

# Legal Protection of the Traditional Market on the Basis of the Economic Constitution of Indonesia

Edwin Tulandi<sup>1\*</sup> Bambang Winarno<sup>2</sup> Sihabudin<sup>2</sup> Suhariningsih<sup>3</sup>  
1. Doctorate Candidate of Law Faculty, Brawijaya University, Malang  
2. Postgraduate Program of Law Faculty, Brawijaya University, Malang.  
3. Professor of Civil Code, Brawijaya University, Malang

## Abstract

Strict competition between modern markets has had an impact on the sustainability of traditional markets in Indonesia, the further exclusion of traditional markets is a fact that can not be denied, therefore traditional markets must be protected. Legal protection of the traditional market refers to the Constitution of the Indonesian economy, economic policy must refer to and should not be contrary to the constitution is very important, because often or usually, the economic policy makers do not feel the need to base themselves on the provisions of the constitution in formulating various economic policies of a country. Legal protection for traditional markets will be developed from the principle of efficiency of justice as set out in the Indonesian economic Constitution. Legal protection for traditional markets is done by granting the rights and limiting the interests of modern markets, the granting of rights to traditional markets is done by empowerment and for limiting the interests of modern markets is done by structuring, thus the notion of structuring here does not mean rejecting the existence of modern markets but the notion of structuring here is directed to Arranging for traditional markets and modern modern markets to move forward and grow together

## 1. Introduction

Globalization and liberalization in the world economy and trade have influenced various aspects of life of the people of the world order, both on the aspects of the political, economic, social, cultural and legal. Indonesia as one part of the world community would not escape from the influence of globalization. The influence of globalisasi in the world economy and trade in Indonesia marked the continued influx of investment flows to invest in Indonesia walaayah. Investment in economic development becomes an important aspect, because the investment is one of the driving force of the process of strengthening the economy of a country. As one of the tools driving the process of strengthening the economy, economic policies in order, some countries are trying hard to increase its investments. In the last decade, investment is not only important to a country's needs in the development of economic development, but is also the primary means in the development of an industry. (Wiranata, 2007)

Positive and negative impacts appear while the roots of globalization and the factors penunjangnya start stuck in settings and Government policy of Indonesia, one of the factors of penunjangnya which is the ideology that is liberalism. Economist of the Institute for Development of Economics and Finance (Indef), Yustika Erani Ahmad said one of the positive impact of economic liberalization, namely increased trading performance. But, according to it should be remembered that trade liberalization is not as smooth as imagined, because most of the country experienced economic damage systematically. "Its impact is no exclusion process, there are certain economic principals against exclusion are thrown due to liberal," economic liberalization can lead to social inequality if not set up properly. (Indef, 2015).

The verdict by KPPU is a normative repugation of the problem of ostracism against the economic actors as the impact of trade liberalization. The decisions referred to are (1) Decision of the case no. 3 / KPPU-L-I / 2000 relating to Indomaret's business expansion; (2) Decision Number 02 / KPPU-L / 2005 concerning Violation of Terms of Trade by PT Carrefour reinforced by the Supreme Court with decision no. 01K / KPPU / 2005 and (3) Acquisition of Alfamart's Decision by Carrefour No. 09 / KPPU-L / 2009. These three decisions outline the social implications of competition between modern retailers. The social implications can be seen from the relationship between modern retailers, traditional retailers and suppliers all of which are included in the Retail Industry.

Traditional retail referred to above is the traditional market. The number of traditional markets in 2007 amounted to 13,450 markets, in just four years or in 2011, the number was 9,559 markets while the modern market was only 10,365 outlets in 2007, to 18,152 in 2011. Almost 4000 markets were closed at intervals of 4 years. Based on data from APPSI it is known that income from traditional market in Jakarta decreased to 60% with modern market presence, especially hypermarket. As a result of this condition, the occupancy rate of traditional markets continues to shrink with a range of 30-40% only, whereas in fact the location of traditional market is very strategic.

