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*Subject* Letter of Invitation

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To Whom It May Concern,

Herewith I officially certify that the following people have been invited to follow an academic writing course at Leiden University (Leiden, the Netherlands) from 14 November until 16 December 2016:

- |                                  |                            |
|----------------------------------|----------------------------|
| ✓ 1. Tedi Rohadi                 | 9. Nita Triana             |
| 2. Elis Ratna Wulan              | 10. Inayatul Ulya          |
| ✓ 3. Ahmad Salehudin             | ✓ 11. Try Riduwan Santoso  |
| 4. Wieda Nurwidada Haritsah Zain | ✓ 12. Kamarusdiana         |
| 5. Ila Amalia                    | ✓ 13. Abdul Gafur Marzuki  |
| ✓ 6. Muhammad Thoriqussuud       | 14. Any Ismayawati         |
| ✓ 7. Mustapa Khamal Rokan        | ✓ 15. M. Ali Sibram Malisi |
| ✓ 8. Azharsyah                   |                            |

This course is organised by the Leiden University Centre for the Study of Islam and Society (LUCIS). More information is available via: [www.lucis.leidenuniv.nl](http://www.lucis.leidenuniv.nl). We would kindly ask you to provide him with the necessary travel permit to enter the Schengen Area.

If you have any questions about LUCIS, please do not hesitate to contact us.

Yours sincerely,

Prof. Dr Petra Sijpesteijn, Director Leiden University Centre for the Study of Islam and Society (LUCIS)

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## CERTIFICATE OF PARTICIPATION

This is to certify that

**Mustapa Khamal Rokan**

has presented his research in the Short Course on Academic Skills  
on Friday 16 December 2016.

The Short Course on Academic Skills was organised by the Ministry of Religious Affairs of the Republic of Indonesia  
and Leiden University Centre for the Study of Islam and Society (LUCIS).

Dr. Nico Kaptein  
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# SOCIAL DIMENSION IN INDONESIAN MARKET LAW

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## ABSTRACT

Indonesian traditional markets are marginalized due to difficulty to compete on the modern market. This can be seen in the decrease of growth and the ratio of expenditure in the traditional markets. In contrast, the modern market turnover showed an increase year after year. Although the government has intervened to protect the traditional market by means of regulations, such as zone establishment, the differentiation of products, scheduling opening hours, the traditional market conditions are still not sufficient to guarantee its survival. It is believed that Indonesian market laws have been shifting away from Indonesian socio-cultural values and tends towards a more capitalist paradigm. Therefore, this paper analyzes the ability of the Indonesian market laws to respond to the specific needs of the traditional market, while making sure that the laws are consistent with the provision on the socio-culture as contained in the Constitution. It uses qualitative research methods with the judicial-normative research and field research. Normative research is research based on the analysis of the legal norms as it is written in the books. Field research or observation is used to see what social-culture happen at the market. As most of Indonesian market law tends to have a capital-oriented perspective, it is disconnected from its roots, the Indonesian social culture. This study propose a paradigm that the market not only as an business institution but also as social and culture institutions based on brotherhood which requires cooperation and mutual security. There are prescriptive law to maintain the existence of traditional markets in Indonesia, which optimizes the concept the regulation of cooperation between the traditional and the modern market economy based on Indonesia socio culture value.

**Keyword : Traditional Market, Social Dimension, Brotherhood, Helping**

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### A. Background

The existence of traditional market has been marginalized after the modern markets have been come to Indonesia.<sup>1</sup> This can be seen from some of data which showed that number of traditional markets get decrease. Incontrast, the number of modern market get increase year after year. Some of datas showed:

In 2007 the number of outlets modern retail was 10.365 and in 2011 become 18.152 outlets, which it's means that increased eight thousand or four stores per day. The number traditional market in 2007 was 13,750 outlets, in 2011 became 9,950 outlets, which it's means that reduce 3,800 outlets, or 29 percent. In 2012 the number of modern market about 10,000 and the number modern market is 14,000 outlets with details of 358 convenient stores, 11 569 Minimarket, 1,146 supermarkets, 141 hypermarkets and 260 grocery or wholesale.<sup>2</sup> In Jakarta for examples, growth of Indomaret rose significantly, with details 525 outlets (in 2006), became 1,115 outlets (March 2009), became 1186 (July, 2010) and became 2162 outlets (in 2011),<sup>3</sup> while the traditional market rose stagnantly at 153 outlet since 2000. In 2015, the traditional market amounted to 9559 while the modern market of 20,000.

### Table. 1.1

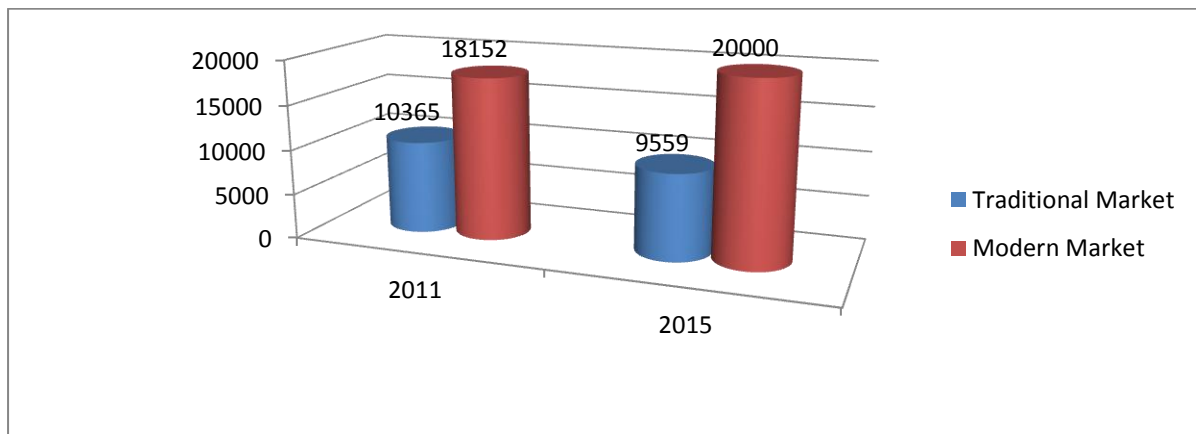
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<sup>1</sup> Modern Markets have been in Indonesia since 1960s, Sariah Plaza (1964), Aldiron Plaza (1979), Duta Merlin, Ratu Plaza, Pasar Raya, Hayam Wuruk Plaza (1980s). M. Udin Silalahi, *Persaingan Di Industri Ritel Ditinjau Dari Aspek Hukum Persaingan Usaha*, 27 Jurnal Hukum Bisnis, 1, 5 (2008).

