

Legal Position of Modern Market in Indonesian Retail Trade System

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Abstract

Implementation of trade Bedrijfsreglementerings Ordinance (BRO) in 1934 was a legacy of the Dutch colonial law after over 80 years being used in Indonesia. Indonesia had finally made official trade regulation in February 2014 Indonesia. The Law Number 7/2014 concerning Trade was made by prioritizing the national interest and intended to protect traditional markets and modern markets with local products, to make trade regulations for the country internal used and to provide protection for the consumer. The government's role in the modern market legal position in the retail trade system in Indonesia is something that could not be ignored. It is very clear, if the condition of a national law is effective, then the economic development would be easily implemented. However, on the contrary, if the law is working effectively, it will certainly have a negative impact on traditional markets and modern markets. The condition also applies to Indonesia as a country that is currently actively doing economic sovereignty. Moreover, when Indonesia declared itself as a legal state (*rechtstaat*) within its constitution. From here we could imply that Indonesia is looking for two things; First, the law is expected to be functioned; and Second, whereas the law is functioned, then the realization of the legal position of the modern market at the retail trade system in Indonesia would be easily realized.

Keyword: Legal Position, Modern Market, Retail Trade System.

1. Introduction

Philosophical basis of the Indonesia economic system is Pancasila and the 1945 Constitution within the article 23, 27, 33, and 34¹. Thus, Indonesia's economic system is oriented to the economic system in the basis of belief in the one and only god (the enactment of ethical and moral religion, not materialism); just and civilized humanity (do not recognize extortion or exploitation); the unity of Indonesia (enactment of togetherness, family principle, socio-nationalism and democracy in the socio-economic); democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives (prioritizing the economic life of the people and the livelihood of the whole society); and finally social justice for the whole of the people of Indonesia (equality, prosperity of whole society instead of individuals)².

From the point of views as mentioned above, justice becomes a very major economic system in Indonesia. It is the starting point, the process and at the same time as the purpose to be reached. Article 33 of UUD 1945 is the main article of Indonesian economic system that is based on Pancasila, with apparatus, namely Articles 18, 23, 27 (paragraph 2) and 34. Based on TAP MPRS XXIII / 1966, set a grain of Economic Democracy (later becoming the provisions in the Guidelines in 1973, 1978, 1983, 1988), which includes the affirmation of the application of Articles 33, 34, 27 (paragraph 2), 23 and grains derived from Articles UUDS regarding the social function of property and the freedom to choose the type of work. In 1993 grains Guidelines of Economic Democracy coupled with elements of Article 18 of the 1945 Constitution in the 1998 and 1999 Guidelines, the grains of Economic Democracy is not mention any longer and predicted "returned" to the original article of the 1945 Constitution.

This imperative-normative grounding are containing ethical guidance and moral sublime, which puts people in a noble position, as a sovereign society, the people as a community that glorified God, who live in brotherhood among each other, mutually help each other and work together. From the foundation of Indonesia's economic system as described above, (Pancasila, the 1945 Constitution, TAP MPRS No. XXIII / 66 and the Guidelines-Guidelines 1973, 1978, 1983, 1988, 1998, 1999), it is clear that Indonesia's economy guided by populist ideology.

Democracy in the economic system ascertains the importance of prioritizing the interests of the people and the livelihood of the whole society, which is based on sovereignty of the people or democracy. Therefore, in

¹ Cornelis Rintuh, *Indonesian Economy*, Liberty, Yogyakarta, 1995, p.43.

² Sri Edi Swasono, *Economy and Democracy System*, UI Press, Jakarta, 1985, pp.125-126.

economic system prevails the economic democracy that does not desire "economic autocracy", as political democracy rejects "political autocracy". Brotherhood-family principles referred is neither the principle of family nor kinship nepotistic principle. Togetherness and family is the economic principle of collective (cooperativism) followed by Indonesia.

Implementation of trade *Bedrijfsreglementerings Ordinance* (BRO) in 1934 was a legacy of the Dutch colonial law after over 80 years being used in Indonesia, Indonesia has finally made official trade regulation in February 2014 Indonesia. The Law Number. 7 in 2014 concerning Trade was made by prioritizing the national interest and intended to protect traditional markets and modern markets with local products, to make trade regulations for the country internal used and to provide protection for the consumer.

The legal position of the government's role in the modern market in the retail trade system in Indonesia is something that could not be ignored. It is very clear, if the condition of a national law is effective, then the economic development would be easily implemented. However, on the contrary, if the law is working effectively, it will certainly have a negative impact on traditional markets and modern markets.

The condition also applies to Indonesia as a country that is currently actively doing economic sovereignty. Moreover, when Indonesia declared itself as a legal state (*rechtstaat*) within its constitution. From here we could implied that Indonesia is looking for two things; First, the law is expected to be functioned; and Second, whereas the law is functioned, then the realization of the legal position of the modern market at the retail trade system in Indonesia would be easily realized.

Economic development in Indonesia could not be separated from the role of economic thinkers Indonesia. The thinkers are experts in various fields. Our country has many well-known economic figures. In Economic System, the term "system" is derived from the words "Systema" (Greek), which can be defined as: a whole consisting of various sections¹. Basically the system is a large organization that weaves a variety of subject (or object) as well as institutional devices in a certain order². A system arises due to human efforts to fulfill their needs. Fulfillment of human needs that are highly variable will bring different systems. Basic human needs (such food, clothing, shelter) will bring an economic system.

Legal certainty is one of the main factors for creating a favorable investment climate. It can not be ignored because it will affect investors interests to invest in Indonesia. In the preamble section or consideration of the Law No. 25 of 2007 mentioned³:

"That to accelerate national economic development and realize political and economic sovereignty Indonesia, we need to increase investment for making the economic potential into real economic strength by using capital from both domestic and foreign; that in dealing with global economic changes and Indonesia's participation in various international cooperation are necessary to create a conducive investment climate, promotion, providing legal certainty, justice, and efficient by considering the interests of the national economy."

Related with legal certainty, according to Sudikno Mertokusumo: ⁴

"People expect a lack of legal certainty, because the lack of legal certainty would make society to be more discipline. Law is in charge of creating legal certainty as it aims for public order. Without the legal certainty, people wont know what should be done and so eventually arise concerns. However too much suppression on the rule of law, and strict obligation towards the rule of law will end up with the consequences of stiff and cause the feeling of unfairness. No matter what, the rules will remain, and should be adhered to and implemented. The law often feels cruel, if implemented strictly, *dura lex, sed Tamen scripta* (legislation is cruel, but it is how it sounds)."

2. Legal Position of the Modern Market in Indonesian Retail Trade System

One of the purpose of a nation is to give welfare for its people. Indonesia objectives contain in the preamble of the 1945 Constitution which protects all Indonesian people and the entire land of Indonesia and to develop the

¹ Wahyu Hidayat, *umm.press.umm.ac.id/uploads/files/Sistem%20Ind.ppt*.

² Dumairy, *Indonesian Economy*, Erlangga, Jakarta, 1996, p.28

³ See Preamble of Consideration on paragraph c UUPM.

⁴ Sudikno Mertokusumo, *to Familiar With Law: an Intorduction*, 2nd Edition, Liberty, Yogyakarta, 1988, p.136.

welfare of the people, the life of the nation, and participate in the world orderliness based on freedom, eternal peace and social justice. It is stated that the goal is to promote the general welfare. So the national economy is devoted to the advancement and welfare of the public. Article 33 mentioned that the economy is structured as a joint venture based on the principle of kinship which mandated by our Constitution. Cooperative is formed as the mandate of Article 33, paragraph 1. The purpose of the cooperative is for the welfare of its members. Indonesia already has a lot of cooperatives. However, those cooperatives still face many problems caused by the low quality of institutions and organizations inside of the cooperative itself.

Article 33 UUD 1945 paragraph 2 states that the state controls production branches and anything controlling the life of many people, and soil, water and natural wealth contained therein shall be used for the welfare of the people to the utmost. The role of the State is to actualize it through the legitimacy of the constitution of the State¹. SOE (State Owned Enterprises) is one form of the implementation of this Article, the examples are PT. Pertamina, PT. Antam, PT Pertani, PT Pupuk Kaltim, PT Pertani and others. In an era of privatization which was originally made for the efficiency and the availability foreign capital into Indonesia, we need need to make sure that the branches of production which are important and the natural resources that exist in Indonesia would not fall to foreigners' hand and Indonesian People should not only received a few benefits or in the worst case, Indonesian people just becoming spectators in their own country. The role of law in here is to protect the interests of the country and it is needed to bring Indonesia become a prosperous nation and master it own country.