A very fundamental change in the management of traditional markets emerged in the Dutch colonial era, seen in the establishment of Pasar Beringharjo, among others Beringharjo Market in Yogya, Beringharjo Market

is the largest traditional market in Yogyakarta owned by the Yogyakarta city government. "Ender Moiste Passer Op Java" is the Dutch name for the Beringharjo market, which means the most beautiful market in Java. Other markets can also be seen in Pasar Johar in Semarang and Pasar Gede in Solo. Traditional market is not only seen in terms of economic but also closely related to local cultural values, one of which is reflected from the culture of Java, the establishment of market buildings in certain locations should get some kind of *pulung* (revelation) so that traders can sell in that place.

Along with the times, traditional Market is not the only means of trade used by consumers in fulfilling their needs. The development of modern markets is the answer to the needs of society that is not just looking for daily needs but also about the facilities offered. Modern markets take advantage of the weaknesses that can be found in people's markets, such as convenience shopping, ease of choosing materials, and product security. Modern markets are known to have high product standards when compared to the traditional market, no wonder if people more trust the modern market in meeting their needs. The presence of modern market in the era of globalization is now not only as a means to meet the needs of consumers alone, but as part of the lifestyle of some consumers.

From the institutional side, the different characteristics of the management of modern markets and traditional markets are apparent from the management institutions. In traditional markets management institutions are generally handled by the Market Service which is part of the bureaucratic system. At this level, the changing of consumer behavior is not accompanied by changes in the behavior of the market managers of the official market (market / PD Pasar), so that the emergence of the market with modern management patterns necessarily change the consumer orientation. The traditional market is identical to the slums, chaotic, dirty, high criminal, uncomfortable, uncertain price, minimal facilities; Parking, toilets, garbage cans, electricity and water, narrow and muddy roads. Contrary to the modern market with centralized and efficient management, with good organizing system, supported by convenient infrastructure and well trained human resources in organizing a good service system. Although there are some differences, does not rule out the possibility of competition between them.

This competition occurs when people choose one of them as a place to shop. The choice is influenced by several aspects, such as the increase in the average income of the people per capita, especially the physical, capital, and consumer groups. The higher the average income of the society per capita, the larger the middle to upper consumer consumer group will also change into the modern market which is physically much better than the traditional market such as comfort, security, cleanliness, and large parking area. Hypothetically, the growth of modern retail is positively correlated with the increase in the average income of the community. In other words, the higher the income of the community, the more rapid the growth of modern modern market, on the contrary, the growth of traditional markets negatively correlated with income or positively correlated with poverty, ie the greater the population below the poverty line the more traditional markets. (Tambunan, 2004). The emergence of the two concepts of modern markets and traditional markets is then led to a dichotomy between the two. The dichotomy between traditional markets and modern markets is not only derived from the architectural aspects of the building or the management of its management architecture, but also from the meaning of market conception as the place of economic transactions. The concept of the market can be understood from various perspectives, such as an economic, social, cultural, even political perspective. In an economic perspective, the concept of the market, in the broad sense, as a place of meeting of demand and supply, is formed as one of the implications of the process of changing society toward capitalist society. (Seran, 2011)

The legal basis of the regulation relating to the traditional market is based on Law No. 7 of 2014 on Trade and Law No. 20/2008 on Micro, Medium and Large Enterprises, of the two Laws, the Central Government formulates the NSPK ( Norms, standards, procedures, criteria) can be found in Presidential Regulation No. 112 on Structuring, Traditional Markets, Shopping Centers, and Modern Stores and Ministerial Regulation No. 70 of 2013 on Guidelines for Traditional Market Arrangement, Shopping Centers and Modern Stores. Both of the Implementing Regulations underlying the Regional Government in making policies related to traditional markets are adapted to the potential of their respective regions.

In Presidential Regulation no. 112 of 2007 on the Guidance of Traditional Market Arrangement and Ministerial Regulation No. 70 of 2013 on Traditional Market Setup Guidelines, Shopping Centers and Modern Stores, business and community involvement are only seen in the Presidential Regulation, namely the involvement of Shopping Centers and Modern Stores to empower the People's Market . While in the Ministerial Regulation the involvement of Shopping Centers and Modern Stores does not exist.