<sup>2</sup> <http://m.bisnis.com/industry/read>

<sup>3</sup> *Id*

## Comparison of Growth Modern Market and Traditional Market in Indonesia



Some of researchs, recommendation, law policy and political will about traditional market have been done. Some of research told marginalized traditional market due to weakness of law enforcement, There are some of regulations to maintain traditional market like limited zone, product differentiation, limited time for modern market etc.<sup>4</sup>

From law policy side, the market supervision board has recommended to government through Decision Number 03/KPPU-I/2000 to regulate and protect the traditional markets. This recommendation has been followed up by President Decree Number 112/ 2007 Regarding Arrangement Traditional Markets, Shopping Centers and Modern Stores and followed by Trade Minister Regulation Number 53/2008 Regarding Arrangement Traditional Markets, Shopping Centers and Modern Stores. Besides that, there are many local government have regulated local regulation to arrange and protect traditional market existence.

The political side, government has revitalized traditional market by building the market like infrastructure, facilities gradually. In 2015, 1.002 there are traditional markets have revitalized with budget IDR 1,4 billion. In 2016, government will revitalize 1.000 market with budget IDR 1,7 billion by Center of Government,<sup>5</sup> and there are many market also have revitalized by local government.

However, the existence of traditional market are still difficult to compete to modern market as mentioned data above. Traditional markets which have been revitalized by government haven't the consumers interest yet. Some of data showed, some of market have revitalized like Nangka Bungur Market at Kalibaru, Center of Jakarta were not still interested by consumer. On the contrary, the markets were interested when those're grungy, muddy. As well as Manggis Market and Pesanggrahan Market at South Jakarta, Kebon Bawang Market at North Jakarta, Kampung Duri Market at West Jakarta Barat also were not interested consumer after revitalizing.<sup>6</sup>

Utami Ayunita dalam penelitiannya eksistensi pasar tradisional di Kab.Sleman (studi di pasar Pahing Desa Trihararjo Kec. Sleman Kab. Sleman) menyatakan selain keberpihakan pemerintah, faktor budaya, sosial dan ekonomi juga merupakan hal yang mempengaruhi eksistensi pasar tradisional di era globalisasi.<sup>7</sup>

<sup>4</sup>Yakub Adi Krisanto, *Persaingan Pasar Ritel di Indonesia: Pasar Modern Versus Pasar Tradisional*, (FH-UPH: Law Review Vol. X No. 1-Juli 2010), p. 17.

<sup>5</sup> There are 880 market have been identified and programmed for revitalizing <http://www.suara.com/bisnis/2016/05/03/133251/tahun-ini-pemerintah-revitalisasi-1000-pasar> tradisional, accessed on 20 November 2016

<sup>6</sup> *Pedagang Merindukan Kembalinya Keramaian Pasar*, Kompas, Selasa, 13 September 2016, p. 28

<sup>7</sup>Utami Ayunita, *Eksistensi Pasar Tradisional di Kab.Sleman (studi di pasar Pahing Desa Trihararjo Kec. Sleman Kab. Sleman)*, tesis UIN Sunan Kalijaga Yogyakarta, 2011.

Some of policy, especial law policy or political will above showed that protection to traditional market more emphasize from outside form. Therefore, this research want to see from inside form, namely to some of traditional advantages. To appear the traditional market advantages into market regulation in order to maintain traditional market besides solving from outside problem. One of traditional market advantages is market which based on social-culture. It's expected become basic and paradigm of market law making.

Legal study that's based on local wisdom has been there since the existence of the law itself. Classic to contemporary legal theory has been widely discussed the law as the values of society itself. Local wisdom consist of value, norm, knowledge which form legal system and solve any problem and it's a measure in behaviour. While the values, norms, knowledge can be derived from the teachings of religion, belief, experience of the existing agreement in the community.

Several studies have been done. I Nyoman Nurjaya (2008) examines the local wisdom in Tanganan Bali, which can successfully maintain the traditional village forest governance Pegrisingan Tanganan Bali. Keboromo community using local wisdom to overcome the corruption behavior. People in Bantaeng, Pinrang and Gowa use local wisdom to assist the police in solving the crime.<sup>8</sup>

The data above showed law development at Indonesia can use local wisdom to the community. Because, law is the concretization of the cultural values of a society itself. Therefore every society always produces culture, law always exist in society and performed with the uniqueness of each. In this context, Wolfgang Friedman (1953) states that the law does not have any power in force universally. Law is not only a product of crystallization desire a group of people who have given the authority to make laws such as legislative or executive who formulate the regulations, but also the law is part of social behavior. In market context in Indonesia, local wisdom especial at the market need to be explored and formulated in norms or rule to maintain traditional markets.