Indonesia Economic Law should also be able to hold the mandate of the 1945 Constitution (amendment) Article 27 paragraph (2) which states: "Each national shall be entitled to proper occupation and livelihood for humanity"². The state also has an obligation to the prospering its people, in order for the economy to bring the welfare of all the people, furthermore the poor and neglected children also need to be taking care by the state. Country needs to create a conducive environment for businesses and people with disabilities should be empowered. Meanwhile those who certainly powerless and suffer serious ill should be given social assurance (Article 34 of the 1945 Constitution). in the present conditions, the duty of this country is not easy especially where government financial capacity itself is very limited. Therefore the concept of a good economy need to be implemented.

Indonesian government system in Chapter VI of Article 18 UUD 1945 (amendment) are also arranged decentralization which also contained therein decentralized economy. The chapter contains:

- 1) The Unitary State of the Republic of Indonesia shall be divided into provinces and the provinces shall be divided into districts and municipalities, where each province, district, and municipality shall have a regional administration, stipulated by virtue of law.
- 2) Provincial, district, and municipal administrations shall arrange and manage their administrative affairs on their own according to the principles of autonomy and assistance tasks.
- 3) Provincial, district, and municipal administrations shall Regional House of People's Representative where the members are elected through a general election.
- 4) Governors, District Heads, and Mayors as the heads of provincial, district, and municipal administrations shall be elected democratically.
- 5) Regional administration shall implement the autonomy as widespread as possible, except the administrative affairs stipulated as the affairs of the Central Government by law.
- 6) Regional administration shall be entitled to determine regional regulations and other regulations to implement the autonomy and assistance tasks.
- 7) Composition and procedure for holding regional administration shall be stipulated by virtue of law.

Article 18A:

- 1) Authority relationship between the central government and provincial, district, and municipal administrations, or between the provincial administration and district and municipal administrations shall be stipulated by virtue of law by taking into account the regional specificity and variety.

¹ Fahri Hamzah, *Nation, State Owned Enterprises, and People Welfare*, Jakarta, Yayasan Faham Indonesia, 2007, p.18. See also Pandji Anoraga, *State Owned Enterprises, Privete Corporation, and Coperative: Three Economic Actors*, Jakarta, PT Dunia Pustaka Jaya, 1995, p. 90.

² Surachmin, *Legal Principles and Implementation of State*, Jakarta, Yayasan Gema Yustlsta Indonesia, jdih.cianjurkab.go.id /.../NASKAH%20AKADEMIK%20RETRIBUSI%20..

- 2) Financial relationship, general services, utilization of natural resources and other resources between the central government and regional administrations shall be stipulated and implemented justly and harmoniously based on the law.

Article 18B:

- 1) The state shall acknowledge and respect the regional administrative units which are special in nature as stipulated by law.
- 2) The state shall acknowledge and respect the traditional law community units and the traditional rights thereof as long as they still survive and comply with the community development and the principles of the Unitary State of the Republic of Indonesia, as stipulated by virtue of law.

Article 18a paragraph (2) clearly indicates that the problem of resource utilization is also regulated within the law. The main objective of decentralization is to improve the welfare of the people through the implementation of business / function / responsibility of government for the provision of better public services. Good implementation of regional autonomy will improve people's welfare.

Legal history of Indonesia's economy has also been embraced Pancasila economic system, which, according to Emil Salim has the following characteristics:

- a) Market economic system with elements of planning;
- b) Principled alignment, because Indonesia adheres to the idea of economic democracy with the principles of life of the balance. Balance between the interests of individuals and society;
- c) Democracy, which means that the economic system is intended for the benefit of people at large;
- d) Humanitarian, meaning an economic system that allows the development of elements of humanity.

The role of the law¹ includes:

- a) Law as keeper of public order and security;
- b) Law as a means of development;
- c) Law as a means of justice enforcement;
- d) Law as a means of public education.

From some terms of the law written in Section (2), a book of Economic Development of Indonesia, we should consider following things, that:

- a) That the rules of national law we must be based on the philosophy of state, which are Pancasila and the 1945 Constitution;
- b) That the rules of national law must conceive and nurture new values which changing social values that rooted in tribalism and regionalism becoming social values sourced nurture life in state bonds nationally;
- c) That the national legal system contains possibility to guarantee the dynamics in the context of national law reform itself, in order for it to prepare development and community renewal in the next period continuously.

Economic system in Indonesia is the economic system of Pancasila, which born in the heart of the nation namely Pancasila and the Constitution-45 and its interpretation. Therefore, the economic system Pancasila is sourced directly from Pancasila fifth precepts, namely: social justice for all Indonesian people and the mandate of Article 27 paragraph (2), Article 33-34 45th Constitution (Amendment 4). The fifth precept is explained that all national and state orientation, political, economic, legal, social and cultural, are thoroughly imbued with the spirit of justice and is intended for all the people of Indonesia². Thus, the existence of the existing Pancasila economic system has been there with Pancasila as its foundation and UUD1945 a constitutional basis.

¹ See FX. Soedijana, et.al., *Indonesian Economic Development (Legal Aspects Analysis)*, Yogyakarta, Penerbit Universitas Atma Jaya, 2008.

² Specialized in economic terms to be clarified in Article 27 (2) reads; every citizen has the right to work and a decent living for humanity. While Article 33 states;

- 1) The economy shall be prepared as joint efforts based on family principle
- 2) Production branches significant to the state and anything controlling the life of many people shall be controlled by the state.
- 3) Soil and water and natural wealth contained therein shall be controlled by the state and used for the welfare of the people to the utmost.
- 4) The national economy shall be held based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental perception, independence, and by keeping the balance of the national economic progress and unity.
- 5) Any further provisions on the implementation of this article shall be stipulated by virtue of law.

2.1 Characteristics Pancasila Economic System

According Mubyarto¹, Pancasila economic system can be characterized as follows²:

- a) The economic wheels are driven by economic, social and moral stimulus;
- b) The strong will on the whole of society towards a state of social equity (egalitarianism), based on the principles of humanity;
- c) The economic policy priority is the creation of a strong national economy, which means nationalism animates each economic policies;
- d) Cooperative is a pillar of the economy and is the most concrete form of the joint venture;
- e) The existence of a clear and firm balance between plan at the national level and the implementation of the decentralization of economic activities in order to ensure social justice.

According to Emil Salim³, the characteristics of the above comes with the understanding based on the documents of the 1945 Constitution and the Guidelines, can be drawn from the characteristics of the economic system Pancasila as follows:

- a) The role of state and economic apparatus of the state is important, but not dominant in order to prevent the growth of etatism system (all rule by state). Private sector's role is important, but not dominant in order to prevent the growth of free fight liberalism. In the economic system of Pancasila, the state and private businesses grow side by side in balance without excessive dominance overlapping of one another.
- b) The working relations between economic institutions are not based on the dominance of capital as well as in the capitalist economic system. Nor is it based on the dominance of labor as in the communist economic system but the principle of the family, according to the familiarity of human relationships.
- c) The community as a whole holds a central role. Production is done by everyone for themselves under the direction or surveillance of community members.
- d) State controls the earth, water and natural resources which contained in the earth and which become the subject for the people's welfare
- e) Not free value, this value system even affect the behavior of economic actors.

2.1.1 System of Economic Democracy

Economic Democracy is a system of Indonesian National Economic System based on kinship, sovereignty of the people, moral Pancasila, and show earnest partiality on the economy. Absolute requirements for the progress of the populist economic system with social justice are:

- 1) Sovereignty in politics;
- 2) Independency in economics; and
- 3) Personality in the field of culture.

The underlying paradigm of populist economic development with social justice are:

- 1) Refreshment of economic nationalism against all forms of injustice system and economic policy;
- 2) The sustainable development approach which multidiscipline and multicultural;
- 3) A review of education and teaching sciences and social economics in schools and colleges.