The explanation above illustrates that the benchmark assessment in the principle of brotherhood and the principle of togetherness is a joint effort involving all elements of the nation as a guidance of behavior is not applied fully in Retail Management. This can be seen in the making of NSPK (norms, standards, procedures, criteria) by the government which resulted in differences in the development of trade facilities and business actors using trade means where the reflection of togetherness and mutual cooperation is increasingly invisible.

"Brotherhood" should be the basis of guidance and behavior guideline that embodied in every national

and regional policy in the implementation of economy based on economic democracy in Indonesia. Not "Brotherhood" that adjust to the national economic development but the national economy that must be adapted to the 'Brotherhood'. A consequence of the formulation of the principle of kinship and the principle of togetherness in the Indonesian Economic Constitution.

The existence of a traditional market that is continuously reduced in number of course will greatly affect the Indonesian economy, if we look back to the post-economic crisis in 1999 the existence of traditional markets in which consists of micro and small business is what actually sustains the economy at that time. The function and role of the state in this case the government is very necessary. The task and function of the state in this case is the government's legal commitment and policy towards the economic and social rights of the society in the form of the right to work by creating conditions, which enable every individual or society to be free in determining its choice and the state guarantee the availability of goods in realizing the welfare of society. (Effendi, 2013)

Understanding that economic policy should refer to and should not be contrary to the constitution is very important, because often or usually, the determinants of economic policy do not feel the need to base themselves on the provisions of the constitution in formulating various economic policies of a country. Economics assumes that law is a given factor. Law must serve economic interests. The law must be functional in support of various economic activities developed on the basis of policies determined by economists from successful experiences or best practices examples from wherever they arrive. In fact, as today's dynamic economic activities of one developing country are increasingly integrated with regional and global economies, there is no obstacle for policy makers to imitate the best practices of other countries.

## **2. Research Methods**

This type of research is classified into normative research or legal research literature. The emphasis of this research is using a legal substance, not the data so that the primary data used is merely to strengthen, equip and support. Secondary data sources is accessed through a data source library (library research), which consists of primary legal materials and secondary law. Secondary legal materials include textbooks that contains a set of theories and concepts of law, previous research results, scientific articles, journals, and papers. In the tradition of legal science known three elements to guide researchers in conducting the legal material classification so that the classification process remain on the logical and systematic way corridor. (Saptomo, Ade, 2007) The approach used in the study problem is of course adjusted to the subject matter which is the focus of research. This study used three approaches: philosophical approach, statute approach, and conceptual approach.

## **3. Results and Discussion**

The 1945 Constitution of the Republic of Indonesia is the highest law in Indonesia which not only governs political life but also economic and social life. As a "Political Constitution", the 1945 Constitution provides for state structure, the relationship between state institutions, and its relationships with citizens. This is regulated in Chapter I Forms and sovereignty, Chapter II of the People's Consultative Assembly, Chapter III State Government Authority, Chapter V State Ministry, Chapter VI Regional Government, Chapter VII Regional Representative Council, Chapter VII B Election, Chapter VIIIA Supreme Audit Board, Chapter IX Judicial Power, Chapter IX A State Territory, Chapter X Citizens and Residents, Chapter XA Human Rights (Particularly Article 28 I).

As the "Economic Constitution", the 1945 Constitution of the State of the Republic of Indonesia also regulates how the national economic system should be developed and developed. The provisions on the national economic system shall be regulated in only one article of Article 33, consisting of 5 (five) verses, and although the provisions on the national economic system are regulated in a single article, these rules shall be elaborated, further regulated consistently with respect to human rights Including economic rights, and the provision of people's welfare. Regulated in Article 33 paragraph 5 (five) of the 1945 Constitution, determines "further provisions concerning this article shall be governed by the Law". As the "Social Constitution", the 1945 Constitution of the State of the Republic of Indonesia regulates the governance of public life, especially in Article 27 paragraph 2 (two), Article 28, and Article 34, and Chapter XII on Education and Culture.

