Jakarta, 2011, p. 69.

³ Ibid.

⁴ Ibid, pp.68-75.

The traditional market is defined as a market that is built by the government, private sector, cooperatives or NGOs to places of business as shops, stalls, and tents owned / managed by small traders and middle or cooperatives with small-scale businesses and small capital by buying and selling process through bargaining. In the Ministry of Industry and Trade Nomor.23 / MPP / Kep / 1/1998 on Institutions of Trade Ministry of Cooperatives, Small and Medium Enterprises, it defines the traditional market as a market that is relatively simple shape of the building, with an atmosphere that is relatively less fun (space where small businesses, parking facilities were inadequate, lacking maintain the cleanliness of the market, and the lighting is not good).

Some factors cause the traditional market still interesting is the character / consumer culture. Although information about modern lifestyles easily obtained, but it seems people still have a culture to keep visiting and shopping at the traditional markets. There is a very fundamental difference between the traditional and modern retail. The difference is in the traditional market is still a process of offering over the price, whereas in the modern retail, prices will surely be marked with a price tag. In the process of bargaining intertwined personal and emotional closeness between the seller and the buyer that may not be obtained when shopping in the modern.¹

Based on management pattern is used, the market can be divided into 2 (two) major groups, namely:²

- 1) The Traditional Market. It is a market that still use management pattern is very simple with the characteristics of each trader has one type of business. It is also the interaction between the seller and the buyer (a bargain price); and the placement of goods align less neat, comfort and security less attention,
- 2) The Modern Retail. It is a market that is already wearing patterns of modern management with the characteristics of the type of merchandise carried by the trader, the price fixed, the layout of merchandise organized and tidy, comfort and security has become main priority.

The proliferation of the modern retail is feared to undermine the existence of the traditional markets, which affect the elimination of tens of thousands, even hundreds of thousands of small traders. Theoretically, the proliferation of luxury shopping centers are already predicted to be marginalized even shut down the traditional markets in which inhabited by many small economic enterprises of the economically weak. It has become a reality that is happening everywhere. The survey conducted AC. Nielsen showed that the number of traditional markets in Indonesia reached 1.7 million units or 73 percent of the existing market.³ However, the rate of growth in modern markets is much higher than the traditional markets (official site of DPW-Jakarta, 2005). If observed, among the markets there have specifications similar merchandise to markets conditions of the traditional markets worsen. The modern markets have largely replaced the role of the traditional markets as a provider of public needs of the city.⁴ This fact can be in Jakarta through The Law No. 2 of 2002 on private sector marketing in the Special Province of Jakarta. In this Law is also regulated area and distance of market venue to establish activities of the environmental market (the traditional market).⁵ Article 10 (2) states that in the conduct of business private market, the distance of infrastructure / place of business must meet the following requirements: 1). 100 m² - 200 m², distance with the market environment 0,5 km; 2). 200 m² - 1000 m², with a distance of 1 km with the market environment; 3). 1000 m² - 2000 m², with a distance of 1.5km with the market environment; 4). 2000 m² - 4000 m², with a distance of 2 km with the market environment; and 5). 4000 m² or more, the distance to the neighborhood market 2.5 km.

Regarding the location, there are several of the modern retail alongside one another. It is even side by side with

¹ Sukrismanto, op.cit., p.19.

² Ibid.p.30.

³ Anonym, *the Existence of the Traditional market: its Networking in Semarang City*, 2011, p. 2.

⁴ Booming of the modern market has seperated all around in Indonesia such as in Yogyakarta and Central of Java. See Anonym, *ibid.* p. 4.

⁵ Dedie S. Martadisastra, *the Role Competition of the Modern Retail and its impacts to the Small Traders*, **Journal of Persaingan Usaha**, ed.4., 2010, pp.69-70.

the the traditional shop or stall. It is because alongside between them, they will compete to attract customers psychologically whether in the form of price competition, quality or service competition. Rivalries are automatically spawned unfair competition and which is strongly felt due to the competition it is a store / traditional stalls. The phenomenon creates jealousy among the people so that many public rejection of the existence of the modern retails. The rejection of it is referred to some evidence that the traditional markets located close to the supermarket affected worse than being away from the supermarket.