If we refer to the Pancasila state ideology or the provisions of Article 33 UUD 1945, then we will find a word populist but it should not be used as an adjective meaning merely populist. The word democracy as sound in principle 4th Pancasila should be written in full, namely democracy, led by the inner wisdom of deliberations / representation, which means none other than the Indonesian democracy. So the people's economy is the democratic economy (system). Definition of economic democracy or democratic economic system explicitly contained within the explanation of Article 33 of the 1945 Constitution which states:

"Production is done by everyone for themselves under the direction or surveillance of community members. Prosperity of society is preferred instead of individuals wealth. Therefore the economy is organized as a joint effort based on family principles. Build a suitable company which is the cooperative."

Economy is based on economic democracy, prosperity for everyone. Because the production branches which are important being controlled by the State and shall be used for the welfare of the people to the utmost. Otherwise, the main production will fell into the hands of those in power and the people will be oppressed by them. Only

¹ Mubyarto, *Pancasila Economy: Idea and Possibilities*, Jakarta, LP3ES.

² Cornelis Rintuh, *op.cit.*, p. 42.

³ The term of "Economy of Pancasila" was appeared in 1967 within the article of Emil Salim. In 1979, Emil Salim was trying to identify the Indonesia Economic System called "Economic System of Pancasila" (SEP).

certain sectors that is not control the life of many people could be in the hands of individuals. Earth, water and natural resources contained within the earth are the main points of the people's welfare. Therefore it has to be controlled by the State and used for the greatest prosperity of the people.

The objectives which are expected from the application of People's Economy System are to:

- 1) Build Indonesia which has strong foundation economically, politically sovereign, and cultured personality.
- 2) Promote sustainable economic growth.
- 3) Encourage people's income distribution.
- 4) Improve the efficiency of the national economy.

Five main things that must be fought in order to actualize the democratic economic system are to:

- 1) Increase budget spending discipline with the main purpose of combating the practice of corruption, collusion and nepotism (KKN) in all its forms.
- 2) Remove the monopoly through the implementation of fair competition mechanism (fair competition).
- 3) Increase allocation of state revenue sources to local governments.
- 4) Control and redistribution of ownership of agricultural land to farmers.
- 5) The renewal in various business sectors and activities, which improve people's welfare in the context of people's economy based on paradigm of the foundation instead of the locomotive paradigm.

2.1.2 Factors that are affecting Economic System in Indonesia

Influence factors of the formation of Indonesian economic system is, as follows:

a) Internal factors

1) Economic Institutions

Economic institutions are institutions that have activities in the economy to fulfill the needs of society in general. Simply, economic institutions can be classified as follows; the agrarian sector which includes agriculture, such as rice, farming, fisheries, and exerting.

2) The economic resources

Potential economic resources or well known as the economic potential of the region can be defined as anything or everything the resources owned by a area that classified as the resources (natural resources / endowment factors) as well as potential human resources that can provide benefits and can used as base capital development (economic) region.

3) Owned factor productions

Factors of production are the resources used in a production process of goods and services. In the beginning, the factors of production are divided into four groups, namely labor, capital, natural resources, and entrepreneurship. But in its development, natural resource factor expanded its scope into the entire tangible object, either directly from nature or not, which used by the company, which then referred as physical factors (physical resources). In addition, some experts also consider the resources information as a factor of production consider the growing importance of the role of information in the era of globalization¹. In total, there are currently five things that are considered as factors of production, namely labor (labor), capital (capital) resources (physical resources), entrepreneurship (entrepreneurship), and the data source information (information resources).

4) The economic environment

The economic environment is an amalgamation of several economic factors, such as the amount of labor, productivity, income, wealth, inflation, and interest rates. These factors affected the spending patterns of individuals and companies

The economic environment is influenced by:

- Income and wealth: economic income measured by GDP, GNP and per capita income. High values of these factors indicate a progressive economic environment.
- The level of employment: high employment is a positive picture of the economy. However, there are a lot of unemployed including partial employment and underemployment.
- Productivity: This is the output produced from a given amount of high-level input support economic productivity of the neighborhood.

5) Organization and management

The organization is an alliance of people, each of them has specific role in a working system and the work split has been detailed into tasks, distributed and then merged again in some form of results.

¹ See Griffin, T., & Ebert, R. *Business* (8th ed.). New York: Pearson Prentice Hall, 2006.

Management is a process of planning, organizing, leadership and control efforts of members of the organization and the use of all available resources in the organization to achieve organizational goals which have been set previously.

b) External Factors

1) Philosophy of Pancasila

Indonesia's economic system is an economic system that is oriented to the Almighty God. In this precept enactment of ethical and moral religion, not materialism. Just and civilized humanity which knows no extortion or exploitation. Indonesian unity enactment of togetherness, family principle, socio-nationalism and democracy in the socio-economic. Populist prioritize the economic life of the people and the lives of many people. Social Justice as well as prioritizing the equation / emancipation, not a major public affluence prosperity of individuals.

2) Constitutional Basis of UUD 1945

Article 33 UUD 1945 is the main article on Indonesian economic system. Article 33 UUD 1945 is the chapter on the economics of which are in Chapter XIV 1945 entitled Social Welfare. Social welfare is an integral part of the ideals of independence. Article 33 UUD 1945 is a chapter of economic restructuring, chapter to address the structural imbalances of the economy. Paragraph 1 of Article 33 of the 1945 Constitution affirms, that the economy is structured as a joint venture based on the principle of kinship. Economy based on economic democracy, prosperity for everyone. Because the branches of production that are important for the state and life of the people should be controlled by the state. Otherwise the reins of production into the hands of those in power and the people will be oppressed. Article in the Constitution that affect the economic system in Indonesia, among others, clauses 18, 23, 27 (paragraph 2) and 34.

3) Guidelines of Indonesian Nation (GBHN)

Based TAP MPRS XXIII / 1966, Economic Democracy established (later becoming the provisions in the Guidelines in 1973, 1978, 1983, 1988), which includes the affirmation of the application of Articles 33, 34, 27 (paragraph 2), 23 and grains derived from Articles Provisional Constitution of property rights yuang social function and the freedom to choose the type of work. In 1993 grains Guidelines of Economic Democracy coupled with elements of Article 18 of the 1945 Constitution in the Guidelines 1998 and 1999 Guidelines, the grains of Economic Democracy is no longer been mention and is expected to be returned to the original article of the 1945 Constitution.

4) The political conditions

Politics also determines the economic system. Like for example if the political conditions in Indonesia which not as stable as conflicts in some regions due to economic factors. Then the economic system will be replaced because it was not compatible any longer with the Indonesian life.

5) Legal certainty

Legal certainty concerning the economic system is based on Pancasila and the 1945 Constitution.

6) People in the broad sense

The definition of the public in the broadest sense that all Indonesian people from lower class to upper class which participates in the Indonesian economy.

7) The Government

The government's decision to change or define the economic system is very important. Because the highest decision rests with the government. Although people want the conversion, but the government is not willing to do so, then the economic system would not be changed.

That view is needed in the implementation of economic development in Indonesia which has heterogeneous society (consisting of various elements of different nature or diversity).It is different with Developed Countries which have homogeneous society. Therefore, we need the following things:

- 1) National agreement concerning paradigm of national economic system to decide which aspects should we build up, according to our constitutions, especially the Preamble and Articles 33 and 34 in conjunction with Article 27 and 28 of the Constitution in 1045 which has 4 (four) times in the amendment;
- 2) The existence of interaction, comprehension (understanding) and good cooperation between experts in the fields of economics, including businessmen and decision makers in the field of law (executive, legislative and judicial);
- 3) Awareness that not only law which should be subject to economic demands, such as in the New Order.

Therefore, the legal principle had to step aside in order to achieve the objectives in the economic field, but on the contrary, to get the purpose of economic development, the measures in the field of the economy itself requires legal certainty and the path (channel) law, so intertwined synergy between the fields of law and economy.