The discourse on the economic constitution at the moment, finds its relevance to the tendency in many countries today. The need for the creation of an increasingly effective, efficient and accommodative system of governance of the changing times, especially in the economic activities of a country, has led many experts to think about newer approaches and to revise the approaches that have been used in defining the problems, Matters relating to state administration, more specifically to the constitutional relationship with the economy. A Constitution is called the Economic Constitution if it contains economic policy. Policies that will shade and provide direction for the development of a country's activities. The arrangements contained in the constitution may be rigid, detailed, and explicit, but may also be flexible or contain only implicit philosophical guidelines such as in the Constitution of the United States. However the nature of economic policy pouring in it, the

constitution as a legal document can be a means to pave the way, engineer and direct the economic dynamics in society. (Asshidiqqie, 2010)

The Constitution of the Indonesian Economy as the supreme law which contains the direction and policy of the economy has the ideal construct that should be used as a benchmark and referral in national and regional development. The structure of the Indonesian economy can be seen from Article 33 paragraph 1 which states, "The Indonesian economy is structured as a collective effort based on the principle of brotherhood ", namely: " ... The economy is structured as a joint effort based on the principle of brotherhood ... ". What is meant by the joint effort based on the principle of brotherhood is cooperative. It should be pointed out that the cooperative in Mohammad Hatta's view is not the economic sector, but is a social life, which involves values, souls or spirit based on the sense of brotherhood, kinship, togetherness, mutual cooperation and so on, Co-operative life. (Elli Ruslina, 2012)

In the Indonesian Economic Constitution economic implementation is based on Economic Democracy which can be found in Article 33 Paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia, namely, "The National Economy is organized on the basis of economic democracy with the Principle of togetherness, Efficiency-Justice , Environmental Perspective, Independence, and by Maintaining a balance of progress and National Economic Unity ". Thus the Indonesian Economic Constitution which contains the People's sovereignty of the people, the highest power in the economic field is held by the people, in other words the people as the highest power holders in the economic field.

In the view of Moh. Hatta, People's sovereignty was originally viewed as an ideal of Indonesia's "Indigenous Democracy", in its explanation that Indonesian democracy should be a continuation of indigenous democracy in Indonesia, in view of its "Indigenous Democracy" embodied i) the ideals of a lively meeting In the hearts of the people of Indonesia from ancient times until now and did not escape because of various kinds of attacks. ii) the ideals of the protest, that is, the right of the people to argue in a general way all the rules of the state deemed unjust (the basis of the demand for freedom of movement and assembly for the people), iii) the aspiration of help. (Mohammad Hatta, 2014).

Original Democracy in question is a native Indonesian life that is used as a political joint, the association of life in question can be found in the social life of Indonesian society before the Indonesian lands fell under the Foreign government, that the social life of the community at that time already familiar with democracy but Which exists only in the village administration, which is jointed by the people or the village of Democracy. In the original Indonesian village, all regulations concerning the interests of collective life are decided by consensus, which is done in village meetings. Any arduous effort, which is not borne by the efforts of a person to be a joint effort, is done according to help.

Starting from that view then, Indonesian Original Democracy contained two properties, namely; I) the first nature of making a consensual decision by deliberation, is the basis of political democracy, ii) the second nature of helping and mutual cooperation is a good joint to uphold economic democracy. From that view was the beginning of the development of Indonesian Economic Democracy which was later stated in the Fourth Amendment of the 1945 Constitution of the State of the Republic of Indonesia, which states "The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainable, environmentally friendly, By maintaining a balance of progress and national economic unity ".

One of the principles in Indonesian economic democracy is the principle of Efficiency of justice, efficiency is closely related to competition, because it can be said that competition or composition can encourage or can realize efficiency. A competition is a condition whereby business actors strive to be as effective as possible to allocate their resources.

Competition aims for efficient use of resources, motivating for a number of potentials available. Business Competition can have positive and negative implications, in terms of positive competition can encourage business actors to use the resources to the fullest. While the negative implication is to run free competition (free fight liberalism) and negative behavior in the Act no. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition as prohibited conduct which includes prohibited activities and prohibited agreements.

About efficiency according to Mubyarto.