The important thing to do to ensure the existence of the traditional market is to improve the infrastructure of the traditional markets. The general impact on employers' traditional markets are negative and often follow the same pattern. Employers of the traditional markets first forced to close his business are usually those sell general goods, processed foods, dairy products, shops selling fresh produce, and wet markets . The traditional market itself which is usually still survive to trade are those who sell the type of product or those who sell in locations where the supermarket is officially not allowed to enter.¹

Adam Smith argued that mechanisms for the market because of competition and the decentralization of power led to the birth of creativity, innovation and investment that will be able to the public welfare.² The essence of the market economy is the decentralization of the decision, relating to the "what", "how much" and "how" of production. It means that the individual should be given a certain latitude for decision-making. The market mechanisms can only be developed within a decentralized decision-making structure. It means that there are individuals independent in moderation which provides supply and demand in a market. It is because the market mechanism requires the reaction of market participants that cannot be predicted.³ The market mechanism that is walking through of free market capitalism would ultimately create prosperity.

In the Preamble of UUD NRI 1945, it calls ... *for social justice as the foundation of the State*.. It gives meaning that the founders of Indonesia really wants that Indonesia is built by considering to social justice. The meaning of justice in the preamble of UUD NRI 1945 is basically the same as the meaning contained in the sense of justice as described in the previous section. However, there is emphasis on fundamental fairness of justice in the preamble of UUD NRI 1945 is that justice be realized in Indonesia basically is social justice for all people. In essence that anything done by all components of the Indonesian nation, both the government and the people must be something that can create social justice. The social justice to be realized must really be felt by all the people of Indonesia.

In the development of philosophy of law and legal theory, both of them are not be separated from the concept of justice. The concept of justice is not a monopoly of one expert only. Many experts from various science background provide answers to what justice. The principle of social justice in the context of the theory of justice that has been exposed to basically makes included in the social justice theory, as stated by Aristoteles, Aquinas, Wolff, Adam Smith, de Tourtoulon, Rawls, Miller, Hampshire, and Krizt. Those expert's thought turn out various views of the social justice.

According to the Theory of Justice of John Rawls,⁴ there are some principles in the theory, as followings:

- 1) The equal liberty of principle. Article 33 (1) of the 1945 Constitution insisted that the economy is structured as a joint venture based on familyness principles. Second point of Pancasila - called Humanitarian fair and civilized, it is not familiar with extortion or exploitation. It means that to obtain

¹ Daniel Suryadarma, et.al., *Impact of Supermarket toMarket and Traditional Retail Seller in Some Indonesian Cities*, Research Center of SMERU, 2007.

² Emmy Yuhassarie, et.al., *Proceeding of the Law No. 5 of 1999 and KPPU*, Colloboration between Supreme Court and Pusat Pengkajian Hukum, Jakarta, 2004, p. 15.

³ Hansen Knud, et.al., op.cit. p. 6.

⁴ John Rawls,*Theory of Justice*, in Fahri Hamzah, *State, State-Owned Enterprises, Public Welfare*, Yayasan Faham Indonesia, Jakarta, 2007, p.18. see also Pandji Anoraga, *Private-Owned Enterprises, Cooperation, The Three Economic Actors*, PT. Dunia Pustaka Jaya, Jakarta, 1995, p.90.

the same freedom on market access for traditional traders and SMEs as well as market access for retail traders and modern market.

- 2) The differences principle. State needs to create a conducive climate for business and for people who are not able to be empowered. For people that cannot be helpless such as sick and disabled, they should give social security (Article 34 of the 1945 Constitution). It can be seen in third point of Pancasila.
- 3) The equal opportunity principle. Article 27 paragraph (2) which provides: "Every citizen is entitled to work and a decent living for humanity". The state also has an obligation to prosperous people, so that the economy should be welfare of all the people, while the poor and displaced children also need to be maintained by the state.

A cartel generally has several characteristics, as follows:

1. There is a conspiracy among several businesses.
2. It is involving senior executives of the companies. It is usually the senior executives who attend meetings and make decisions.
3. It is usually using the association to cover their activities.
4. It is deciding price fixing or price setting pricing in order to be effective. It is then followed by the allocation of customers or territorial division or allocation of production. The cartel usually will set production cuts.
5. The existence of threats or sanctions for members who violate the agreement. If there are no sanctions for violators, the cartel is vulnerable to fraud to obtain greater profits than other cartel members.
6. The existence of the distribution of information to all members of the cartel. Even if it is possible to be organized using data audit report production and sales in a particular period. Auditor will make a report production and sales of each member of the cartel and then share the results of the audit to all members of the cartel.
7. The existence of a compensation mechanism cartel member whose production is greater than or exceeding their production quotas against small or they are asked to cease its activities. This compensation system will certainly succeed if businesses will benefit more than they do the competition. This would make compliance with the decisions taken members of the cartel to be more secure.