- 4) Synergy itself is expected to strengthen economic development in a systematic and construction of the National Law System, which in turn both the National Economic System and the National Legal System will be more stable in the perspective of Sustainable Development.
- 5) Of course, any economic system must also support the development of the legal system in a positive way, so that the legal system can be further support the development of systems of national economy positively, and so on. Unlike in the past when law development were being ignored, violated, even trampled by economic actors as well as the Parliament and the rulers, meanwhile they called for legal protection and legal certainty, as the financial crisis threatens the survival of life and economic development, the postscript caused by arrogant attitude of the experts and economic actors themselves, as the law is only an obstacle course of economic development.

The highest law regulating the economy in Indonesia contained in Article 33 UUD 1945, which states:

- 1) The economy shall be prepared as joint efforts based on family principle
- 2) Production branches significant to the state and anything controlling the life of many people shall be controlled by the state.
- 3) Soil and water and natural wealth contained therein shall be controlled by the state and used for the welfare of the people to the utmost.
- 4) The national economy shall be held based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental perception, independence, and by keeping the balance of the national economic progress and unity.
- 5) Any further provisions on the implementation of this article shall be stipulated by virtue of law.

2.1.3 Traditional Economic System

- a) The characteristics of the traditional economic system

It has the following characteristics:

- 1) Production techniques were studied hereditary and simple.
- 2) Only a few uses of capital.
- 3) The exchange is using a system of barter (goods with goods).
- 4) Have not recognize the division of labor yet.
- 5) Still tied up to the tradition.
- 6) Land, as the support production activities and sources of prosperity.

- b) The positive of the traditional economic system

It has advantages as follows:

- 1) Fair competition, the relationship between individuals are very close
- 2) People feel safe, because there is no heavy burden to bear.
- 3) There is no individualistic.

- c) The weakness of the traditional economic system

In addition of having many advantages traditional economic system also has weaknesses, namely:

- 1) The technology that being used is very simple, so the productivity is low.
- 2) The quality of production is still low.

There is now no longer a country that adheres to the traditional economic system, but in some remote areas, such as the Bedouins and Bugis still use this system in everyday life

2.1.4 Market Economic System (Liberal / Free / Capitalist)

United States, Sweden, the Netherlands and France.

- a) Characteristics of the market economy / liberal / free / capitalist.

Market economy system / liberal / free can be characterized as follows:

- 1) Everyone is free to have the goods, including capital goods.
- 2) Everyone is free to use the goods and services they have.
- 3) Economic activity is intended to make a profit.
- 4) All economic activities undertaken by the public (private)¹.

¹ See Suroso, *Indonesian Economy*, Jakarta, PT. Gramedia Pustaka Utama, 1994.

- 5) The government does not intervene in the market.
 - 6) The competition shall be allowed.
 - 7) The role of capital is vital.
- b) The positive of the market economy / liberal / free / capitalist.
Market economy system / liberal / free / capitalists have a variety of goodness among others:
- 1) Grow initiative and the creation of the community to organize economic activity.
 - 2) Every individual is free to have sources of production.
 - 3) The emergence of competition to advance.
 - 4) Produced high-quality goods, because the goods which is not qualified will not be sold in the market.
 - 5) The efficiency and effectiveness of higher because every economic action is based on the profit motive.
- c) The weakness of the market economy / liberal / free / capitalist.
Market economy system / liberal / free / capitalist has the following disadvantages¹:
- 1) Difficult to equalize incomes.
 - 2) There tends to be exploitation of the workers by the owners of capital.
 - 3) The emergence of a monopoly can be detrimental to the community.
 - 4) Often turmoil in the economy due to misallocation of resources by individuals.

2.1.5 Economic System Command / Centralized / etatisme / Socialist / Communist

This economic system is applying by some countries like Russia, China, and Cuba.

- a) The characteristics of a command economy.
Command economy system has the following characteristics²:
- 1) All of the tools and resources controlled by the government.
 - 2) Individual property rights are not recognized.
 - 3) No individual or group can strive freely in economic activities.
 - 4) Economic policy governed entirely by the government.
- b) The positive of command economy system.
Command economy system has the merit, among others:
- 1) It is easier for the government to control inflation, unemployment and other economic problems.
 - 2) The market of goods in the country is running smoothly.
 - 3) The government can intervene in terms of price formation.
 - 4) Relatively easy to perform the distribution of income.
 - 5) Rare opportunity for the economic crisis.
- c) The weakness of a command economy.
Command economy system has the disadvantage, among others:
- 1) It turns off the individual initiative to advance
 - 2) Monopoly detrimental to society is often to happen
 - 3) People do not have freedom in selecting resources

2.1.6 Mixed Economic System

- a) The characteristics of a mixed economic system.³
Mixed economic system, among others:
- 1) is a combination of a market economy and a centralized system.
 - 2) capital goods and vital resources controlled by the government.
 - 3) the Government may intervene to make rules, set fiscal policy, monetary, assist and supervise the activities of the private sector.
 - 4) the role of government and private sector balance.
- b) The positive of Mixed Economic System.
- 1) Avoiding Free Fight liberalism
 - 2) Avoiding monopoly Sistem Ekonomi Campuran

This view of justice according to the concept of Aristotle⁴, distinguished between distributive justice that is to question how the state or society divide or spread justice to the people in accordance with their position, while

¹ See Gregory Grossman, *Economic Systems*, 3rd Ed., Jakarta: PT Bumi Aksara, 1995.

² Suroso, *op.cit.* pp. 15-16

³ Cornelis Rintuh, *op.cit.*, p. 41.

⁴ *Ibid.*

commutative justice is justice that does not distinguish the position or status of individual persons to get treated the same law. Wherein, the two forms of justice still must follow the principle of equality. John Rawls conceived of justice as fairness, containing the principles that free and rational people who wish to develop interests should receive an equal footing at the moment will be, start it and it is a fundamental conditions for the community.¹ Thus, justice is fairness (fair, naturally) when the existing order can be accepted by all people fairly, through a sincere acceptance of all elements of class, group, race, ethnicity, religion without pressure, which can create a just society. Without the complete legal instruments with lofty ideals, justice will be difficult to achieve. Therefore, the rights and obligations and also responsibilities inherent in the law were in essence a legal commitment in protecting the interests of individuals.

Adam Smith (1723-1790) gave birth to the doctrine of Justice (justice), which states that the purpose of justice is to protect from losses (the end of justice is to secure from injury)². Smith's teachings are the basis of inseparable relationship between law and economics, and between economics and politics are intimately connected, and later known as political economy (political economy)³. As one of the objectives of the political economy to provide some power for the state or the government to be able to perform various tasks and functions well, where the political economy sought to formulate how the prosperity of the people and the government as well. In an era of globalization, the existence of the law is considered important, because changes in various fields requires a norm or rule of law which can provide guidance to the appearance of the noble ideals as the first time the idea of trade liberalization which calls for economic equality and welfare of the world community that is considered unfair due to the practice of colonialism.

Every country needs a philosophical foundation of nation and state. The philosophical foundation drafted on vision, mission and purpose of the State. For Indonesia, the philosophical foundation of the state is Pancasila. Therefore Pancasila should be seen as a whole as a national guideness as well as the national standard, norm and principles which also includes simultaneously human rights and human responsibility, which on the other side of Pancasila is also useful as a margin of appreciation⁴, as they also have to be implemented in the implementation of the Law economy in Indonesia. Thus the Economic Law in Indonesia in the form of Margin of Appreciation used as a benchmark for the justification of the legal norms in force so that the main values of Pancasila as an ideology of a nation that is togetherness with the ideal form of community social life, is a community of kinship, thus in economics, ideology Pancasila requires togetherness (kinship Economic Democracy Article 33 of the 1945 Constitution), which is realized through the Welfare State.

The emphasis that should be getting attention is that the development in the science of Indonesian law, ultimately not only a transfer of knowledge regarding the law or training skills to execute the law, but also must include educational values that became the basis of the national legal system to be built and for Indonesia values - called the values of Pancasila. Furthermore, the Indonesian government must be careful in choosing and implementing economic development strategies. There is a warning "theoretical" Neoclassical economics that of the West is suitable to develop the national economy, but it is not suitable or sufficient to achieve equity and social justice. Pancasila mandate will achieve social justice for all Indonesian people that should be used as the fundamental guidelines of any economic development policy and the development of law as a cornerstone of economic development.