"The pursuit of efficiency has its limits, the limits are morals, not technical limits. How to outline the moral limits concretely? Moral limits can be held if we want to sincerely. This is what drives economic justice. ... economic justice emerges as a problem in society when people begin to worry that the atmosphere of competition in the economy and the business of society goes in such a way that justice is disrupted or more unfulfilled. The realization of social justice depends on the implementation of the principle of economic justice. Economic justice. It is the rule of the game, whereas social justice is the result, that is a feeling of security and peace in society because the rules of the game are obeyed by all members of society, without exception. The advanced and modern society which is the ideal society, is a society that can maintain a balance between continuous progress through efficiency and tranquility due to the realization of justice. For the sake of the

progress and tranquility of society, the two elements of economic justice and efficiency are equally important."  
(Mubyarto, 1994)

Mubyarto's opinion represents the reason why the word efficiency is compared with justice, Consciously that the movement of the Indonesian economy will not develop by not doing the best possible efficiency, but as a result the values of justice in society will be eliminated as a result of unlimited efficiency. Therefore, to achieve the objectives of the Indonesian Economic Constitution, the general welfare, efficiency that emphasizes the competition must be balanced with social justice, the balance between competitors (business actors) and cooperation, on the one hand as competition and on the other as justice.

Based on the principle of fair efficiency, it will try to develop a form of legal protection for traditional markets. The concept of legal protection, which can not be separated from the protection of human rights, is a concept of a legal state which is a term as a translation of two terms *rechstaat* and rule of law. Thus, in the explanation of the 1945 Indonesian Reproductive Act before the amendment stated, "The state of Indonesia is based on law, (*rechtsstaat*), not on the basis of mere power (*Machtsstaat*)". Theory The legal state essentially means that the law is supreme and the obligation of every state or government organizer to subject to law, no above-the-law rule, all under the rule of law ), With this position, there can be no arbitrary power or misuse of power. (Hasrul, 2013)

According to Satjipto Rahardjo, that the protection of the law is the existence of an effort to protect the interests of a person by allocating a power to him to act in the framework of his interests, further to integrate and coordinate the interests that can collide with each other by law are integrated in such a way that the collisions-The collision can be minimized. Organizing the interests is done by limiting and protecting those interests. (Satjipto Rahardjo, 2005)

From the above explanation about the protection of the law there are 2 important things;

1. First the allocation of power to act and
2. Integrate and coordinate the mutually colliding interests.

In relation to the first, the allocation of power in question is called right, so not all power can be called by right, but only certain powers. While the second is about integrating conflicting interests, it is related to that according to Satjipto Rahardjo that in the traffic of interest, the protection of certain interests can only be provided by limiting interests on the other. Based on the above explanation, if it is linked with traditional market, the injustice that occurs in traditional market should be given legal protection, legal protection form that is to allocate power to traditional market and protection to the interests of traditional market that is to earn a living and livelihood worthy.

The granting of rights and protection of traditional retail interests as described above also relates to justice, according to Ulpianus "*Iustitia est constans et perpetua voluntas ius suum cuique triuendi*" (Justice is a will that is fixed and not ultimately to give to each person what is rightfully). That sense is also in harmony with the views of Justinianus "*Juris praecepta sunt hawc; honeste vivere, alterum non laedere, suum cuique tribuere*" (The basic rule of law is to live worthily not harming others and giving others what is part of it). (Johnny Ibrahim, 2009).

John Rawls developed the idea of the principles of justice by the full use of his concept of creation known as the "original position" and the "veil of ignorance". As in general, each contract theory must have a hypothesis and is no exception to Rawls's concept of a contract of justice. It seeks to position the same and equal situation between each person in society and no party has a higher position between one another, such as position, social status, level of intelligence, ability, strength, etc. . Thus, these people can deal with others equally. (Faiz, 2009)

Such conditions are what Rawls refers to as the "original position" which is based on the reflective equilibrium notion based on the characteristics of rationality, freedom and equality in order to regulate the basic structure of society. Rawls's historic hypothetical hypothesis is almost identical to what Thomas Nagel puts forward as "the view from nowhere," but rather emphasizes the highly abstract version of "the State of Nature."

In the original position will adopt two principles of justice, the first principle states that each person has the right to a most extensive system of basic freedoms in proportion to similar systems for others, the second principle states that a) the socially and economically equitable Fair if it benefits the most disadvantaged people in society b) cling to positions and positions open to everyone. The first principle relates to equality of opportunity whereas the second principle concerning the occurrence of inequality is permissible only if it is necessary to improve the welfare of the less fortunate.