According to Sri Winarni,¹ In general, small businesses have the feature, as follows: (1) the form of individual business and has not incorporated the company; (2) Aspects of the legality of a weak effort; (3) The organizational structure is simple with a division of labor that is not standard; (4) Mostly do not have the financial statements and no separation between his personal wealth with the wealth of the company; (5) Quality management are low and rarely have a business plan; (6) the main sources of venture capital is private capital; (7) Human Resources (HR) limited; and (8) the owners have a strong bond with the company, so that all the company's obligation is also the duty of the owner.

Competition between the traditional and the modern retail market is the most inviting attention because it puts one party linked (the traditional retail) in a weak position. Making it imperative for all stakeholders (retailers, associations, government, business experts retail) play an active role together to resolve access problems mentioned above. The most strategy likely used to the traditional market in the face of competition of modern retail is how the traditional market forge synergies with the modern retail. They are not instead of against each other to attack each other. It is due to differences in characteristics between the traditional and the modern retail inversely, thus further weakening the position of the traditional market.

Strategies that can be done by the traditional markets, among others:

- 1) Collaboration between the traditional and the modern retail in market access and also supplier collaboration in the supply of merchandise;

¹ Sri Winarni, *Strategy to Develop Small Trade Through Improving Accessibility of Banking Credit*, Infokop No. 29 year XXII, 2006.

- 2) Service Improvement;
- 3) Facilitate access to loan capital for the traditional market players to the expansion of the business;
- 4) The government should pay more attention to the development of the traditional markets (in terms of selling place and permitting the entry of modern retail);
- 5) Improvement infrastructure that includes the assurance of cleanliness, hygiene, and convenience market environment; and
- 6) The Government Decree related to the distance between the traditional with the modern retail, zoning / neighborhood to prevent unbalanced competition.

Some attributes that need to be considered for the traditional markets to survive with the emergence of the modern retail, among others:

- 1) The price and accurately size;
- 2) Hospitality services;
- 3) The location and ambiance outlet (safety, comfort, and cleanliness);
- 4) Some other attributes;
- 5) The speed of the waiter, the amount of product available, product diversity, diversity of brands, and promotions (gifts and discount prices); and
- 6) Spacious outlet, opening hours, parking and security can also affect consumer preference on the existence of the traditional markets and the modern retail.

There are some aspects that must be considered also in bridging the traditional and the modern retails, as follows:

1. Economic Aspects

In order to overcome the competition that is not balanced with the modern retail, the measures deemed necessary to address the economic aspects of the problem and develop a small retail specialty in the traditional markets, among others:

- 1) Cultivating cooperation in the form of joint venture / cooperative to face difficulties procurement of materials or goods being traded, including the development of institutions "Trading House" which serves to provide the raw materials and goods traded by small retail traders, as once practiced by the state trade.
- 2) In order for retail development program in Indonesia runs a comprehensive manner, the financing program needs to reformulate both concerning the restoration and development aid and funding the traditional market either development of venture retailers in the traditional market through markets and shops.
- 3) Facing of the traditional markets need to be addressed. It is completing the physical build of the market by providing complete public facilities, social facilities, and market information.

2. Institutional

- 1) Institutional patrons markets include government and private institutions / associations need to be rebuilt to form a Committee of Retail Trade Indonesia with the leading sector is the Ministry of Commerce, which serves to formulate general policies and operational policies structuring and development of modern market, shop modern and the traditional market.
- 2) Institutional Cooperative Market in the form of institutional market is one of stands out in the neighborhood merchants in the traditional markets whose activities are more in the effort to raise the institution itself. For the reason, we need to enhance its role as a supplier for the need of traders in the traditional markets. The role as a business is to further streamline the business of small traders and the role of associations, which becomes a node amplifier existence of the traders that should be done simultaneously. In this both external roles, the problems faced by the traditional market traders can try to overcome together.

3. Government Policy

Understanding public policy of the published literature can be revealed that public policy in the International literature called public policy, which is a set of rules that must be adhered to together and are binding all

citizens. Each violation will be sanctioned in accordance with the weight of the offense committed and the sanctions imposed by the public in front of the institution, has the task of imposing sanctions.¹

Rule or regulation is simply we understand as public policy. It can be interpreted as the law. It is not only the law but we must understand it fully and correctly. When an issue of common interest is deemed necessary to set the formulation of the issue into public policy, it must be done, prepared, and agreed upon by the competent authorities. If the public policies are set to become a public policy; the question then does it become law? Would become a government decree? If the answer is so, the public policy becomes a law and must be obeyed. Meanwhile public policy experts define that public policy is anything done or not done by the government, why a policy should be conducted and whether the benefit to the common life must be considered holistic that the policy contains a great benefit for its citizens and have little impact and should not to cause adverse issues.