Some questions required by legal scholars to devise a system of economic laws which can be expected to support economic development are:

- 1) What kind of the economic system that is ideal and was inspired by the founders of our nation and the national economic system? What can we build in the beginnings of the 21st century that needs to be (ideally) and (be realistic)? Is it true that the Indonesian people want a market economy system that freely, or (considering the majority of the people still living in the era of agricultural communities and the beginning of industrialization)? Is the market economy that we need is what in Germany is known as Soziale Markt-wirtschaft or system of social market economy , as it has been since 1953 (half-century) applied in Germany? And not a market economy with competition freely, as implemented in the United States? If true, then the wisdom of Economic Laws and regulations, organization, and management as well

¹ John Rawls, *Justice Theory*, Yogyakarta, Penerbit Qalam, 2005, pp. 50-51.

² R.L. Meek, D.D. Raphael and P.G. Stein, e.d, *Lectures on Jurisprudence*, Indianapolis, Liberty Fund, 1982, p. 9.

³ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nation*, London, Penguin Book, 1979, p. 397.

⁴ Muladi, *Pancasila as a Basic Development of Legal Science in Indonesia*, Jakarta 7 Desember 2006, pp. 11-12.

- as segments of the economy should not be too much refers to the wisdom and law of the US economy, but should more reflect the economic theory policy and / or the Economic Laws of Germany, for example.
- 2) What are the characteristics and shortcomings of Indonesia's economic system today? And in what terms do we need improvement or change in order to be closer to our economic system is aspired?
 - 3) What are the things in the field of law by economists and businessmen perceived as a barrier or obstacle of economic progress?
 - 4) And also what elements in our legal system that is expected to be fixed and how to fix it in order to further support the Law of economic activity?
 - 5) What paradigm and the rule of law do we have to change as a result of economic globalization; so that on one hand we can compete with foreign economic operators (including those from neighboring countries), but on the other hand remained loyal (albeit in a more modern form) to the ideals of the nation and the direction of the constitution?

In the outline of the economic system that is practiced in many countries, it were distinguished into three groups, namely the market economy, central planning economy, and a mixed economy. *Firslyt*, the Market Economic System or Liberal economic system or economic system known as *Laissez Faire* is the economic system that gives full freedom in all areas of the economy to each individual to obtain the greatest possible profit¹. Philosophy or ideology that become the basis economic system is that each of unit of economic activity actors are given the freedom to conduct activities that will provide benefits to him, then at the same time the community will be benefit as well.

Adam Smith in his book *The Wealth of Nations* (1776), showed that free enterprise is driven by personal economic interests which are a strong driving force to prosperity². In a free market system, it can create a high enough efficiency in regulating economic activities, which the government did not intervene and did not try to influence the economic activities of society.

Characteristics of the market system are:

- 1) Everyone is free to have the means of production;
- 2) The presence of free enterprise and the freedom of competition;
- 3) Limited government intervention;
- 4) The manufacturer is free to determine what and how many will be produced;
- 5) The prices established in the free market;
- 6) Production is carried out with the purpose of obtaining profit as well as all economic activity is driven by the profit principle.³

Secondly, economic central planning / socialist is an economic system that is applied to the communist countries, the economic system in which the government fully determine the pattern of economic activity that will be carried out. So in this case everything must be regulated by the state and commanded from the center.⁴

Characteristic of centralized economic system is:

- 1) All the economic resources controlled by the state;
- 2) All the economic activities are to be undertaken together. All enterprises are owned by the state so that no private company;
- 3) All decisions regarding the amount and type of goods are determined by the Government;
- 4) The prices and the distribution of goods are controlled by the state;
- 5) All citizens are employees of the state⁵.

Finally, the system of mixed economy is the economic system which being controlled and monitored by the Government, however the community still has a fairly broad freedom to determine the economic activities that they want to run. The economic system is a mixture or blend of the market economy / liberal with socialist economic system or central planning. In the mixed system, the goal of the intervention of the government is to avoid consequences that are less favorable than the free market system. Government intervention in the

¹ Sadono Sukirno, *Op.Cit.*, p. 66.

² Crayonpedia, *Op.Cit.*, p. 3.

³ *Ibid.*, p. 3

⁴ Sadono Sukirno, *Op.Cit.*, p. 68.

⁵ Crayonpeida, *Op.Cit.*, p. 2.

economy can be divided into three (3) forms, namely¹:

- 1) Form of regulations that aim to regulate and supervise economic activity that is executed in a reasonable norms. This regulation is viewed as a rule of the game or the rules of the game rather than economic activities are made public.
- 2) The form of direct economic activity. In indonesia, government intervention was quite spacious as evidenced by the many companies owned by the state.
- 3) By conducting fiscal (tax and spending policy change government) and monetary policy (to regulate and supervise the activities of the financial sector) with the aim that the economy can grow rapidly without inflation.

The characteristics of a mixed economic system are²:

- 1) Vital resources are controlled by the government;
- 2) The government develops regulations, planning, and set kebijaksanaan in economics;
- 3) Private are given freedom in areas of the economy within the limits of economic policy established by the Government;
- 4) The right to private property over the means of production are recognized, provided that their use does not harm the public interest;
- 5) The Government is responsible for social security and income distribution;
- 6) The type and quantity of goods produced is determined by the market mechanism.

2.1.7 Market Mechanism

The market mechanism still plays an important role in determining the pattern of economic activity that is made public. Two monumental works that talk about the market mechanism are the theory of Moral Sentiments as his first work published in 1759 followed by *An Inquiry Into The Nature And Causes Of The Wealth of Nations* in 1776. Adam Smith only received a single concept or a theory of justice that is justice commutative. The reason, the so-called justice really only has one meaning, namely commutative justice concerning equality, balance, harmony relationship between one person or party with another person or party.

The principle of justice according to Adam Smith, there are three, namely:

- 1) *Principle of No Harm*. It is the principle of not harming others, especially not harm the rights and interests of others. This principle aims for a social interaction whatsoever everyone should restrain himself to not to harm the rights and interests of others, as he did not want that his rights and interests are harmed by anyone. In business, there should be no injured party rights and interests, either as investors, employees, distributors, consumers, family members or members of the general public either in relation to his personal, his or her reputation.
 - a) *Firstly*, justice is not only about the recovery of losses, but also concerning the prevention of violations of the rights and interests of other parties.
 - b) *Secondly*, the government and the people alike have the right according to the social status that should not be violated by both sides. The Government is obliged to refrain from violating the rights of the people and the people themselves must comply with the government for the government to be fair, it is only with this can be expected to create and secure a harmonious social order.
 - c) *Thirdly*, with regard to the principle of impartiality of justice (impartiality), namely the principle of equal treatment before the law for all members of society.
- 2) *Principle of Non-Intervention*. Principle of non-intervention is to demand the guarantee and respect of the rights and interests of everyone, no one is allowed to intervene in the lives and activities of others. Intervention in any form would be a violation of the rights of a particular person that is a harm (loss) and that means there has been an injustice. In relations between government and people, the government is not allowed to intervene in the private lives of every citizen for no apparent reason, and government intervention will be considered a violation of justice. In the field of economics, government intervention in the business affairs of every citizen without a valid reason will be considered as unfair and constitute violations of the rights of individuals, particularly the right to freedom. The Government and people have the right according to the social status that should not be violated by both sides. The Government is obliged to refrain from violating the rights of the people and the people themselves must comply with the government for the government to be fair, it is only with this can be expected to create and secure a harmonious social order.

¹ Sadono Sukirno, *Op.Cit.*, p. 68

² Crayonpedia, *Op.Cit.*, p. 3.

- 3) *Principle of Justice Swap*. The principle of fair trade exchanges embodied and expressed in market price mechanism is a further application of no harm in particular in trade exchanges between the parties with the other parties in the market. Adam Smith distinguishes between the natural and the market price or actual price.

Natural price is the price that reflects the cost of production which has been issued by the manufacturer, which consists of three components, namely labor costs, profit owners of capital, and rents. The market price or actual price is the actual price offered and paid in commercial transactions in the market. If an item is sold and bought at price levels naturally, it means that the goods are bought and sold at a fair price level. At that price level, both producers and consumers are likely achieve benefits. Price naturally expresses equal footing and balance between producers and consumers because what have been issued by each can be return (producer: in the form of the price it receives, the consumer: in the form of goods obtained), the equity value of the exchange actually occurs.