Based on the above explanation in terms of current traditional market conditions, based on the first principle of justice view according to John Rawls that the same opportunities referred to in the retail context are equal opportunities to strive for traditional market and modern market, different is the treatment as intended in The second principle that inequality is permissible if for the benefit of the disadvantaged, disadvantaged people in the retail Industry in question is traditional market.

Empowerment and retail arrangement is a form of realization of social justice, social justice understood

as justice relating to how well earned and demanding sacrifices, advantages and burdens in social life is shared equally to all members of society. With this simple understanding, a certain social or social policy condition is judged as fair and unjust when a person, or a particular group / group of people gets little benefit from what they ought to earn, or a huge burden of what they ought to bear .

"Empowerment" comes to the fore because of the two premises of failure and hope. The failure in question is the failure of models of economic development in tackling the problem of poverty and environmental sustainability. While expectations arise because of alternative development alternatives that include democratic values, gender equality, intergenerational equations and adequate economic growth. <sup>1</sup>(Masyruki, 2011).

Empowerment always refers to the disadvantaged group of people who are often victimized by the dynamics of economic development especially in the current era of Globalization, this is what traditional retailers feel using the means of trading the people's market and using the means of trading traditional stalls. Therefore, the ideal empowerment model for traditional retail empowerment is based on traditional market itself. The ideal empowerment model for empowerment Traditional markets are based on the traditional retail itself. The gradual empowerment process can be done in three phases;

1. Initial phase,
2. Participatory Phase,
3. The Emancipatory Phase.

These three phases of empowerment are highly relevant if applied in empowerment for traditional retailers. The initial phase is a phase of empowerment by the government for the people, the participatory phase is a phase of empowerment by the government along with the people, and for the emancipatory phase is a phase of empowerment by the people and for the people supported by the government and society. The three phases are chosen because they are in harmony with the principle of Brotherhood which is the basis of the Indonesian economy, in which the joint effort is done not only by the government but also involving business actors and the community.

Initial phase, empowerment in this phase lays a crucial role for the Government because in this phase the people are passive, that what has been planned will be implemented by the people. Therefore, planning by the government should make the Constitution an economic basis in every policy to be taken. It also relates to how to maximize the potential of regionalism by not abandoning the values outlined in the Indonesian Economic Constitution.

Participatory phase Empowerment in this phase is the emphasis on how to develop a conducive business climate for the retail industry, Business climate influenced by many factors. Based on the survey, the main factors affecting business climate are labor and labor productivity, regional economy, physical infrastructure, socio-political conditions, and institutions. Factor in Fase Partisipatory, the process of empowerment comes from the Government with the community, and earmarked for the people. In the context of retail empowerment undertaken by the Government in this case local government together with traditional market entrepreneurs, Empowerment in this phase that is related to traditional retail management and formation of associations to attract the aspirations of business actors, with various government policies in the first phase Continued in this phase is how the local government becomes a manager (for traditional markets) as well as manager (for a private market managed privately) or even a facilitator of management assistance (for traditional stalls). The situation in question, especially is a bureaucratic institution (government).

Emancipatory phase, this phase is the last phase where the process of empowerment comes from the people to the people with the support of society and government. In the retail context, this phase is how traditional markets build trust by people to be able to shop at traditional markets. In trade, capital is anything that can be profitable or productive, capital in the form of material such as building or goods, capital in the form of quality education; Local cultural wisdom; And social capital in the form of togetherness, social obligations are institutionalized in the form of common life, roles, authority, responsibility, reward system and other interests that result in collective action.

The difference of empowerment for the traditional market in this research and empowerment in the regulation of the Minister of trade no. 70 by 2013 is empowerment in this research is directed to provide equitable protection, while empowerment in the Ministerial Regulation No. 70 by 2013 is directed in order to increase competitiveness. in article 18 paragraph 3 States;

Increased competitiveness as referred to in paragraph (2) carried out in the form;

- a. Rejuvenation or revitalizing traditional Market buildings;
- b. Implementation of professional management;
- c. Provision of merchandise with the good quality and competitive price;
- d. The process of financing Facilities to market traders to working capital credit and ownership of the

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<sup>1</sup> Masykuri Bakri, Dekonstruksi Jalan Terjal Pembangunan Negara Dunia Ketiga Perspektif Pendidikan, Pemberdayaan, dan Pelayanan Publik, (Surabaya: Visi Press Media, 2011) hlm. 44.

business place.