The result showed that price sensitivity has insignificant toward hedonic value. Shopping values are positively influencing satisfaction but utilitarian value plays a big role on this path. Moreover, the management should improve the necessity of customers to achieve shopping values, satisfaction and loyalty.<sup>9</sup>

This study uses qualitative research methods with the judicial-normative research and field research as well as. Normative research do with analyzing the legal norms of law as it is written in the books<sup>10</sup>. The legal norms that will be studied are norms at Indonesian constitution, especially Article 33 The Constitution 1945. It also study about the principles, purpose and legal norms<sup>11</sup> related to market regulation in Indonesia such as the Presidential Decree Number 112/2007 Regarding Arrangement Traditional Markets, Shopping Centers and Modern Stores and followed by Trade Minister Regulation Number 53/2008 Regarding Arrangement Traditional Markets, Shopping Centers and Modern Stores, Government Regulation Number 17/2013 Regarding Small Business Medium, Regional regulation regarding the market. Field research or observation<sup>12</sup> is used to see directly social culture at

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<sup>8</sup> Satjipto Rahardjo, 2009.

<sup>9</sup> Anastasia Audrey Oenaryo dan Liza Agustina Maureen Nelloh, SHOPPERS' LOYALTY IN PASAR DUKUH MENANGGAL SURABAYA, JMK, VOL. 15, NO. 1, MARET 2013, 1-10, p. 12

<sup>10</sup> Ronald Dworkin, *Legal Research*, (Deadalus: Spring, 1973), p. 250.

<sup>11</sup> Soejono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta: Raja Grafindo Perkasa, 2007), p. 15.

<sup>12</sup> According to Earl Babbie field research and "observation" are same. He said, *this should become even clearer to you as we turn now to what probably seems like the most obvious method of making observation; field research. If you want to know about something, why not just go where it's happening and whach it happen, experience it.* Lihat Earl Babbie, *The Practice of Social Research*, Edisi 8, (London: International Thomson Publishing, 1998), p. 280

market activities to strengthen the traditional markets in Indonesia. The field studies will be conducted at two (2) place i.e in Yogyakarta and Medan, North Sumatera. Both of areas have good local wisdom.

### **Social Dimension in Indonesia Constitution**

Article 33 UUD 1945 is base of the economic Constitution of the Republic of Indonesia. Article 33 UUD 1945: (1) The economy shall be organized as a common endeavour based upon the principles of the family system. (2) Sectors of production which are important for the country and affect the life of the people shall be under the powers of the State. (3) The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people. (4) The organisation of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.

Based on Article 33 UUD 1945 many have argued that Indonesia's economic system is socialist. The external factors, it can be seen from the history before leading up to independence which was made after the 1945 failure of the capitalist system (1950-1959). The condition can be understood from the geo-politics perspective that the Indonesian constitution favor of socialism. Internally, the chairman of the committee Indonesia Independence Supomo designer of the Constitution rejected the idea of individualism and take the brotherhood spirit that from Indonesian rural culture.<sup>13</sup>

Socialism in Article 33 UUD 1945 can be seen on a fragment of a sentence explanation of the article is that "production by all, for all, under the leadership of the various institutions in society". Article 33 UUD 1945 was Mohammad Hatta suggestion, as understood by the idea of democratic economy through reading socialist books and more broadly associating with members of the Social Democratic Labour Party. Mohammad Hatta called the social system in the Indonesian constitution with socialist-cooperative.

The concept of socialist cooperative coined Hatta admitted derived from of Islam values. Sources of Islamic teachings explicitly he conveyed in a meeting with party leaders, bankers and agricultural experts in New York, United States on June 6, 1960. In the next sentence was delivered, Hatta said that "socialist cooperative.... is derived from the Islamic teaching to put forward basic of justice and brotherhood as well as a high appraisal of the creatures of God."<sup>14</sup>

To understand the social dimension in the Constitution, Article 33 UUD 1945 can be parsed based on seven keywords. Seven of the sentence is a "joint venture", "family principle", "dominate the life of the people", "economic democracy", "efficiency of justice", "outonomy", "maintain balance and national economic unity". To understand of these seven words above are needed to see the social dimension in the legal market as economic institutions in Indonesia.

First, the concept of helping each other. The concept of helping each other on Article 33 UUD 1945 requires every person involved in the economy to help each other to make economic building with the benefits widely. As mentioned in the document composition

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<sup>13</sup> See, Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) dan Panitia Persiapan Kemerdekaan Indonesia (PPKI) tanggal 29 Mei 1945–19 Agustus 1945. Tim Penyunting Saifroeddin Sabar dkk., diterbitkan Sekretariat Negara Republika Indonesia, Jakarta, dalam Johnny Ibrahim, *Hukum Persaingan Usaha (Filosofi, Teori, dan Implikasi Penerapannya di Indonesia*, Cetakan Pertama, (Malang: Bayumedia Publishing, 2006), p. 191-192.

<sup>14</sup> A. Effendy Choirie, *Privatisasi Versus Nee-Sosialisme Indonesia*, (Jakarta: Pustaka LP3ES, 2003) hal. 100. See Also, Muhammad Hatta, *Kumpulan Pidato II*, (Jakarta: Inti Idayu Press, 1983), p. 90.

BPUPKI ... Indonesian people live in helping mutual. Indonesia's economy based on the free will to the ideals of mutual help and joint venture, which will take place gradually with the developing cooperative.

The attitude of helping each other is the cultural spirit of the Indonesian people.<sup>15</sup> The principle of mutual help is a form of resistance from the perception of some founding fathers towards individualism and free competition. Individualism and free competition as the "culprit" of capitalism and imperialism, so it is natural that these values are kept away from the people of Indonesia.<sup>16</sup> Individualism and free competition will only make the welfare of an individual and a handful of people, but aspired by the Constitution is the collective welfare. Welfare aspired to be achieved in the spirit of collectivism. Bung Hatta said:

"According to him, the basis of the economy in the future getting away from the basic individualism and closer to collectivism, which is equally prosperous. Indeed kolektivismelah in accordance with the ideals of Indonesian life. Already ancient Indonesian society-as well as in other Asia-based society to collectivism, which is famous as the base for helping (*gotong royong*)."<sup>17</sup>

Second, the joint venture. Joint venture means a tool for sharing and complementary roles in order to improve the common welfare, although not with the same number. The emphasis on the welfare aspects together, although in different dimensions and levels mean rejecting any behavior of economic agents to discriminate, actors boycott to the weak economy and have a limited capacity of capital by a larger player. Cooperation in constitution is not intended to undertake unilateral cooperation for prosperity for most businesses, while in most other businesses suffer losses and marginalized.