In the long term, through the mechanism of competitive markets, the market price will fluctuate in such a way around the natural price that would give birth to an equilibrium point which describes the equality position of producers and consumers. In a competitive free market, the more scarce goods and services offered and otherwise the increasing of demand, will further raise the price. At this point the producers will be benefited while consumers are harmed. But as prices rise, more and more manufacturers are keen to get into the field of the industry, which led to offers abundant with consequent price declines. Then consumers become producers benefited while impaired.

Mechanism of market activity is very colored by the flow of goods available, and determine the characteristics of the market itself¹. If viewed from the activities of the market itself there are different types of markets. Bromley classified the market into three groups: daily market, regular market, and specialty markets, each market has its own buying and selling activities.

Traditional markets have the potential that can not be ignored either economically or socially. First, economically able to support thousands of people, or an arena for subsistence or space for economic empowerment of the people². Second, the market as a public space is an arena for shaping the socio-economic fabric of relations, in which build the values of mutual trust, mutual respect, and a feeling of empathy for others. Third, the market is built naturally in a community of various social groups, ranging from large merchants, small traders, Lesbian, street vendors, porters / carry, and buyers. Lately, we can see the increasing presence of malls, plazas, hypermarkets, minimarkets in the centers of large cities and areas, which connotes adds support for the city in question as the developed or prestigious city³.

Indeed, if viewed from the physical aspect, the modern market is very magnificent and attractive, providing quality goods and satisfy the tastes of the buyer. The buyers who come to the mall or plaza in addition to buy a wide variety of needs, also for prestige. With the outbreak of the modern market, traditional market increasingly pressured, marginalized, and began to be abandoned, threaten the existence of traditional markets. The traditional vendors who have a business or economics with numerous small capital out of business, unable to compete with modern markets. The flood of modern retail flowing to the regions, not only lead to a domino effect on the national economy and local businesses, but will also effect the Employment Termination (PHK).

From the aspect of price, modern market is sometimes said to be cheaper than the prices of goods in traditional markets⁴. With cross-subsidy strategy, making the price of a type of cheaper goods, but prices of other goods much more expensive compared to the prices in traditional markets. Besides the purchase price can also be suppressed because the advantage to be able to buy in bulk, and cost a minimum stock with the help of

¹ Based on the goods that being trade, there are markets that provide daily needs, fruit market, florist, bird market, klitikhan market (second hand goods), and there also markets that are open the whole day, half day, only in the morning, only at night, or even open by season (Pon, Pahing, Wage, Kliwon). Eksistensi Pasar Tradisional Relasi dan Jaringan Pasar di Kota Semarang-Jawa Tengah, 2011, p. 2.

² Populist Economy is the economy that conducted by society, which are economy enterprises that becoming the source of family/individual income in order to fulfilled their basic needs such as foods, cloths, houses, healthcare and education (Gunauan, 1999). Eksistensi Pasar Tradisional Relasi dan Jaringan Pasar di Kota Semarang-Jawa Tengah, 2011, p.6.

³ The presence of shopping malls, street vendors also are part of the urban economic system and a major city icons that have been attached to a number of big cities in Indonesia. Eksistensi Pasar Tradisional Relasi dan Jaringan Pasar di Kota Semarang-Jawa Tengah, 2011, p.5.

⁴ See Herman Malano, *How to Save Traditional Market*, Jakarta, Gramedia Pustaka Utama, 2011.

information technology. Unconsciously, these indulgence and convenience will cost expensively because of the occurrence of siphoning money out. Modern retailers are generally foreign owned, for example hypermarkets, supermarkets, minimarkets, Makro, Carrefour, Giant, Goro, Indogrosir, even classmates Indomaret which started spreading to smaller environment also belong to foreign investors. While local players, namely Alfa is also included in this criterion despite the smaller size of the store (semihiper), but the diversity of the goods sold at hypermarkets. It is certain that the spread of modern market would be in line with the flow of capital to the outside (capital outflow), or at least will happen backwash effect from the regions to the center.

Traditional market development should consider factors favorable to the the market and should be managed professionally with good management. Every country has a specific purpose. This purpose is becoming the guideline on how the country was structured and how the lives of the people governed. On the other hand state functions emphasis on the dynamic aspects of the country with all the activities, the role played in achieving the objectives of the state.

In the framework of the government's duty to carry out the purpose of the state as an organization of power, Wolfgang Friedmann says there are four state functions, namely:

- 1) as the provider, the state is responsible and ensure a minimum standard of life as a whole, and provide other social security;
- 2) as the regulator, states should establish the rule of law in the life of the state;
- 3) as enterpeuner, the state run sector of the economy through state-owned enterprises / regions (SOE / enterprises), and seek the conditions conducive to the development of business; and
- 4) as the umpire, the state-set standards with the standards that are fair to the parties engaged in the economic sector, especially among the private sector or among certain business fields¹.

The central government has outlined the policy as a guideline or a foundation to manage the traditional market as stipulated in Government Regulation No. 38 Year 2007 regarding Division of Government Affairs between the Government, Provincial Government, and the Regional Government of Regency / City, noted that traditional market is a matter of choice, then management the authority of the Local Government, Government Regulation No. 42 Year 2007 on the franchise for a business type of modern stores, Presidential Decree No. 112 of 2007, concerning: Structuring and Development of Traditional Markets, Shopping Centers and Modern Stores², Regulation of the Ministry in the annex No. 22 Kep. Minister of Public Works No. 378 / UPTS / 1987 Date 31-08-1987 concerning the ratification 33 construction standards in Indonesia³ regarding the planning of the city area, specify the type of commercial and industrial facilities in 5 hierarchy, namely: shop, shops, shopping centers for the 30,000 residents of the neighborhood, shopping center and trade for 120,000 residents, as well as shopping centers and commercial to 480,000 residents, letter Joint Decree of the Minister of Industry and Trade and Minister of Home Affairs No. 145 / MPP / Kep / 5/97 on the Management and Development of Market and Shopping, Health Ministerial Decree No. 519 / Menkes / SK / VI / 2008 on Guidelines for the Implementation of the healthy market. Regulation No. 53 / M-DAG / PER / 8/2008 on Guidelines for Planning and Development of Traditional Markets, Shopping Centers and Modern Stores, Regulation No. 53 / M-DAG / PER / 8/2012 of 2012 on the franchise for a business type of modern stores, Regulation No. 68 / M-DAG / PER / 10/2012 of 2012 on the franchise for a business type of modern stores, Regulation No. 70 / M-DAG / PER / 12/2013 on Guidelines for Planning and Development of Traditional Markets, Shopping Centers and Modern Stores, Home Affairs Minister Regulation No. 41 Year 2011 on Guidelines for the Organization and Work Procedure of Civil Service Police Unit of Special Province of Jakarta, Regulation Provincial Government of Jakarta Capital Special Region No. 2 of 2002 on private sector marketing, Decision of the Governor of Jakarta Special Capital Province Number 44 Year 2004 regarding Implementation Guidelines for private sector marketing in the Special Capital Province of Jakarta. Important policy related to these provisions is th e protection of the traditional markets of the modern market competition as well as development of traditional market traders, both with regard to infrastructure, capitalization and ways sought better known as the revitalization of traditional markets.

¹ W. Friedmann, in I.Dewa Gede Atmadja, *State Science : History, Concept of Nation and Analysis of State*, Malang, Setara Press, 2012, p. 58.

² Hardilina, *Implementation of Traditional Market Management Policy Possesed by the Pontionak Government*, Disertation, Padjadjaran University, Bandung, 2013.

³ Adityo Setiawan, *Distribution Pattern and Influeced Factors of Area Selection of Modern Retail in Surakarta*, Thesis, University of Diponegoro – Semarang, 2009.

More details of modern retail concepts in the regulation, can be explained as follows¹:

- a) Minimarket; if the floor area <400m².
- b) Supermarket 400 m² - 5,000 m².
- c) Hypermarket > 5.000 m².
- d) Department Store > 400 m².
- e) Grocery > 5.000 m².

The nature of traditional markets empowerment is how to do a good reinforcement of the traditional market in aspects of management, management, and development (including the construction and renovation) while placing the merchant market as the main focus and the basis of market forces. It means the existence of a policy or anything called remodeling or rebuilding a traditional market is essentially one strategy option whose position is under the building traditional market-based empowerment concept of social economy.