These differences make a difference in the translation for empowerment for the improvement of competitiveness as mentioned we can conclude that to improve the competitiveness only makes the traditional market as the only object where there is no involvement of traditional market and modern market in an effort to empower the traditional market. While empowerment in this research is empowerment as a form of fair protection, that is there is giving of rights to traditional market entrepreneur to go forward and develop independently. The reflection of The Principle of Brotherhood that was not seen in the market setting is now proposed that there is cooperation and mutual cooperation that can be seen with the involvement of the traditional market in the second phase of the parsipatory phase and the third phase is the emansipatory phase.

Traditional Market Arrangement is one of the instruments in realizing fair protection for traditional market, if viewed with the theory of legal protection according to Satjipto Rahardjo, that in traffic of interest there are mutually colliding interests therefore by to keep one's interest done by limiting interests The other, and if associated with John Rawls's theory of justice with regard to the 2 priorities of justice, the first principle of equality (equal freedom) takes precedence over the principle of the two principles of difference.

On the basis of these two theories if associated with traditional markets that the limitation of interests by modern markets should not be done by banning modern markets from trying or standing in an area, as opposed to the first priority in John Rawls's theory of justice, thereby limiting To the modern retail is done in perspective Spatial arrangement is not limited in its sense of rejection but restriction in its sense in order.

The injustice to traditional markets can be clearly seen from the existence of a modern market side by side (with very close distance) with traditional markets. This can lead to a decrease in profits that resulted in traditional retail folded mats. Distance problems, which for some regions do not even set the ideal distance between traditional markets and modern markets, this is also coupled with the emergence of modern retail bodong that seemed to be separated from the supervision by the local government.

Spatial planning is intended to maximize development in the region, while the central issue facing development in the region is the expansion of employment, the placement of an Industry in an area and help the part of the city that includes lagging economically in order to be able to overcome the obstacles facing it. Therefore, as a sub-system in the regional development, the structuring of modern markets and traditional markets sh Therefore, at the planning level is directed to the triple track developmen which is the implication of the economic system based on the popularization of the Constitution of Economy, namely:ould at least address the central issues facing regional development.

Therefore, the planning level is directed to the triple track developmen which is the implication of the people's economic system based on the Constitution of Economy, namely:

1. Pro poor in the retail context is the alignment of traditional market, retail arrangement in favor of traditional market is intended to make traditional market as the center of concern which means to arrange retail instead of traditional market that adjust to the entry of modern market, but on the contrary that modern market Which must adapt to the existence of traditional market. The development of modern market in the regions even shows the opposite where the evictions and displacement of the people market under the guise of revitalization often occur, the same thing is also felt by traditional stalls that can not do anything when next to it in the wake of modern market.
2. Pro Job in this case is to build a traditional market seen from its capacity in the Industry in an industry that is Retail Industry. By looking in the context of Industry then the existence of traditional markets and modern markets is a unity. The retail industry can provide jobs, this is pointed out because the retail industry does not require special skills as a condition. The retail industry can also bring diversity of service patterns to the consumer (society) to the traditional retail of social and cultural nuances and to modern retailers with efficiency and effectiveness to bring the pattern of service in accordance with the development of the times, In addition, by looking at retail in industry perspective can accommodate the rights Economy of all Indonesian people as part of human rights. Paragraph I Opening of the 1945 Constitution of the State of the Republic of Indonesia, "that indeed freedom is the right of all nations and, therefore, the occupation of this World must be abolished because it is incompatible with humanity fairies and justice justice" The concepts of individual freedom each Citizens and even the fundamental freedoms of every human being, including fundamental freedoms in the economic field. Thus, the collective independence of nationality from the individual freedom of every citizen, and indivisual freedom space will never be open if there is no national independence. Therefore, economic rights must also be understood in a balanced manner with the fundamental obligations and responsibilities of individuals and collectivities to respect the rights of others.
3. Pro Growth, In reality in the field especially related to retail, market arrangement planning will be faced with social, economic, environmental, political and legal problems. Therefore, pro-growth retail arrangement planning focuses on accomodating each element whether it is socio-political and

legal to grow retail in the context of regional and national development. It is also related to how to accommodate the interests of modern market and traditional market. KPPU's decision related to Indomaret gives an idea how in running its business, it should be that modern market should pay attention to traditional market interest in order to realize the balance of interest between modern market and traditional market.