The phrase "joint venture" suggests that economic activity is an effort and activities carried on cooperation among the parties as stakeholders, businesses, consumers, governments and all involved in the field of the Indonesian economy. Instead, the economy is not willing to do economic development alone, unilaterally, a few people or only the parties and classes. Joint venture also means that Indonesia's economy is based on the principle of cooperation.

Third, family. Joint venture as referred to above do on family principles. The meaning of principle of the family can be understood in two (2) dimensions. First, the principle of family insists the preparation of the economic system on a joint effort based on a sense of helping each other, not compete with each other let alone leading or "kill" one another. Like a family, if the family is experiencing a loss will be felt and helped the other family. In economic terms, if one or a group of businesses experiencing difficulties and it will be felt marginalized and assisted by the actor or group of actors other business. Second, the principle of the family referred to above can be understood by the lay of Article 33 and the 1945 Constitution as a rule for the big family of the Republic of Indonesia (read: Indonesia Nation). Kinship is a large family of the people of Indonesia. That the economy to be compiled is the economic development of Indonesia, not by and for others (read: other nations).

Fourth, economic democracy. Article 33, paragraph 4 of the 1945 Constitution states the national economy is organized based on economic democracy. The sentence in Article 33

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<sup>15</sup> As'ad Said Ali, *Negara Pancasila Jalan Kemashlahatan Berbangsa*, (Jakarta: LP3ES, 2009), p. 209.

<sup>16</sup> *Ibid*, hlm. 210. Lihat juga Sri Edi Swasono, *Kebersamaan dan Asas Kekeluargaan*, (Jakarta: UNJ Press, 2005), p. x.

<sup>17</sup> Mohammad Hatta, *Ekonomi Indonesia di Masa Datang*, pidato Konferensi Ekonomi di Yogyakarta, 3 Februari 1946, reproduced in Hadi Soesastro dan Aida Budioman (eds), *Pemikiran dan Permasalahan Ekonomi di Indonesia dalam Setengah Abad Terakhir*, dalam As'ad Said Ali, p. 210.

paragraph 4 is the result of the fourth amendment of the Constitution 1945.<sup>18</sup> Economic democracy as that is almost parallel to the demands of social justice requires equality welfare possessions by weakening or eliminating major differences between the prosperity of the citizens or classes of people.<sup>19</sup> This concept is called a democratic economy where production is done by all for all under the leadership or members of the community, the prosperity of society which is the goal and not the prosperity of per-person.<sup>20</sup>

The principle of economic cooperation waives a big difference between business people, especially marginalized even shut down small businesses. As for what is meant by economic democracy is not concerned with the prosperity of the per-person or one group but rather the purpose and will of the people should be the guideline that many companies and income. Everything stems huge income on people's livelihood should be based on common property and is located under the custody of the people through representative bodies. Political democracy alone can not carry out equality and fraternity. Next political democracy must also apply economic democracy. Unless, the man is not yet independent, equality and fraternity do not exist, because the ideals of social democracy is democratic Indonesia, covering the whole environment that determine the fate of mankind.<sup>21</sup> The term economy of the people are opposed to the character of the colonial economy of slavery, suck, discriminatory, selfish and greedy. Strictly speaking, the economy is based on the idea of democracy in accordance with Article 33 UUD 1945, which is based on the economic understanding "togetherness and the principle of family" based on mutualism and brotherhood or in religious language is based togetherness (*kejamâ'ahan* and *keukhuwahan*).<sup>22</sup>

Fifth, fair efficiency. Efficiency is a word that is economical. When word of efficiency coupled with economic justice means moral or social economy. Thus the constitution requires the Indonesian economy not only in the economic calculation as such but morality and social. The relationship of these variables in the economy is not only associated with the calculations that are economic but also by moral and social missions. Therefore, the efficiency of justice are broad meaning. Fragment of the word "efficiency" in Article 33 UUD 1945 showed that in a democratic economic system is not only understood in a short term perspective and dimension of financial, but understood comprehensively in terms of attention to both qualitative and quantitative aspects, financial and non-financial, as well as aspects of environmental sustainability, Political democratic economy is not based on equity, growth and stability, but on justice, participation, and sustainability. Allocation mechanism in a democratic economic system, except for the branches of production that are important for the state and dominate the life of many, still is based on the market mechanism. But the market mechanism is not the only one. In addition through market mechanisms, allocation also encouraged to be held through the mechanism of joint venture (cooperative). The market mechanism and cooperatives can be likened to the two sides of the same coin, an allocation mechanism democratic economic system.

Based on the principle of kinship Indonesian market system requires not only cooperation but also help each other and not the market system mengguguli the other

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<sup>18</sup> Marsono, *Susunan dalam Satu Naskah UUD 1945 dengan Perubahan-perubahannya 1992-2002*, (Jakarta: CV Eko Jaya, 2005), p. 126.

<sup>19</sup> Muhammad Yamin, *Proklamasi dan Konstitusi Republik Indonesia*, Ed. VI, (Jakarta: Ghalia Indonesia, 1982), p. 105.

<sup>20</sup> See, Revisond Baswir, *Ekonomi Kerakyatan Ekonomi Rakyat dan Koperasi Sebagai Sokoguru Perekonomian Nasional*, p. 2.

<sup>21</sup> Mohammad Hatta, *Demokrasi Kita*, Cet. 5, (Jakarta: Bina Aksara, 1985), p. 60.