The main duties associated with managing traditional markets include: fostering traditional market traders, the maintenance and development of facilities and infrastructure of traditional markets, the recommendations and advice planning with regard to the development plan and the arrangement of the traditional market, the coordination of the handling of the safety and hygiene of traditional markets, the registration / heregistrasi, leasing , the administrative management of traders / businesses, optimizing billing charges and administrative management of the levy in the traditional market.

In Article 15 of the President of the Republic of Indonesia Regulation Number 112 of 2007 concerning the arrangement and development of traditional markets, shopping centers and modern shops, paragraph 1 of the Government and Local Government either individually or jointly in accordance with their respective duties to provide guidance and supervision of markets traditional, modern shopping malls and stores, paragraph 2 in order to develop traditional markets, the Local Government:

- a) Seeks alternative sources of funding for the empowerment of traditional markets in accordance with the legislation in force;
- b) Improves the competence of traders and traditional market managers;
- c) Prioritizes the opportunity to obtain a place of business for traditional market traders who have been there before the renovation or relocation of traditional markets;

Evaluation of the Management of Traditional Markets

Regulation of the retail industry, particularly governing the existence of modern and traditional retail originally contained in the Joint Decree of the Minister of Industry and Trade and Minister of Home Affairs No. 145 / MPP / Kep / 5/97 on the Management and Development of Market and Shopping². Each year modern retail in particular foreign-owned Indonesian increasingly spread. This is what makes some traditional retailers began to feel discomfort even some small retail / traditional are forced to close. In anticipation of these developments, then the Government issued the decree that modern retailers and traditional retailers can grow together.

In an economy we have known four (4) types of decisions, namely decisions regarding what to produce, how much production, how to produce it, and how the allocation of such products. Thus, based on decision-making mechanism, we have known 2 (two) economic systems, namely the market economy and command economy. Based on its review, the system of the above market economy decisions were taken by economic actors through market mechanisms which also referred as the price mechanism or can be said to be highly decentralized decision-making. While the command economy system, decisions are taken by the command or detailed planning.

a. Failure of The Market Economy System

Market economic system is a system that was introduced by Adam Smith in his book *The Wealth of Nation* which is described in the book that the "market" as the best model of the economic system"³, However these systems has often cause problems in carrying out its functions for many times. The objectives to be achieved by capitalism and the market economy system is to ensure economic growth from year to year, where the economy is growing continuously. Economic growth measured by GDP (Gross Domestic Product), which is the monetary value of all

¹ Ibid. p. 25

² See [ml.scribd.com/.../Ministry Decree on Guideline Set up-Coach-Traditional Market](http://ml.scribd.com/.../Ministry-Decree-on-Guideline-Set-up-Coach-Traditional-Market).

³ Hizbut Tahir, *the Failure of Free Market*, <http://hizbut-tahrir.or.id/2009/04/28/kegagalan-pasar-bebas>, access date 9 April 2011, p. 1.

goods and services in the economy.

In fact, there are a lot of collapse, deterioration, lethargy, depression caused by the market economy system as the concept of Adam Smith. However for supporters of the free market system, those events are normal in a rotation of repeat business. According to Clement Juglar, that the business cycle takes 8-11 years. Meanwhile, according to economist Joseph Schumpeter, Juglar business cycle requires 4 (four) stages:

- 1) expansion (increase in production and prices, low interest rates);
- 2) crisis (stock market crash and the bankruptcy of companies everywhere);
- 3) the recession (a fall in prices and production of goods, high interest rates);
- 4) resurrection (stocks reawakened because of low prices and falling incomes).¹

Business cycle is a type of fluctuation found in a set of economic activities of the countries that organize the working system in the business: business cycle has a stage of expansion which occurs simultaneously in every economic activity, followed by recessionary conditions in general, further to the situation of contraction, and recovery conditions, all of which blends into the next phase of expansion in the rotation; in terms of the duration of business cycle ranging from pollen of one year to ten or twelve years; all of this can not be divided into shorter business cycle with the same properties.²

The Business cycle is a how the operation of the economic system work, or commonly called the concept of economy wheels rotation, which in normal circumstances (simple) will be able to walk normally without the need for strict regulation of the Government. So in this case, the market can manage everything well and perfectly. In other words as if the economic system can work automatically through the strong hand which set from the outside or the invisible hand. But in fact the market mechanism can not provide assurances to be able to run perfectly without distortion or loss for the benefit of the wider community. Many facts have been found that the free market produces a lot of deficiencies, irregularities or fraud, or harm to consumers. Even in the long term there is a tendency that the grouping of certain manufacturers are dominant market share.

Although, the market economy has virtues, inter alia:

- 1)Market can provide more precise information;
- 2)The market gave a fillip to entrepreneurs in order to develop their activities;
- 3)The market gives stimulation to acquire modern skills;
- 4)Promote the use of market goods and factors of production efficiently; and
- 5)Market give a high freedom to the people in order to engage in economic activities.³

However in reality, the market economy system is very extensive, complicated and difficult to trace, where competition in the system is quite strict.

In this case, the market economy system has some weaknesses, as follows:

- 1) Unlimited freedom could oppress certain groups;
- 2) Economic activity is very unstable situation;
- 3) The system of market mechanisms will arise harmful monopoly power;
- 4) The market mechanism can not provide some kind of goods efficiently;
- 5) The activities of consumers and producers may generate externalities (side effect) a disservice.

From those weaknesses, it can be seen that apparently the real economy is far from perfect market, where it is difficult to obtain sufficient market information for both consumers and producers regarding the price, quantity, and quality of products as well as the source. Even sometimes to obtain the information required high costs, plus the existence of economies of scale in many major sectors of the economy creates barriers to entry (entry barrier) for businesses who want to work in the same sector. Thus in turn, it resulted in the allocation of resources that are not appropriate, and this is not intended by these countries when they began to implement a market economy in their countries. Whereas main factor market failures and the economic slump is due to the unavailability of rules or institutional advance in the market that will drive economic actors in the market. In this case the absence of legal and institutional unpreparedness of protecting the economy as institutional market. Legal and institutional devices, even if there is still a very weak economy in order to support the operation of the market

¹ *Ibid.*, p. 2.

² *Ibid.*

³ Sadono Sukirno, *Op.Cit.*, pp. 44-45.

effectively and efficiently.

Without a well-established legal system, for example, all contracts and business agreements will only stay on paper, copyright only a byword, and the exchange rate or currency can be changed at any time. Where the situation is lack of legal certainty, clear business will not grow so well.¹

This condition leads to market failure which is the inability of a market economy to function efficiently and give rise to persistence in economic activity and growth. Notice this condition, most countries in the world today is no longer fully implementing the system of market economy. But use more of mixed economic system, the system of market economy with government intervention in regulating economic activities. Form of government intervention is in the form of making the rules, run the fiscal and monetary activities and directly running economic activity.

2.1.8 Thought of harmonization originated from Rudolf Stammler

He suggests that the concepts and principles of law that is fair including "harmonization" between the goals, objectives, and interests of individuals and the goals, objectives and interests of the general public. In other words, the law will be created when there is good alignment between goals, objectives and interests of rulers (government) with the community. On the other hand, the National Law Development Agency (Ministry of Law and Human Rights), giving the sense of legal harmonization as scientific activities for processes perharmonisasian (alignment / suitability / balance) written law refers to the values of the philosophical, sociological, economic and juridical.

Thus, harmonization is a "conditio sine qua non" for ensuring the rule of law, rule of law, law enforcement and legal protection cored justice and truth. The placement of harmonization (horizontally and vertically) in the process of regulations establishment were being conducted on higher and equal laws, and also on the values that live in the community, and in accordance with the needs of the community. In this process, the harmonizations of regulations are necessary to form regulations that are able to create harmonious living conditions (law as a tool of social harmony).