Nevertheless, there must be someone who will be advantaged or disadvantaged in the context of applying the public policy. In this situation, the government must be wise in setting the policy.² Article 15 (1) the Presidential Decree Number 112 of 2007 concerning the Arrangement and Development of the Traditional Markets, Shopping Centers and Modern Shops states that “*both the governments and the local government individually or jointly in accordance with their respective duties to provide guidance and supervision of the traditionalmarkets, modern shopping malls, and shops*”. Article 15 (2) further states that “*in order to develop the traditional markets, the Local Government: a) Seeks alternative sources of funding for the empowerment of the traditional markets in accordance with the legislation in force; b) Improves the competence of the traditional market traders and managers; c) Prioritizes opportunities to obtain a place of business for traditional market traders who have been there before the renovation or relocation of traditional markets; and d) Evaluates the traditional market management.*”

According to the Theory of Efficiency Economic Analysis of Richard A. Posner,³ he explains that the welfare or prosperity can be maximized by the institution that manages natural resources starting from the production process, distribution, up to the use of the products. However, it must be stated an eligible in the area of:

- 1) Precautionary (Prudence);
- 2) Decency or Wisdom; and
- 3) Efficiency.

All three of these requirements means that the planning for the transfer of the utilization of energy sources in the future does not have an effect whether its economic, technical, and ecological. According to Richard Posner, an economic approach in law is needed to analyze the application of the principle of legal certainty through theory of economics analysis of law,⁴ which then by Steven Shavell be used as an application of the law of contract.⁵

Indonesian national law also gives the company the transnational status as a subject of national law with put it as one legal entity. This can be seen in the provisions of Article 5 of the Law No. 25 of 2007 on Investment, which is set as follows:⁶

- 1) Domestic investment can be done in the form of business entity as a legal entity, not a legal entity, or individual in accordance with the provisions of the legislation.
- 2) Foreign investment shall be in the form of a limited liability company under the laws of Indonesia and domiciled in the territory of the Republic of Indonesia, unless otherwise stipulated by law.

¹ Riant D. Nugroho, *Public Policy: Formulation, Implementation, and Evaluation*, Elex Media Komputindo, Jakarta, 2004, pp.1-7.

² Thomas R. Dye, *Understanding Public Policy*, Prentice Hall, New Jersey, 1995, pp.2-5.

³ Richard A. Posner and Kenneth E. Scott, *Economic of Corporation Law and Securities Regulation*, 5th ed. Little Brown & Company, Boston & Toronto, 1980, p.3

⁴ Ibid.

⁵ Steven Shavell, *Economic Analysis of Contract Law*, National Bureau of Economic Reserach, Cambridge, 2003.

⁶ Juajir Sumardi, *The Law of Trans-National Companies and Franchise*, Arus Timur, Refleksi, 2009, p.15

- 3) Investors in a foreign country and making an investment in the form of limited liability is done by:
 - a) take shares when the establishment of a limited liability company;
 - b) buy the stock; and perform other means in accordance with the provisions of the legislation.

3. Conclusion

In connection with the issue of the traditional market challenge, it can be said that there are several obstacles and challenges commonly encountered in the effort to organize and develop the traditional market management in the competition against the crush of retail trade, as follows:

1. People's Welfare. Economic activity is devoted to the welfare of the people as a whole. All factors related to activity, the economy should be held including the involvement of the government that should regulate, supervise, and facilitate. Regulation and supervision should be made as the guarantors of certainty in the form of law. So that the implementation of businesses in the market in order to drum-economy run well in a healthy competition that would lead to the welfare of society.
2. Transparency of competition. The regulatory, supervisory and control economic activity will be fair and has legal certainty. It also can lead to the creation of conditions of fair competition in which the businesses will be more focus on developing its business with better and more open.
3. Social responsibility. All parties involved in the practice of market economy. In the Law on Monopoly and Unfair Competition directed to have a high social responsibility to the community. Businesses are not just looking for a profit, but rather grow and develop systems the macro economy by involving the community, government and business actors themselves.