<sup>22</sup> Sri-Edi Swasono, *Kebersamaan dan Asas Kekeluargaan*, (Jakarta: UNJ Press, 2006), p. 176 and 211. See also, Sri-Edi Swasono, *Indonesia dan Doktrin Kesejahteraan Sosial (Dari Klasikal dan Neoklasikal sampai ke The End of Laissez-Faire)*, (Jakarta: Perkumpulan PraKarsa, 2010), p. 66-67.



businesses to shut down due to not much less able to compete. Competition is a philosophy of prioritizing the interests of a (self-interest or personal profit) as the main feature of liberalism that gave birth to individualism.<sup>23</sup> While cooperation stems from the familiar togetherness (collectivity) which encourages the intention to continue to cooperate and work together to achieve the mutual-interest.<sup>24</sup>

## **B. Social Dimensions Market settings to Act**

Indonesia has legislation relating to economic generally and market law specifically. Market regulation in the broad sense (read: economy) contained in Article 33 of the 1945 Constitution as previously described and legislation level legislation such as Law Number 5/1999, Law Number 25/2007 on Investment, Law Number 20/2008 on Small and Medium Enterprises (SMEs). While the market arrangements are specifically contained in several regulations such as the Presidential Decree Number 112/2007 and the Regulation of the Minister of Trade Number 53/2008.

### **1. Social Dimensions of the Act Number 5/1999 Concerning Prohibition of Monopolistic Practices and Unfair Competition**

Market regulation to the Law Number 5/1999 is on the prohibition of monopolistic practices and unfair business competition. Birth of Law Number. 5/1999 is motivated in part by the social dimension. Socio-economic of the birth of Law Number 5/1999 backed by unequal social conditions among the businesses. On the other hand, the birth of Law Number 5/1999 can not be separated from the economic crisis that occurred in Indonesia in 1998 and the strategies of economic development at the time it was more oriented to growth rather than equitable distribution so that wealth just controlled by certain people. The social dimension Market Law Number 5/1999 can be seen from the objectives of competition law. The purpose of competition law in Indonesia contained in Articles 2 and 3 of Law Number 5/1999, namely:

1. Protect the public interest and increase national economic efficiency as one of the efforts to improve people's welfare.
2. Create a conducive business environment through fair business competition rules in order to ensure certainty in trying the same opportunity for businesses large, medium-sized businesses and small businesses
3. Prevent monopolistic practices and unfair business competition posed businesses, and the creation of effectiveness in business activities

The social dimension in the objectives of Law Number 5/1999 can be seen from: First, Law Number 5/1999 aims to protect public interests. The public interest includes all Indonesian people, including the interests of small businesses in the traditional market. In economic terms the public interest requires that the balance of market equilibrium businesses that exist in the market both businesses large, medium and small, and the market system that are manufacturer, distributor and retail markets.

Second, the Act Number 5/199 aims for the welfare of the people. Sentence welfare of the people implies a competition organized not only the competition in the doctrine of keeping the competition as well as agreements that are prohibited, prohibited acts and abuse of dominant position, but the competition law after the welfare of businesses, including small businesses. That there are different paradigms oriented competition law to maintain competition without looking at small businesses, while the paradigm of Indonesian competition laws keep the whole society, including small businesses. Small businesses are an

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<sup>23</sup>*Id.*p. xi.

<sup>24</sup>*id*

integral part of the Indonesian people. Business competition law regulates the balance of business opportunities between large enterprises and small businesses so that all people obtain welfare.

Third, realize the conducive business climate. The purpose of Law Number 5/1999 is not only protects competitive business climate, as the paradigm of competition law generally, but also protects the conducive business climate. A conducive business climate necessitates the presence of all types of businesses both large, medium and small live a comfortable life. The existence of traditional markets that have been around a long time and where most small businesses conduct business activity must be maintained in order to keep its business climate conducive to the existence of the modern market.

Fourth, the certainty of chance to the same for all businesses (large businesses, medium and small). The goal of maintaining certainty the same for all businesses show Law 5/1999 is not only oriented to maintain the conditions of competition as a paradigm of competition law in general but also protects small businesses. The different types and the ability of business is natural to create the conditions that need each other between large enterprises, medium and small are given equal opportunities to grow and develop. With a paradigm for the regulation of business competition in Indonesia not only regulate competition among businesses that have accrued to the balance (*equal playing field*) as a paradigm of competition in general, but the Indonesian competition laws also maintain the climate of competition from businesses that do not are equal (*unequal playing field*). Sentence of entire businesses large, medium and small on the purpose of Law Number 5/1999 shows the purpose of competition not only regulates the position of businesses that one level but at all levels of businesses.

Fifth, to prevent monopolistic practices and or unfair business competition. Sentence monopolistic practices and unfair business competition should be seen from the philosophy of the Indonesian economy. The purpose of Law Number 5/1999 not only crack down on the occurrence of monopolistic practices and unfair business competition, but also prevent it. Therefore, all efforts to take precautions as outlined in government regulation is part of prevention efforts. Sentences can be attributed to prevent monopolistic practices and unfair business competition in Indonesia's economic paradigm can mean limiting the actions that can lead to the purpose of competition law is not reached.

Differences purpose of competition regulation policies have an impact on the market in each country. In the United States (US) for example, competition law purposes paradigm shift the emphasis to the most vulnerable and the massive consumer. The consideration is based on the best course of action does not harm consumers. Therefore, if the traditional market determined who should be protected in the competition and given restrictions to the modern market, consumers should not be the ones most harmed by the existence of the policy.<sup>25</sup>

The social dimension can be seen from the exclusion of Article 50 h and the Commission Regulation Number 9 /2011, which protects small and medium sized businesses. This can be seen in the exclusion clause of the Act Number 5/1999. Protection of traditional market in competition law can be seen in Article 50 letter h. Article 50 is the other provisions that are excluded from the provisions of Law No. 5 of 1999. Article 50 letter h reads: "Excluded from the provisions of Law No. 5 of 1999: Entrepreneurs who belong to small businesses. While that is a relatively small businesses contained in the letter "h" Explanation of Article 50 reads as follows: Entrepreneurs who belong to small businesses is referred to in Law Number 9/1999 and has now converted into Law Number 20/2008.