Steps on harmonizations of regulations are very closely related to the existing legal system, namely by:

- 1) Paying attention to national legal systems as inputs (input), by taking into account the existence of elements that are running, such as: (a) the legal substance, namely legislation, common law and legal order internally, (b) the legal structure, namely readiness public institutions as well as apparatus / local government officials, (c) the legal culture which includes the attitude and behavior of public officials and citizens of materials associated with local regulations.
- 2) Paying attention to the reality of the existence of regulations and their enforcement in practice as opposed to a sense of justice and aspirations developed in the community.
- 3) Conducting an assessment or evaluation of the results achieved in the form of the establishment of regulations that have an impact on people's lives.

Basic form is based on the idea of a hierarchy of legal norms that puts the basic norm (norm-fundamental, basic norm) as the highest law in the system of norms, control and become a source of legitimacy of the rules below are established as the concretization of the basic norm. All norms whose validity can be traced to one basic norms and basic norms together to form a system of norms, is a normative order. The basic norm is the source of the validity of the same for all the norms that are included in the same order and the validity of the same reasons for the enforceability of norms.

Then, in the legal system of the Republic of Indonesia, the legal norms applicable in a system that is multi-layered and tiered, as well as in groups, where the norm is always valid. Being Sourced and based on the norms of higher and higher norms applicable, sourced and based on the norms of higher again, and so forth up to the basic norm of the state (staatsfunda-mentalnorm) of the Republic of Indonesia, Pancasila².

Implementation of trade Bedrijfsreglementerings Ordinance (BRO) in 1934 which was a legacy of the Dutch colonial law after over 80 years being used in Indonesia, Indonesia has finally made official trade regulation in

¹ Michael P. Todaro and Stephen C. Smith, *Economic Development in Third Countries*, Jakarta, Erlangga, 2003, p. 81.

² Maria Farida Indrati S., *Regulatory Science: Type, Function and Substance*, Revised Ed., Jakarta, Penerbit Kanisius, 2007, p.57.

February 2014 Indonesia. The Law Number 7 in 2014 concerning Trade was made by prioritizing the national interest and intended to protect traditional markets and modern markets with local products, to make trade regulations for the country internal used and to provide protection for the consumer. The spirit of the government in developing this legislation are:

- 1) That the products traded in the country as much as possible are also produced in the country.
- 2) Supporting the national economic resilience through food security and energy security, as well as maintaining the balance of interests of producers in the upstream and downstream of consumer interests as much as possible
- 3) That the framework of consumer protection should be upheld through the obligation to use the Indonesian language labeling for goods traded within the country and the fulfillment of the provisions of National Standard of Indonesia (SNI).
- 4) That the entrepreneurs in all parts of the country especially actors KUMKM (Cooperatives and Micro, Small and Medium Enterprises) actors can work more efficiently and develop more advanced.
- 5) Become the basic and legal protection for the the order and growth of entrepreneurs engaged in the trading system via electronic (e-commerce).
- 6) Sovereignty of the people protected by the involvement of Parliament in the ratification of an international trade agreement.
- 7) The establishment of the National Trade Committee is required in order to assist the government in accelerating the achievement of the implementation of trade policy.

Furthermore, this Trade Act mandates the dissolution of the technical guidelines for the implementation of clauses into 9 government regulations, 14 presidential decrees, and 20 ministerial regulations are detailed as follows:

a. Government Regulations

- 1) The government regulation concerning administrative sanctions against the owner of the warehouse who did not register their the warehouse (article 15);
- 2) Obligations and the imposition of sanctions against service providers who do not have a competent technical personnel (Article 20);
- 3) Payment Method and delivery of goods in the way of export and import activities (Article 40);
- 4) Trade frontier (Article 56);
- 5) The procedure for the establishment and enforcement of standardization of goods and / or standardization of services (Article 64);
- 6) Trade transactions through an electronic system (section 66);
- 7) Trade security measures, anti-dumping actions, and actions compensation (article 22);
- 8) The procedure for reviewing and cancellation of international trade agreements (Article 85);
- 9) Trade information system (Article 92).

b. Presidential Decree

- 1) Development, empowerment, and the improvement of people's quality of market management (Article 13);
- 2) Setting of licenses, zoning, zonation of folk markets, shopping malls, supermarkets, and grocery (article 14); Penataan, pembinaan dan pengembangan pasar lelang komoditas (pasal 18);
- 3) Structuring, fostering and development of commodity auction market (article 18);
- 4) Control of basic and essential goods (article 25);
- 5) Storage of staples and / or essential goods (Article 29);
- 6) Traded goods related to security, safety, health and the environment;
- 7) Registration of goods as well as the termination of the trading and withdrawal of goods. (Article 34);
- 8) Goods and / or services that are prohibited or restricted in trade (Article 35);
- 9) Empowerment of cooperatives and micro, small, and medium enterprises in the trade sector (Article 73);
- 10) The Practice of the Indonesian imagery campaign to promote trade in order to introduce goods and / or services locally and overseas (Article 79);
- 11) The establishment of the negotiating team in charge of preparing and negotiating (Article 86);
- 12) The procedure of granting preference to the developing countries (pasal 87);
- 13) The National Trade Committee (pasal 97);
- 14) Trade in goods in the supervision of government (Article 101).

c. Ministerial Regulations

- 1) The use or completeness of the Indonesian language labeling (Article 6);
- 2) Distribution of goods (Article 11);
- 3) The registration procedure of the warehouse (article 14);
- 4) Administration registration of goods in the warehouse (Article 17);
- 5) Improvement use of domestic products (Article 22);
- 6) Trade between islands (Article 23);
- 7) Licensing in the field of domestic trade (Article 24);
- 8) The determination as an exporter (Article 42);
- 9) The procedure for the imposition of administrative sanctions against exporters who are not fulfill their obligation for the exported goods (Article 43);
- 10) Identification as importers (Article 45)
- 11) Procedure for the imposition of administrative sanctions against the importer is not responsible for the imported goods (Article 46)
- 12) Determination of imported goods in bad condition (Article 47)
- 13) Licensing of exports and imports (Article 49)
- 14) Goods that are prohibited to be exported and imported (chapter 51)
- 15) Goods that are restricted to be exported or imported (Article 52);
- 16) The imposition of administrative sanctions for exporters and importers who export or import of goods that are not in accordance with the provisions of the restriction of goods (Article 52).
- 17) The implementation guidance to businesses in order to develop export
- 18) Standards for implementation and participation in trade fairs.
- 19) Procedures for ease of implementation, and participation in trade promotion in order to imaging Indonesia activities.
- 20) The implementation of monitoring trading activities and supervision of goods are defined as goods under supervision.

3. Conclusion

As the set of norms and regular behaviour, the society law is a social institutions, established in order to fulfilled the human need and creating peace among the society. As it being said that traditional market as social institutions since it can fulfilled the human in terms of services in traditional market that related to the society economy needs. Thus, the society could not live properly without law, because the other norms could not possibly fulfilled the human needs of order and peace as a whole. Government regulate policy through Government Regulation No. 112 of 2007 on the Management and Development of Traditional Markets, Shopping Centers and Modern Stores. Some of the economists and some of the spatial experts say, these regulations weakened the traditional market traders. In this government regulation There are two fundamental issues in the law policy. The first issue is the issue zonation. This government regulation is not regulating which zone is available to modern market building, therefore many of the modern markets being built near by the tradional market. In the case of law settlement within society, related to the society interests that normally based on the values of which one is good and which one should be avoided and efforts to increase the degree of society compliance on law by letting the society to know and understand the legal provinsions. It gives them chance to be able to absorb the values that the worst habit is the act against the exsiting law. The degree of society compliance on law is an indicator of the functioning of a rule of law, for example, the functioning of local regulations regulating the levy on the traditional market service marked the higher degree of compliance towards the these provisions of the means that its local regulations are functioning well. From a conceptual description of the implementation problems of the modern market position in the retail trade system in Indonesia in the aspect of law effectiveness that:

1. *First*, the rule of law applies legally, if the determination is based on the norms of higher levels - Hans Kelsen, or if shaped in a predetermined manner - W.Zevenbergen, or if it shows the relation between a condition and consequences - JAlogemann;
2. *Second*, the rule of law applies sociologically if these norms work effectively means it can be enforce by the authorities even though it has not been received by citizens (Theory keuasaan), or it can serve as a norm due to the acceptance and recognition by the community (Recognition Theory),
3. *Third*, the rule of law in perspective of philosophy, means it is in accordance with the ideals of law as the highest positive value'

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