References

- Ahmadi Miru and Yodo Sutarman, *Consumer Protection Law*, 2nd ed., PT. Raja Grafindo Persda, Jakarta, 2004.
- Ahmad Yani and Gunawan Widjaja, *Serial of Anti Monopoly Business Law*, Rajawali Pers, Jakarta, 1999.
- Anonym, *the Existence of the Traditional market: its Networking in Semarang City*, 2011.
- Daniel Suryadarma, et.al., *Impact of Supermarket to Market and Traditional Retail Seller in Some Indonesian Cities*, Research Center of SMERU, 2007.
- Dedie S. Martadisastra, *the Role Competition of the Modern Retail and its impacts to the Small Traders*, Journal of Persaingan Usaha, ed.4., 2010.
- Djokosutono, *Constitutional Law*, Ghalia Indonesia, Jakarta, 1959.
- Edi Suharto, *Development the Community, Empowerment the People: Strategic Analysis of Development of Social Welfare and Social Working*, Refika Aditama, Bandung, 2005.
- _____, *Theory of Feminist and Social Work*, Paper on Workshop on Feminist and Social Work, Pusat Studi Wanita – State Islam University Sunan Kalijaga, Yogyakarta, 13 April 2006.
- _____, *Development, Social Policy and Social Working: Thought Spectrum*, LSP Press, Bandung, 1997.
- _____, *Map and Dynamic of Welfare State in Some Countries: What Lessons can be studied to Develop Indonesia?*, Paper, Rediscussion Relevancy Welfare State and Decentralization-Autonomy in Indonesia, Yniversity of Gadjah Mada, Yogyakarta, 25 July 2006.
- Emmy Yuhassarie, et.al., *Proceeding of the Law No. 5 of 1999 and KPPU*, Colloboration between Supreme Court and Pusat Pengkajian Hukum, Jakarta, 2004.
- GC van Kooten and Bulte EH., *the Economics of Nature*, Blackwell Publisher, Malden.
- Hansen Knud, et.al., *The Anti Monopoly Act*, 2nd ed., collaboration GTZ and Katalis Mitra Plaosan, Jakarta, 2002.
- Herman Malano, *to Save Traditional Market*, Gramedia Pustaka Utama, Jakarta, 2011.
- James Midgley, et.al., *Introduction: Social Policy and Social Welfare*, in James Midgley, et.al., *The handbook of Social Policy*, Sage, London, 2000.
- _____, *Introduction: Social Welfare*, Prentice Hall, New Jersey, 2000.
- Jeremy Betham, *An Introduction to the Morals and Legislation*, Batoche Book, Kitchener, 2000.
- John Rawls, *Theory of Justice*, in Fahri Hamzah, *State, State-Owned Enterprises, Public Welfare*, Yayasan Faham Indonesia, Jakarta, 2007, p.18. M. Abdul Rosyid, *Overview of Islamic Economy Towards Pareto Analysis*, <http://al-zakaa.blogspot.com>, accessed 1 March 2014.
- Juajir Sumardi, *The Law of Trans-National Companies and Franchise*, Arus Timur, Refleksi, 2009.
- Michael P. Tadaro and Stephen C. Smith, *Development of Economy*, Erlangga, Jakarta, 2006.
- Neil Thompson, *Understanding Social Work: Preparing for Practice*, Palgrave, New York, 2005.
- Paul Spicker, *Social Policy.: Themes and Approaches*, Prentice Hall, London, 1995.
- _____, *Poverty and the Welfare State: Dispelling the Myths*, Catalyst, London, 2002.

- Pandji Anoraga, *Private-Owned Enterprises, Cooperation, The Three Economic Actors*, PT. Dunia Pustaka Jaya, Jakarta, 1995.
- P3EI, *Economy of Islam*, Rajawali Pers, Jakarta, 2012.
- Riant D. Nugroho, *Public Policy: Formulation, Implementation, and Evaluation*, Elex Media Komputindo, Jakarta, 2004.
- Richard A. Posner and Kenneth E. Scott, *Economic of Corporation Law and Securities Regulation*, 5th ed. Little Brown & Company, Boston & Toronto, 1980.
- SatjiptoRaharjo, *Other Sides of Legal Science in Indonesia*, Kompas, Jakarta, 2003.
- Steven Shavell, *Economic Analysis of Contract Law*, National Bureau of Economic Research, Cambridge, 2003.
- Sri Winarni, *Strategy to Develop Small Trade Through Improving Accessibility of Banking Credit*, Infokop No. 29 year XXII, 2006.
- Sukrismanto, *an Analysis of Possibility of Revitalization on the Public market Gubug, District Grobogan*, Thesis, University Diponegoro, Semarang, 2012.
- Thomas R. Dye, *Understanding Public Policy*, Prentice Hall, New Jersey, 1995.