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<sup>25</sup> HMBC Rikrik Riziyana & Vovo Iswanto, *Catatan Kecil Tentang Praktek Penyalahgunaan Posisi Dominan*, in Hakim Garuda dkk, *Litigasi Persaingan Usaha*, (Tangerang: Centre for Finance, Investment and Securities Law bekerjasama dengan Telaga Ilmu Indonesia, 2010), p. 63.

In philosophy, the social dimension of Law No. 5 1999 is the protection of small business is to protect small businesses from the behavior of unfair competition committed by the perpetrators of the larger business because small businesses have a strategic role in national economic development, because in addition to a role in economic growth and employment, also play a role in the distribution of development outcomes.<sup>26</sup>

## **2. Social Dimension of the Law on Small and Medium Enterprises**

Generally, Law 20/2008 on Small and Medium Enterprises (SMEs) regulating the definition, empowerment, guarantee and matters related to small business, micro and medium enterprises. According to Article 1 paragraph 2, Law Number 20/2008 on SMEs that is a small business is an economic enterprise productive stand-alone, conducted by an individual or business entity that is not a subsidiary or not a branch of the company owned, controlled, or be part either directly or indirectly from medium or large businesses.<sup>27</sup>

The social dimension can be seen in Regulation Number 17/2013 on the Implementation of Law Number 20/2008 on Micro, Small, and Medium Enterprises The social form in Government Regulation Number 17/2013 with four (4) areas: (a) business development, (b), the Partnership, (c), Licensing and (d) the coordination and control.<sup>28</sup>

In terms of business development do in the field of production and processing, marketing, human resources, as well as design and technology.<sup>29</sup> While development activities conducted through data collection, identification of potential and problems, preparation of coaching and development program according to the potential and the problems encountered, the implementation of training and development programs and monitoring and controlling the implementation of the program through a cooperative approach, centers, clusters and groups.<sup>30</sup>

The development of micro, small and medium-sized businesses by developing business networks and partnerships, conduct business efficiently, fostering innovation and market opportunities, expand market access, use of technology, improve product quality and sources of funding to the broader business. The development effort by people at least must give priority to the use of products produced by micro-, small- and medium-sized businesses, creating new entrepreneurs, technical and managerial assistance and consultation and mentoring.<sup>31</sup>

The most important social dimension is a partnership. Partnership includes the transfer of skills in production and processing, marketing, financing, human resources and technology in accordance with a partnership consisting of a core-plasma, sub-contracting, franchising, general trading, distribution and agency, for the results, operational cooperation, joint venture (JV), outsourcing and other forms of partnership.<sup>32</sup>

That partnership, nucleus-plasma, large business serves as the core, micro-enterprises, small businesses, and medium-sized businesses located as plasma, or medium-sized businesses located as the core, micro and small enterprises located as plasma. In the case of large businesses that expand their business in franchising provides the opportunity and the prioritization of micro, small enterprises and medium-sized businesses that have the ability.<sup>33</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> Article 6, poin 2 UU Number 20/ 2008

<sup>28</sup> Article 2 Government Regulation Number 17 Tahun 2013 Concerning Implementation Act Number 20/2008 Cocerning Small, Medium Enterprises.

<sup>29</sup> Article 4 Government Regulation Number 17/2013

<sup>30</sup> Article 5 Government Regulation Number 17/2013

<sup>31</sup> Article 8 point 4 and 5 Government Regulation Number 17/2013

<sup>32</sup> Article 11 point 1 and 2 Government Regulation Number 17/2013

<sup>33</sup> Article 16 Government Regulation Number 17/2013

While a business partnership with a common trading patterns, can be done in the form of cooperative marketing, provision of business premises, or received a supply of micro-enterprises, small businesses, and medium-sized enterprises by big business is done openly. Meeting the needs of goods and services needed by businesses large or medium-sized business is done by giving priority to the procurement of production of small business or micro-businesses which conform to the quality standards of goods and services needed. Setting payment system in the form of a partnership of general trade was done with no harm either party.<sup>34</sup>

In a partnership for results, micro-enterprises, small businesses, and medium-sized businesses located as executor who run enterprises are financed or owned by large businesses or micro and small enterprises located as executor who run enterprises are financed or owned by medium-sized businesses.<sup>35</sup> Each party is to partner with a profit sharing contribution in accordance with the capabilities and resources owned and agreed by both parties that partner with the size distribution of profits earned or losses incurred each party that partnered with the pattern of results based on agreement agreed.<sup>36</sup>

Government and Local Government set great efforts to build partnerships with micro enterprises, small businesses, and medium or medium-sized businesses to establish partnerships with micro and small businesses. To build these partnerships and regional governments shall provide data and information on the micro, small, and medium-sized businesses that are ready to partner, developed a pilot project partnerships, facilitate policy support and coordinate policy-making and program implementation, monitoring, evaluation and control of public on the implementation of the partnership.<sup>37</sup> To supervise the partnership, Business Competition Supervisory Commission (KPPU) is an institution that guided to conduct surveillance in accordance with the provisions of laws and regulations.<sup>38</sup>

### **c. Social Dimension on Presidential Regulation Number 112 of 2007 on Management and Development of Traditional Markets, Shopping Centers and Modern Stores Social Dimensions of the Indonesian Trade Minister Regulation Number. 53/2008 on Guidelines for Planning and Development of Traditional Markets, Shopping Centers and Modern Stores**

Presidential Decree Number 112/2007 established pursuant consideration the development of retail trade in small and medium scale, modern retail trade sector on a large scale at a rapid pace, the traditional market needs to be empowered to be able to grow and develop in harmony, mutual need, mutual strengthening and mutual benefit. Moreover, Presidential Decree Number 112/2007 aims to create guidelines for traditional markets, shopping centers and modern shops load the norms of justice, mutual benefit and without pressure in the relationship between suppliers of goods with modern stores as well as the development of partnerships with small businesses, so as to create orderly competition and balance the interests of producers, suppliers, modern stores and consumers.<sup>39</sup>

The social dimension of President Decree Number 112/2007 are as follows: First, in terms of business licensing khsususnya to obtain permits, traditional markets, shopping centers and modern store obliged to provide the results of feasibility studies including environmental impact assessment, especially the cultural aspects and the implications for traffickers local retail and plans a partnership with small businesses.