#### 4. Conclusion

The 1945 Constitution of the State of the Republic of Indonesia as the highest source of law contains documents whose content material is intended for the administration of a Government, in observing the contents of the 1945 Constitution of the State of the Republic of Indonesia, the elements governed for the operation of a country can be regarded as Political Constitution, Social Constitution and Economic Constitution. The 1945 Constitution of the State of the Republic of Indonesia as the Constitution of the Indonesian Economy should be understood as the highest economic policy that should be used as a reference and reference in developing every national economic development policy. In the Indonesian Economic Constitution, especially in Article 33 paragraph 4, the economy is based on economic democracy which is one of the principles is efficiency-justice, based on the principle, the legal protection for traditional markets does not mean to isolate an area from the presence of modern market but the protection of traditional market law Developed on the principle of efficiency of justice, in efficiency directed to provide equal opportunities and for justice directed to provide legal protection in the form of empowerment and structuring.

#### REFERENCES

##### Books

- Asshidiqqie, Jimly. 2010, *Konstitusi Ekonomi*, Jakarta: Kompas.
- Effendi, Taufiq. 2013, *Reformasi Birokrasi Dan Iklim Usaha*, Jakarta: Konstitusi Press.
- Hatta, Mohammad. 2014, *Demokrasi Kita (pikiran-pikiran tentang demokrasi dan kedaulatan rakyat)*, Bandung: Segi Arsy.
- Ibrahim, Johnny. 2010, *Hukum Persaingan Usaha: Filosofi, Teori, dan Implikasi Penerapannya di Indonesia*, Ar Ruzz Media
- Mohamad Faiz Pan. 2009, *Teori Keadilan* Jakarta: Jurnal Konstitusi, Volume 6, Nomor 1,
- Mubyarto. 1994, *Sistem dan Moral Ekonomi Indoensia*, Jakarta: LP3ES.
- Ruslina, Elli. 2012, *Makna Pasal 33 Undang-Undang Dasar 1945 dalam Pembangunan Hukum Ekonomi Indonesia*, Jakarta: Jurnal Konstitusi, Volume 9 Nomor 1.
- Tambunan Tulus TH, Nirmalawati T, Dyah. 2004. *Arus Kajian Persaingan Dalam Industri Retail*, Jakarta: KPPU.
- Wiranata, I Gede A.B, 2007, *Reorientasi Terhadap Tanah Sebagai Objek Investasi*, Bandar Lampung, Universitas Lampung.
- <http://indef.or.id/id/berita/detail/551/dampak-positif-dan-negatif-liberalisasi-ekonomi-menurut-ekonom-indef>. di diakses tanggal 15 maret 2015.
- Marcel Seran. *Perlindungan Hukum Bagi Pasar Tradisional Di Era Globalisasi dan Liberalisasi Perdagangan* file:///C:/Users/Acer/Downloads/9341-20995-1-PB%20(1).pdf

##### Laws

- Republik Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.
- Republik Indonesia, *Undang-Undang No. 7 Tahun 2014 Tentang Perdagangan*.
- Republik Indonesia, *Undang-Undang No 20 Tahun 2008 Tentang Usaha Mikro, Kecil dan Menengah*
- Republik Indonesia, *Peraturan Presiden Republik Indonesia No. 112 Tahun 2007 tentang Penataan dan Pembinaan Pasar Tradisional, Pusat Pembelanjaan dan Toko Modern*.
- Republik Indonesia, *Peraturan Mneteri Perdagangan Republik Indonesia No. 70 Tahun 2013 tentang Pedoman Penataan dan Pembinaan Pasar Tradisional, Pusat Pembelanjaan dan Toko Modern*