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<sup>34</sup> Article 20 ayat (1), (2), (3) PP Number 17/2013

<sup>35</sup> Article 22 Government Regulation Number 17/2013

<sup>36</sup> Article 23 Government Regulation Number 17/2013

<sup>37</sup> Article 30 Government Regulation Number 17/2013

<sup>38</sup> Article 31 Government Regulation Number 17/2013

<sup>39</sup> See, Clausule a and b President Decree Number 112/ 2007

Second, structuring and market location. Incorporation of traditional markets, in addition to referring Spatial Planning District / City and Detail Spatial Plan Regency/City, including regulatory zoning also required to take into account the socio-economic conditions of society, the existence of traditional markets, shopping centers and modern shops and small businesses, including cooperatives there is in the area concerned.<sup>40</sup> While the establishment of shopping centers and modern shops shall take into account the socio-economic conditions of society, the existence of traditional markets, small and medium sized businesses in the area concerned, pay attention to the distance between Hypermarket with the traditional markets that have been there before, as well as providing facilities which ensures Shopping Center and Modern stores are clean, sanitary (hygienic), safe, orderly and comfortable public spaces.<sup>41</sup>

Third, the classification system of sales and other types of goods. Presidential Decree Number 112/2007 classifies the sales system and the type of merchandise Modern Stores. Modern shops with kind Minimarket, Supermarkets and Hypermarkets sell at retail to the type of consumer goods, especially food products and other household products. While the Department Store is a kind of consumption goods and clothing and accessories products primarily to the arrangement of items based on gender and/ or age level of consumer and wholesale wholesale selling consumer goods.

Fourth, cooperation, supply of goods and working hours. Presidential Decree Number 112/2007 obliges Shopping Center provides business premises for small businesses with a sales price or the cost of rent in accordance with the ability of small enterprises that can be utilized by small businesses through other cooperation in the framework of the partnership.<sup>42</sup> The business collaboration between suppliers and wholesale, hypermarkets, department stores, supermarket, and network management Minimarket which contains the terms of trade should be clear, fair, equitable and mutually beneficial and agreed by both parties without any pressure. In terms of partnerships between small businesses with wholesale suppliers, hypermarkets, department stores, supermarkets, and mini-network manager, a cooperation agreement was done with no charge a registration fee of goods from a supplier of small businesses. Payments to suppliers of small businesses should also be made in cash, or for technical reasons it may be done within a period of 15 (fifteen) days after all billing documents received. No cash payment can be made along the way does not hurt small business suppliers, taking into account risk and interest costs for small business suppliers. Whereas, in order to create cooperative relations based on justice, mutual benefit and without pressure between Suppliers to Modern Stores, Government and Local Government can facilitate the interests of suppliers and Modern Store in order to negotiate cooperation.<sup>43</sup>

Fifth, coaching. Government and Local Government to provide guidance and supervision of traditional markets, shopping malls and modern shops. For the traditional market of Local Government to provide guidance to seek alternative sources of funding, improve the competence of traditional traders and market managers, prioritize opportunities to obtain a place of business for traditional market traders who have been there before the renovation or relocation of traditional markets. While coaching Shopping Centers and Modern Stores, the Regional Government is expected to empower Shopping Centers and Modern Stores Traditional Markets in developing and overseeing the implementation of the partnership.<sup>44</sup>

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<sup>40</sup> Article 2 Point (1), (2), dan (3) President Decree Number 112/ 2007

<sup>41</sup> Article 4 Point (1) President Decree Number 112/ 2007

<sup>42</sup> Article 6 President Decree Number 112/ 2007

<sup>43</sup> Article 10 and 11 President Decree Number 112/ 2007

<sup>44</sup> Article 15 President Decree Number 112/ 2007

The social dimension in the Regulation Number 53/2008 on Guidelines for Planning and Development of Traditional Markets, Shopping Centers and Modern Stores is to reinforce a few things:

First, licensing requirements and distance. Requirements for the establishment of traditional markets or Shopping or Modern Store is the analysis of socio-economic conditions of society which includes the structure of the population according to livelihood and education, the level of economic income household, population density, population growth, partnerships with SMEs locally, local employment, resilience and growth in traditional markets as a means for local SMEs, the existence of social facilities and public facilities that already exist, positive and negative impacts caused by the distance between Hypermarket with the traditional market that has been there before as well as corporate social responsibility.<sup>45</sup>

While the authorities implementing analyzes socio-economic conditions of society carried out by the agency/independent institution competent to do in the area concerned and the document is a supplementary document that is integral with the terms of the proposed permit the establishment of traditional markets Shopping Center or Shop Modern except Minimarket.<sup>46</sup> While in terms of distance determination establishment of markets should consider the location of establishment Hypermarket or traditional markets with Hypermarket or traditional markets that have been there before, a healthy business climate between Hypermarket and traditional markets, the accessibility of the area (traffic flow), support/infrastructure as well as attention to the development new settlement.<sup>47</sup>

Second, business partnership. Regulation Number 53/2008 split the partnership traditional and modern market in the form of joint marketing, provision of business premises, or receiving supplies from a supplier to a modern shop is done openly. Cooperation marketing is done in the form of manufactured goods to market SMEs are packed or repacked with the brand owner of the goods, modern stores or any other brand that was agreed in order to increase the sale value of goods or market products of SMEs through a storefront or outlet of modern stores.<sup>48</sup> While the provision of business premises by the management of Shopping Centers and Modern Stores to SMEs by providing business space in the area or shop Modern Shopping Center.

Third, empowerment and development of traditional markets. Traditional market management can be carried out by State-Owned Enterprises (BUMN), Regional-Owned Enterprises, cooperatives, private, government, and local government. Government and / or local governments either individually or jointly to empower the traditional market management by a professional management system.<sup>49</sup> Coaching traditional market by the creation of management systems market management, training of human resources, consulting, facilitation of cooperation, development and improvement of facilities and infrastructure markets.<sup>50</sup> Regulation Number 53/2008 prohibits every business conduct monopolistic practices and unfair business competition where assessment and settlement of violations of monopolistic practices and unfair business competition both among suppliers or fellow modern stores or between suppliers with modern stores conducted by the Business Competition Supervisory Commission (KPPU).<sup>51</sup>

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<sup>45</sup> Article 3 Point (2) Indonesian Trade Minister Regulation Number 53/2008

<sup>46</sup> Article 3 Point (4), (5), (6) Indonesian Trade Minister Regulation Number 53/2008

<sup>47</sup> Article 3 Point (3) Indonesian Trade Minister Regulation Number 53/2008

<sup>48</sup> Article 5 Point (1) dan (2) Indonesian Trade Minister Regulation Number 53/2008

<sup>49</sup> Article 17 Point (1) dan (2) Indonesian Trade Minister Regulation Number 53/2008

<sup>50</sup> Article 19 Indonesian Trade Minister Regulation Number 53/2008

<sup>51</sup> Article 25 Indonesian Trade Minister Regulation Number 53/2008

## **Social Dimension in Practice Market in Indonesia**

In practice, the market activity in Indonesia is not only business activity that makes material gain sole purpose. But the market is a human entities that need each other as social beings, so as to form a community with a strong sense of family. It can be seen from the relationship between the seller to seller, the seller of the labor market. On the one hand, between business has dimension of competition in which each business operators want the products offered are purchased by consumers so as to obtain benefit. On the other hand, the relationship between the businessmen and other businesses are family ties of mutual help and mutual guarantee of life.

It can be seen from the relationship between business actors greet each other, chatting, telling each other, help each other, mutual mempiutangi and mutual suffering businesses that notabenenya competitors in the business. Family relationships in each market has different roots. In some markets in Yogyakarta are like in Bringhamdjo Market, Market and Market Kranggan Giwangan that kinship is caused by the same feel as a newcomer in Yogyakarta. Market participants who were in some markets Yogyakarta mostly migrants from various regions, especially from Central Java and around Yogyakarta, such Purwokerto, Salatiga, Solo, and also from areas further away are like West Java, East Java, Bali, Sumatra, Kalimantan and Sulawesi. Feeling as fellow newcomers make businesses look for relatives, friends in order to survive in the land.

Kinship in traditional markets is one of the social dimension is still very strong. Although selling the same product but among traders feel like family. Dimension family wants all businesses can gain prosperity together. If other businesses that acquire customers or profits do not shrink hi other business actors. The businesses believe that every person mempunyai sustenance each other or with the language "provision will not be confused" the term often used by market traders.

Family relationships are also very visible when someone buys something in one place, instead of other business operators (and on the same product) helped find the product or to convince buyers to purchase such products even if not of her belongings. This suggests that the sense of kinship among businesses in traditional markets very closely. In Kranggan Market, Yogyakarta , social relationships by helping each other with the container shown a very strong organization. The relationship between the market participants such as the relationship of the family. If market participants neighbors after the other market participants provide assistance in the form of visits and material assistance. Likewise, if the market participants implement the thanksgiving celebration or other businesses also congratulated and help each other.

The social dimension is very important is mutual guarantee among market participants. The realization brothers and sisters among businesses also mutual guarantees among businesses. Mutual guarantee among businesses are mutually guarantee the safety of the product and so on. Market Giwangan in Yogyakarta, if there are business actors are not in place, while buyers come, then other market participants who sell merchandise, or of at least ask the buyer to wait a bit so that the seller comes.

## **Conclusion**

The market in Indonesia is not only a place to meet buyers and sellers to do business relationship such as selling products, buying products, offer services and use services and so on, but the activity in the market have the social aspects are integrated into the culture of Indonesia. The social dimension contained in the market can be divided into three areas: (1). The market in Indonesia is not only a business entity that makes a business advantage the only goal, but the market is a human entities that need each other to form a community with a sense of kinship. Kinship in traditional markets is one of the social

dimension is still very strong. Traders who sell products or even the same kind of products does not feel as a competitor. Conversely, despite selling the same product but among merchants feel like family. Dimension family wants all businesses can gain prosperity together. (2). The social dimension of mutual help is a derivative of taste brotherhood contained in Traditional Markets. Properly, a social being, the market is not contestation struggle for profit alone, away from the advantage that the desire among market participants showed an attitude of mutual help between one another. (3). The social dimension is very important is mutual guarantee among market participants. The relationship between businesses in the Market Tradisioal not only competing against one another, but also mutual guarantees. The realization brothers and sisters among businesses also mutual guarantees among businesses. Mutual guarantee among businesses are mutually guarantee the safety of the product and so on.

The social dimension in the market starting with the concept of ownership markets as public ownership. The market as a place of economic activity is a form of public ownership. The nature of the market as a public property aims to keep the public interest against the market that cannot be monopolized by a handful of people. With every person the opportunity to do the activity in the market will be able to realize the people's welfare. The purpose of law is to create fairness among businesses to achieve economic goals ie welfare / human happiness together.

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